

COMMENTS OF THE SECURITIES AND EXCHANGE COMMISSION
ON TITLE IV OF H.R. 5050 TO THE SUBCOMMITTEE ON
COMMERCE AND FINANCE OF THE HOUSE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE, 93RD CONGRESS,
1ST SESSION

(1973)

TITLE IV - SECURITIES PROCESSING

Title IV of H.R. 5050 provides a regulatory framework for the development and regulation of an integrated national system for the processing and settlement of securities transactions. The basic purpose of this section of the bill is to assure that a series of interdependent developments which are currently being implemented, such as comprehensive securities depositories, systems for clearance and settlement of transactions, and improved transfer facilities, are effectively forged into a modernized, nationwide system for the safe and efficient handling of securities transactions in a manner which best serves the financial community and the investing public. While the Commission believes that Title IV of H.R. 5050 provides a comprehensive and effective means to accomplish the above objectives, we believe that the legislative approach we recommended last year would accomplish these objectives, and, at the same time, would best utilize the expertise and manpower of the private sector and the federal bank regulatory agencies and avoid duplicative regulatory efforts.

As the Subcommittee is aware, a number of bills dealing with securities processing have been introduced in both Houses of Congress, including H.R. 14567, 92d Cong., 2d Sess.(1972), which was introduced in the House of Representatives on behalf of the Commission. A central question in the consideration of these various legislative proposals has been whether, and to what extent, the authority to examine clearing agencies, securities depositories and transfer agents organized as banks, and to enforce the applicable standards to be promulgated by the Commission, should be vested in the bank regulatory agencies or the Commission.

Pursuant to Title IV of H.R. 5050 the Commission would be the sole regulator of clearing agencies, depositories, and transfer agents. In contrast, in H.R. 14567, the Commission recommended a division of regulatory responsibilities between the Commission and the bank regulatory authorities. Specifically, the Commission recommended that depositories and clearing agencies, which are inextricably a part of the securities handling process and which traditionally have been subject to regulatory oversight by the Commission, should continue to be under the Commission's jurisdiction regardless of whether they were organized as banks. The Commission believes that its objective of a single, unified, nationwide system for

processing securities transactions could best be fulfilled if depositories and clearing agencies are subject to regulation by the Commission. Thus, without precluding supervisory oversight by banking authorities where a depository is a bank and, in fact recommending cooperation between the Commission and the bank regulatory authorities, the Commission proposed in H.R. 14567 to retain its authority to inspect depositories, and to require reports from, and enforce compliance by, depositories with the regulations to be promulgated by the Commission.^{1/} Similarly, with regard to transfer agents which are not banks, the Commission would have had full responsibility for setting standards and insuring compliance with those standards. In the case of banks which are transfer agents, the Commission proposed that while it would have the authority to set standards,^{2/} registration, inspection and

^{1/}The Commission believes that with respect to depositories which are organized as banks, bank regulators should not be preempted from responsibility in such areas as safekeeping of funds and securities, security and financial responsibility. And, to the degree their expertise can be utilized within the framework of the Commission's primary responsibility for the regulation of depositories, we would welcome such assistance.

^{2/}H.R. 14567 contemplated that the appropriate bank regulatory authority would set the recordkeeping and reporting requirements for bank transfer agents. However, the Commission now believes that in order to achieve uniformity in recordkeeping and reporting with regard to all transfer agents, this authority to set recordkeeping and reporting standards should rest with the Commission.

enforcement responsibilities would be undertaken by the federal bank regulatory authorities. The Commission believes that this division of responsibilities for bank transfer agents should be considered by the Subcommittee.

We also note that it is possible for a transfer agent to perform the functions of a depository. At present, depositories have developed separately from transfer agents both because of the large number of transfer agents which serve individual issuers of securities and also because depositories were assigned different functions at their inception. The development of a transfer agent depository could, however, provide certain advantages since it would make depository services available to individual investors and smaller institutions whose participation in the securities markets may not be sufficiently active to justify their assuming the obligations of a participant in a pure depository. We believe that the bill should be modified specifically to permit the combination of depository services and transfer agent services in one institution if the Commission determines that this is feasible and desirable. We would be prepared to assist the Subcommittee in framing amendments which would keep this option open.

Our comments on specific provisions of Title IV are as follows:

Section 401

Section 401 of H.R. 5050 proposes to amend Section 2 of the Securities Exchange Act of 1934 ("Act") to provide that one of the purposes of that Act is the development of an integrated national system for the prompt and accurate processing and settlement of securities transactions. We believe this provision is appropriate.

Section 402

Section 402 of the bill amends Section 3(a) of the Act by adding definitions of the terms "clearing agency," "securities depository," "participant," "person associated with a participant," "transfer agent," "bank regulatory agency," and "rules of a clearing agency" or "rules of a securities depository." We note that there are certain exclusions from the terms "clearing agency," "securities depository," and "transfer agent." In this connection, we wish to note that investment company shares are frequently distributed through methods involving the use of intermediary organizations commonly referred to as "service agents." The functions performed by such service agents acting in various capacities simultaneously for investors, retailing dealers, principal underwriters and the issuing investment companies, may vary somewhat throughout

the industry, but generally they include the following:

1. Receive orders accompanied by payment directly from shareholders for the purchase of fund shares.
2. Compute the portions of the investor's payment due to the fund, the underwriter, and the retailing dealer, record the transaction accordingly, and credit the monies to the appropriate accounts.
3. Credit the share account of the investor with the number of shares purchased.
4. Mail a confirmation statement of the transaction to the investor, the retailing dealer, and the registered representative of the retailing dealer. Copies are usually also furnished to the principal underwriter, the fund custodian, and the fund for their records.
5. Similarly process orders for the liquidation of fund shares.
6. Calculate and process the reinvestment of cash dividends for shareholders.

Most such service agents, depending on the nature of the services they render, appear to come within the definition of the terms "clearing agency," "securities depository," and "transfer agent" as they appear in Section 402.

In this connection, we note that proposed paragraphs (22)(C)^{3/}

^{3/}We assume that the exclusionary language of proposed paragraph 22(C) does not include a depository organized as a banking institution with Federal Reserve membership (e.g., limited purpose trust company) by reason of safekeeping or other functions commonly performed by them on the date of the enactment of this paragraph. Some depositories are presently organized as limited purpose trust companies.

and (D) and the last sentence of proposed paragraph (25) of Section 3(a) of the Act contain certain exclusions from the terms "clearing agency," "securities depository" and "transfer agents" and we assume that there was no intent to exclude service agents who perform the above-listed functions in connection with mutual fund shares or variable annuity contracts under proposed paragraph (22)(D) and the exclusionary sentence in proposed paragraph (25). We suggest that the exclusionary sentence in proposed paragraph (25) be amended to make this clear.

Section 403

Section 403 would amend Section 15(c) of the Act by adding new paragraph (6) to make clear that the Commission has authority to promulgate rules applicable to brokers, dealers and exchange members to regulate the time and method of making settlement, payments and deliveries, and opening, maintaining, and closing accounts. We believe the only meaningful reading of this section and the parenthetical phrase "other than an exempted security or commercial paper, bankers' acceptance or commercial bills" is that a broker or dealer whose business is entirely in exempted securities would not be subject to rules adopted pursuant to proposed Section 15(c)(6), but that a broker or dealer who engages in transactions

in both exempted and non-exempted securities would be subject to the full effect of all the rules under that section. We recommend that this be made clear in the legislation.

Section 404

Proposed New Section 17A of the Act

Subsection (a)(1) of proposed Section 17A would require all clearing agencies, securities depositories and transfer agents to be registered within 180 days after the effective date of the Securities Exchange Act Amendments of 1973 and would authorize the Commission to exempt any person, security, transaction, clearing agency, securities depository or transfer agent, or class or classes thereof from any provision or provisions of Section 17A or of any rule thereunder. We support this provision.

Subsection (a)(2) would require the Commission to report to Congress in its annual report the number of exemptions requested and granted and the basis or bases upon which such exemptions were granted. We have no comment on this Subsection.

Subsection (a)(3) would make clear that the provisions of proposed Section 17A shall apply only to securities and persons performing the function of transfer agent with respect to securities which are registered pursuant to Section 12 of the Act or which would be required to be so registered except

for the exemption provided in Subsections (g)(2)(B) or (g)(2)(G) of Section 12. Proposed Section 17A would not apply to variable annuity contracts issued by insurance companies. The last sentence of proposed Section 17A(a)(3) should be revised to make clear that service agents who may perform clearing agent, depository or transfer agent functions in connection with variable annuity contracts would be subject to the requirements of proposed Section 17A.

Subsection (b) of proposed Section 17A would provide that transfer agents may register with the Commission by filing a registration statement containing certain information. As we indicated in our introductory remarks, we believe that transfer agents which are banks should be required to register with the appropriate bank regulatory agency, with notice thereof to the Commission.

Subsection (c) of proposed Section 17A would provide that a securities depository or clearing agency may register for purposes of this section by filing with the Commission a registration statement containing specified information and such other information as the Commission may require. We support this provision.

Subsection (d) of proposed Section 17A would require the Commission to find as a prerequisite to registration that a securities depository or clearing agency meets the criteria set forth in this subsection.

We note that this Subsection, as well as other Subsections, contemplates that a clearing agency or securities depository will be a self-regulatory organization. As the Subcommittee is aware, certain privately-owned entities will be encompassed by the definition of a clearing agency and depository. Some of these organizations, particularly certain clearing organizations, have not been self-regulatory bodies and, under the bill, probably should not be. We note that the bill provides the Commission with broad exemptive powers which could be used to exempt such entities from any clearing agency or depository requirements which we deem to be inappropriate or unnecessary to carry out the purposes of this Section.

Subsection (d)(2) would require that the rules of the clearing agency or securities depository provide that certain enumerated classes of persons are eligible to become participants subject only to certain exclusionary rules set forth in that Subsection. With respect to persons not specifically designated in Subsection (d)(2), the clearing agency or securities depository may impose additional enumerated grounds for restricting or conditioning participation.

1. We believe that clause (2)(A) of Subsection (d) should be corrected to read "all registered broker or dealers or members of a national securities exchange."

2. We note that Subsection (d)(2) would, among other things, give a clearing agency or securities depository discretionary authority to deny participation to persons who have been expelled or suspended by a registered clearing agency or securities depository, during the period of such expulsion or suspension. The Commission believes that its approval should be required before a person currently under suspension or expulsion from a clearing agency or securities depository may become a member of another clearing agency or securities depository.

3. The Commission believes that the rules of a clearing agency and securities depository should allow these entities to impose additional criteria to those set forth in Subsection (d)(2) of proposed Section 17A for admission to the clearing agency or securities depository, provided the Commission determines that such additional criteria are necessary or appropriate in the public interest, for the protection of investors, or to assure the prompt and accurate processing and settlement of securities transactions. The primary purpose of the Commission's suggestion in this regard is not to limit entry to a clearing agency or securities depository, but rather to ensure that all broker-dealers and

other financial institutions will have access to such entities on a reasonable and non-discriminatory basis and at the same time to protect the financial integrity of these entities and their participants.

Subsection (e) of proposed Section 17A would require the Commission to publish notice of the filing of a registration statement of a clearing agency or securities depository and to afford interested persons an opportunity for comment. Within 60 days of filing of a registration statement by a clearing agency, securities depository or transfer agent the Commission would be required by order to grant such registration or to institute appropriate administrative action to determine whether the application should be denied.^{4/} The Commission does not object to a requirement that it institute administrative action to determine whether applications for registration should be denied, if the intent of the proposed amendment is, as we believe, to require due process when denial of registration is being considered and the defect in the registration statement cannot be remedied. We believe, however, that to

^{4/}The sixty day period within which the Commission is required to act with regard to securities depositories and clearing agencies is unduly short in view of the fact that the notice of filing must be sent out for public comment. Since the Commission must prepare a release announcing the filing, await comments on the filing, and analyze these comments, we suggest that the Commission be allowed 120 days to act in the case of securities depositories or clearing agencies.

require the Commission to enter an order granting registration of a transfer agent could create an undue administrative burden for the Commission since there are thousands of transfer agents.^{5/} Since we assume that the only purpose of this provision is to prevent the registration of a transfer agent by mere inadvertence, we suggest that the Subcommittee consider deleting this requirement at least with respect to transfer agents.

Subsection (f) of proposed Section 17A would provide that a clearing agency, securities depository or transfer agent may withdraw from registration upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors. The Commission may also, by order, cancel or deny the registration of such entities if they are no longer in existence or have ceased to do business in the capacity specified in the registration statement. The Commission supports this provision.

^{5/}Since there are a limited number of clearing agencies and securities depositories, the Commission does not believe that the requirement of an order for granting their registrations would be an administrative burden.

Subsection (g) of proposed Section 17A would give the Commission broad authority to adopt such rules and regulations with respect to the activities of clearing agencies, securities depositories or transfer agents as the Commission finds necessary or appropriate in the public interest or for the protection of investors. We support the need for such rulemaking authority over these entities with regard to their activities in the securities processing area.

Subsection (h) of proposed Section 17A deals with review by the Commission of disciplinary action taken by clearing agencies and depositories against participants and persons associated with a participant, and review of denials of admission. Commission review of such action would be upon application of an aggrieved person filed within 30 days after such action has been taken or upon the Commission's own motion. The Commission would be authorized to order a stay of the implementation of any disciplinary action pending review. This Subsection would give the Commission authority to review action taken against non-broker-dealer participants including banks and other financial institutions and their associated persons. We support this provision.

Subsection (i)(1) of proposed Section 17A would give the Commission, after notice and opportunity for hearing,

authority to affirm, modify or set aside disciplinary action taken by a clearing agency or depository with respect to a participant or person associated with a participant, and Subsection (i)(2) would authorize the Commission, upon a finding that the sanctions or penalties imposed in any disciplinary proceeding are inappropriate, to cancel, reduce, require the remission, increase, broaden the scope of, or otherwise require the imposition of a different sanction or penalty.

1. It should be noted that Section 8 of H.R. 15303, 92d Cong., 2d Sess. (1972), provided that if the Commission determined in its review that the sanction imposed by a self-regulatory organization was inadequate or inappropriate in view of the nature and seriousness of the violation, it could remand the disciplinary proceeding to the self-regulatory organization with a statement of its position thereon and with appropriate instructions to the self-regulatory organization to reconsider such penalty or sanction and to determine whether some different or additional penalty or sanction should be imposed. After such determination, the Commission could again review the disciplinary action and, with or without taking additional evidence, then determine and impose such penalty or sanction as it deemed appropriate. The Commission could not, however, assess any fine which the

self-regulatory organization had not already imposed upon the person disciplined. The Commission believes that the Subcommittee should give consideration to adopting this approach.

2. While proposed Section 17A(i) would give the Commission the authority to review disciplinary proceedings de novo, it is clear that the Commission has the discretion to consider the record before the securities depository or clearing agency. While we have no objection to being granted authority to review a proceeding de novo, we believe that the Commission should have the authority, as a matter of administrative efficiency, to remand cases for reconsideration to the clearing agency or securities depository involved, in appropriate instances.

Subsection (j) of proposed Section 17A would provide for review of a denial of participation in a clearing agency or securities depository and, upon such review, require the Commission either to dismiss the proceeding or, by order, to set aside the action of the clearing agency or securities depository and require it to admit the applicant to participation. Again this review is not limited to broker-dealer participants and would include banks and other

financial institutions who may be denied participation in a clearing agency or securities depository. We support this provision.

Subsection (k)(1) of proposed Section 17A would require clearing agencies and depositories to submit rule changes along with a summary statement of the changes, and the basis therefor, to the Commission. In addition, the Commission could require clearing agencies, depositories, and transfer agents to file such information as the Commission may require to keep current their registration statements. No rule change would become effective unless the procedures set forth in this Subsection were followed. Subsection (k) would require all rule changes to be published for comment. A proposed rule change would become effective 60 days after such publication (or 150 days if the Commission institutes public administrative proceedings concerning the proposed rule change) unless the Commission by order disapproves it.

1. In our view, public notice and an opportunity for comment is desirable. We believe, however, that the securities depository or clearing agency, rather than the Commission, should solicit public comments on proposed rule changes so that it may have the benefit of such comments before it acts. We also believe that solicitation of public

comments should not be required with regard to all rule changes.^{6/} This matter should be left to the securities depository, subject to Commission discretion to solicit additional comments. In any event, where a securities depository or clearing agency has obtained comments, the Commission should not be required to duplicate that effort unless, in its discretion, it wishes to do so. Additionally, copies of the comments received by the clearing agency or depository should be sent to the Commission with the filing of the proposed rule change.

2. Although opportunity for postponing proposed rule changes is provided for by this Subsection, there is no explicit provision enabling the Commission, where consistent with the purposes of proposed Section 17A or otherwise appropriate in the public interest, to accelerate the time required before rule changes can take effect, although such authority is implicit. Many housekeeping rule changes and amendments, directly or indirectly designed to improve service to investors, should be permitted to take effect with dispatch, and without publication, subject to the Commission's oversight.

^{6/}For example, housekeeping rules and other minor or technical changes should be excepted from this procedure. However, the Commission should be able to require the securities depository or clearing agency to solicit comments on any change.

3. Finally, as noted previously, this Subsection would make such rule changes effective within 60 days after publication unless the Commission disapproves such changes. Under the Subsection, as drafted, the Commission would not be permitted to extend this period unless it instituted public administrative proceedings concerning such changes. We believe the requirement that public administrative proceedings must be instituted, if the Commission has not completed review within 60 days of publication, is unduly burdensome especially in view of the fact that public comment is required, and it is not likely to significantly aid the administrative decision-making process or the public interest.

Subsection (1) of proposed Section 17A would give the Commission direct disciplinary authority over transfer agents and their partners, officers, directors and employees. As we indicated in our introductory remarks regarding Title IV, we believe that, in the case of transfer agents which are banks, such disciplinary authority should rest with the appropriate bank regulators.

Subsection (m)(1) of proposed Section 17A would grant the Commission direct disciplinary power over depositories and clearing agencies. Subsection (m)(2) would grant the Commission direct disciplinary power over participants and

persons associated with participants. Subsection (m)(3) would give the Commission authority to remove from office any officer or director of a clearing agency or securities depository who has willfully failed to enforce the rules of such entity or has willfully abused his authority.

With regard to Subsection (m)(2), the Commission should be granted direct authority to censure or otherwise impose limitations on a participant. The rather severe sanctions of expulsion or suspension may work an undue hardship on the participant. The additional sanctions we suggest will give the Commission greater administrative flexibility to fashion appropriate sanctions. Sanctions against persons associated with a participant should be expanded to include censure.

Regarding Subsection (m)(2), we suggest that the Commission not be given direct authority to discipline a participant or person associated with a participant for violation of a rule of the depository or clearing agency which relates solely to the internal management or procedures as between the depository or clearing agency and its members, where such rules do not affect the public interest, the interest of investors or the efficient processing of securities transactions. Additionally, the Commission should not be required to proceed against any such participant or person

associated with a participant under Subsection (m)(2) solely because of violations of any securities depository or clearing agency rule without first notifying the entity of the alleged violation and the Commission's intention to institute a proceeding based on it, and giving such entity a reasonable time within which to compel compliance with the rule. As noted above, under Subsection (m)(2), the Commission would have disciplinary power over participants and their associated persons. As the Subcommittee is aware, this would include banks, insurance companies, and other financial institutions.

Subsection (n) of proposed Section 17A is intended to give meaning to the Commission's authority under Subsection (m)(1) to suspend or revoke the registration of a clearing agency or depository by giving the Commission authority to apply to any court of competent jurisdiction for the appointment of a trustee to operate or terminate the facility under terms and conditions prescribed by the court. We believe such authority is desirable since it would not necessarily make the sanction of terminating or suspending the registration of such facilities a hardship to participants and investors. We note, however, that such a sanction would probably be imposed on a clearing agency or depository only for the most

severe failures on the part of such facility to fulfill its statutory responsibilities.

Subsection (o) of proposed Section 17A is a record-keeping section which is substantially identical to existing Section 17(a) of the Act. We support this provision.

Subsection (p)(1) of proposed Section 17A would require the Commission to prepare full and detailed reports of all examinations conducted by it of banks that are registered as clearing agencies, depositories or transfer agents and, upon request, to furnish a copy of such report to the appropriate bank regulatory agency as defined in proposed Section 3(a)(26) of the Act (Sec. 402 of H.R. 5050). Subsection (p)(2) would direct the Commission to consult and cooperate with the appropriate bank regulatory agencies in order to facilitate fulfillment of their mutual regulatory responsibilities to the maximum extent practicable. This is the only provision in the legislation which relates to cooperative efforts between the Commission and the banking authorities, since Title IV of H.R. 5050 makes the Commission the sole regulator of clearing agencies, depositories and transfer agents. We believe that consideration should be given to granting the bank regulatory authorities the oversight authority suggested in our earlier remarks. Nevertheless, if Congress believes that the Commission should be the sole

regulator, we will, in any event, cooperate with the various bank regulatory authorities to the maximum extent possible.

We wish to reemphasize former Chairman Casey's statement that "(W)e are sensitive to the reluctance of banks to become subject to multiple regulation in their transfer functions and of their desire that a depository to which they entrust the securities that they hold as fiduciaries look like a bank, feel like a bank and be regulated like a bank."^{7/} The

Commission will make every effort to accommodate these concerns.

Subsection (q) of proposed Section 17A provides that this Section shall not apply to any transfer agent with respect to securities transactions occurring outside the jurisdiction of the United States. We have no comment on this provision.

Subsection (r) of proposed Section 17A would require the Commission to take whatever steps are within its power to bring about the elimination of the stock certificate as a means of settlement among brokers by December 31, 1976. We are in complete agreement with this goal. We are concerned, however, that the rigidity of a fixed timetable may make it difficult to adapt to circumstances not now foreseeable and

^{7/}See Statement of William J. Casey, former Chairman of the Securities and Exchange Commission to the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, on H.R. 14567, and S. 3876 (August 14, 1972).

to weigh the benefits and advantages of eliminating the stock certificate at a fixed point in time against the costs which would have to be incurred to achieve it. However, if Congress fixes a definite timetable, the Commission will undertake to meet it.

Section 405

We believe that the subject of confidential treatment of information filed with the Commission is not germane to securities processing legislation. We note that the subject of making information available to Congress has been already dealt with in Title I of H.R. 5050. We do not believe that there is any need to change existing procedures regarding confidential treatment of information, but if the Subcommittee wishes to make these changes, we have the following comments.

Section 405 of H.R. 5050 would amend Section 24 of the Act to provide that persons who file registration statements, reports, and other materials with the Commission pursuant to the Act may make written objection to the Commission to the public disclosure of information contained in those filings. The Commission would be required to grant confidential treatment where it finds: (1) that disclosure is not in the public interest and (2) that disclosure would (A) jeopardize the safety of funds or securities, (B) require the revealing

of trade secrets or processes, or (C) impair the value of a contract. Pending the Commission's findings, the information which is the subject of the objection would be treated as confidential but, in the event the Commission failed to make the required findings within thirty days from the date the information was received by it, the confidential treatment would cease and such information would become public.

Section 405 of H.R. 5050 would also amend Section 24 of the Act to provide that nothing in this Section shall prohibit the Commission from disclosing any information in any administrative or judicial proceeding, and would permit the Commission to make available to an appropriate regulatory agency, for the purpose of enabling it to carry out its responsibilities under the Act, any information contained in any registration statement, document, report or other material filed with the Commission pursuant to the Act. We assume that the term "appropriate regulatory agency" is intended to include the various self-regulatory organizations, as well as the Federal Reserve Board, and we suggest that this be made clear. In addition, we suggest that the bill be modified to permit the Commission to make such information available to other government agencies when needed for the performance of their duties. Moreover, Section 405 appears to require the

Commission to provide "the duly authorized committees of the Congress" with any information they might request, presumably including information as to which confidential treatment has been granted.

The Commission concurs in the Subcommittee's attempt to create standards by which the need for confidential treatment should be measured. We do not agree, however, that confidential treatment should be obtainable only where a public interest standard and one or more of the remaining three standards set forth in proposed Subsections 24(a)(1)(A), (B) and (C) have been met. There may well be situations where it would be appropriate in the public interest to grant confidential treatment, but where at least one of the additional criteria set forth in the proposed section cannot be met. Under existing Section 24(b), if a person objects to the disclosure of information subject to that Section, the information is treated as confidential unless the Commission determines that disclosure is in the public interest. Under the proposed amendment in H.R. 5050, the Commission must affirmatively grant confidential treatment, upon the basis of specified findings. The exact significance of this distinction is not entirely clear, but it would appear to place a greater burden on the person seeking confidential

treatment, as well as to require the Commission, in the interest of fairness, to act affirmatively in each case where confidential treatment is sought. The proposed amendment to Section 24(b) should also be revised to permit persons to withdraw information as to which confidential treatment is unsuccessfully sought, as is presently permitted.

Pursuant to proposed Section 24(b), the Commission would be required to make a determination concerning the confidential treatment of particular information within thirty days after the information is filed with it; otherwise, the information would be subject to public disclosure. Since this requirement may be impossible to meet, particularly where the Commission's staff is confronted with numerous contemporaneous objections to public disclosure of what may be diverse information, it is recommended that the time within which the Commission may determine whether to grant confidential treatment be extended to at least ninety days.

In the event that Congress determines that Section 405 of H.R. 5050 or some other provision concerning confidential treatment of information filed with the Commission pursuant to the Act should be adopted, the Commission recommends that the standards adopted be made equally applicable to information filed pursuant to the Securities Act of 1933. It should be

noted, however, that our recommendation for conformity is limited to the applicable standards for judging confidential treatment and not to the types of information as to which the standards would apply. Thus, under the Securities Act, confidential treatment is available only for material contracts while under the Securities Exchange Act, confidential treatment can be extended to any information required to be filed with the Commission pursuant to that Act. The Commission believes that the existing distinctions should continue.

Proposed Section 24(d) would prohibit the Commission from withholding information from the "duly authorized committees of the Congress." This provision is extremely broad insofar as it appears to encompass any information available to the Commission whether acquired, for example, by way of a required filing or during the course of a non-public investigation. Moreover, the phrase "duly authorized committees of the Congress" can be construed to mean any committee which has been duly established by either House of the Congress. Section 101 of H.R. 5050, on the other hand, would require information to be transmitted only to the House Committee on Interstate and Foreign Commerce or the Senate Banking, Housing and Urban Affairs Committee. There is no apparent reason for the difference in these two provisions.

While the Commission does not object to congressional committees having access to information contained in the Commission's files, it believes, for the reasons set forth in Commissioner Loomis' testimony^{8/} concerning Section 101 of H.R. 5050, that some accommodation may be necessary in order to preserve the efficiency and integrity of the Commission's law enforcement and other regulatory functions.

Section 406

Section 406 of the bill would amend Section 12 of the Act to give the Commission authority to establish the form or format of the stock certificates of certain issuers and it would also require an issuer whose securities are registered on a national securities exchange to consolidate in one person the functions of transfer agent and registrar and otherwise to comply with such rules and regulations as the Commission promulgates as necessary to assure the prompt and accurate processing and settlement of securities transactions. While we support all efforts to eliminate duplicative costs, we are not convinced that the functions of transfer agent and registrar should always be combined, particularly where an issuer acts as its own transfer agent. There may be sound reasons for maintaining a separate registrar to monitor the number of shares authorized and outstanding. In addition, we believe that

^{8/}See Statement of Philip A. Loomis, Jr., Commissioner, Securities and Exchange Commission, before the Subcommittee on Title I of H.R. 5050, June 7, 1973.

the Commission's rulemaking power to assure the prompt and accurate processing and settlement of securities transactions should extend to issuers whose securities are traded in the over-the-counter markets.

Section 407

Section 407 of the bill would add new Subsection 19(c) to the Act and direct the Commission to make a study of the registration of securities in street name. We concur that such a study should be made. However, on page 117, lines 19-20, the statement "with particular reference to Section 14" should be expanded to include Sections 12(g) and 15(d) of the Act since those sections impose periodic reporting requirements based upon the number of record holders. If the "street name" study legislation is enacted, we believe that these two areas are closely related and that it would be appropriate to combine them into a single study.

Section 408

Section 408 would amend Section 28 of the Act to provide an exemption from state and local taxation on changes in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or depository, or upon the delivery or transfer of securities effected through such agency or depository, unless such changes would otherwise be taxable if the clearing agency or depository were not located within the jurisdiction of the taxing authority. We support this amendment.

Section 409

Section 409 would add a new Section 19A to the Act, which would require the reporting of lost and stolen securities and the fingerprinting of persons involved in the securities business or securities handling process. We assume that the language of this Subsection would permit the Commission to designate a private contractor to receive reports of lost and stolen securities

We believe that Subsection 19A(a)(1) also should be modified to give the Commission authority to require that persons engaging in securities transactions make an appropriate inquiry to determine whether the securities involved have been reported as missing, lost or stolen. Consideration should be given to including counterfeit securities in this Subsection.