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The Role of the Transfer Agent in an IPO

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Introduction

A transfer agent is an essential partner to any company that is about to engage in an Initial Public Offering (IPO). Although companies may maintain their own shareholder records, once deciding to “go public,” companies typically retain the services of a transfer agent registered with the Securities and Exchange Commission (SEC) pursuant to Section 17A of the Exchange Act of 1934. While the closing of an IPO is fairly straightforward, the company's (and often underwriters') preparations in advance of the IPO, coordination with the transfer agent, and maintenance requirements post-IPO are crucial for ensuring the company's compliance with applicable laws, as well as the confidence of the shareholders. For a high-level overview of the IPO process and a guide to additional IPO-related resources, see the [Initial Public Offerings Resource Kit](#).

This practice note explains the role of the transfer agent in assisting the parties, including the company, underwriter, and legal counsel, in the closing of an IPO and the ongoing compliance requirements of a “public” company.

Appointing a Transfer Agent and Preparing the Securities to Be Offered in the IPO

The transfer agent is typically the primary contact and interface between the company and its shareholders, even if your company also retains the services of an investor relations firm. While investor relations firms are helpful in assisting with formal shareholder communications, most day-to-day interactions with shareholders relate to inquiries regarding their ownership and the ability to transfer shares. Therefore, a transfer agent will not just need to be knowledgeable of the issues and regulations involved, but must be responsive and understanding of the needs of shareholders who often have little experience owning restricted securities, or investing in public companies. Most importantly, while there are many transfer agents registered with the SEC, not all transfer agents are eligible or qualified to act as a “FAST Agent.” A FAST Agent is a transfer agent that is able to directly interact with DTCC (see below) to deliver securities electronically. While transfer agents that are not FAST Agents can make arrangements to work with a FAST Agent, it is more efficient if your transfer agent can handle these transactions independently.

Companies engaging in an IPO will generally follow these steps to appoint a transfer agent and prepare the securities to be offered for the IPO:

1. **Complete the appointment documents.** These documents generally set forth the role and responsibility of the transfer agent. Typically, the transfer agent may also request copies of the company's organizational documents, such as a Certificate of Incorporation and By-Laws as well as other pertinent information regarding the company, its authorized officers, and capital structure. The appointment and termination of the transfer agent will need to be approved by the company's board of directors. See also the form [Appointment of Transfer Agent Board Resolutions](#) and [Termination of Transfer Agent Board Resolutions](#). You will also often need to provide the transfer agent with information regarding arrangements for printing stock certificates.
2. **Provide the transfer agent with a schedule of shareholders.** The transfer agent's primary responsibility is to maintain the shareholder records of the company. Accordingly, to the extent that a company has been maintaining their own shareholder register, or had their corporate counsel maintain the shareholder register, the company should deliver the shareholder register to the transfer agent when it is first appointed. The transfer agent will then be able to load that shareholder data (i.e., shareholder name, certificate number, date of issuance, etc.) into its system to ensure the integrity and continuity of such records.
3. **Obtain a Committee on Uniform Security Identification Procedures (CUSIP) number.** A CUSIP number acts as an identifier for the specific security to be offered in the IPO and is utilized by various entities to settle and trade in the security. A common misunderstanding is that a CUSIP number identifies the company; in actuality, however, if a company has multiple securities listed for trading (i.e., common stock, preferred stock, warrants, etc.) each security will need to have its own CUSIP number. Furthermore, the securities laws and regulations thereunder require the company to obtain a new CUSIP number for its securities in connection with certain corporate actions, such as a change in name or reverse stock split. This new CUSIP

number will then replace the old number to identify the applicable securities. A company may obtain new CUSIP numbers from CUSIP Global Services, which is managed by S&P Global Market Intelligence. The company may make this request by completing an online form (available at <https://www.cusip.com/cusip/request-an-identifier.htm>), providing a copy of certain required documentation (e.g., a copy of the preliminary or final prospectus relating to the offering of the securities), and paying the applicable fees. The CUSIP number is often assigned within a few days of completing the application process, but may be obtained in a few hours for an additional fee.

4. **Obtain eligibility for the security from the Depository Trust & Clearing Corporation (DTCC).** DTCC provides many services in the securities industries, including clearing and settling virtually all broker-to-broker equity transactions in the U.S. markets. In connection with an IPO, DTCC will deliver the shares to the appropriate underwriter accounts upon the closing. Accordingly, it is essential for any IPO that the securities are eligible for services with DTCC. While a transfer agent may be able to assist with this process, in an underwritten IPO (i.e., a company taken public by an underwriter such as an investment banking firm), the underwriter is primarily responsible for obtaining eligibility with DTCC through DTCC's electronic underwriting platform, UW Source. Once the security is eligible, the DTCC participants (i.e., clearing firms) will be able to hold the security on behalf of their broker/shareholder clients and transfer it to other clearing firms for the settlement of any trades or transfers that may have occurred. DTCC offers the following services to complete the transactions discussed above:
 - i. **Fast Automated Securities Transfer Program (FAST).** The FAST system is DTCC's platform for electronically depositing and transferring securities. This system eliminates the need to deliver physical paper stock certificates to the transfer agent for the processing of any applicable transfers between clearing firms. This system provides greater efficiencies and reduces the time involved in processing transfers, or even new issuances of securities by the company. Typically, DTCC will approve eligibility for the FAST program automatically when the underwriter applies for DTCC eligibility for the securities in connection with the closing of the IPO. However, the process can be more difficult in other types of public offerings and the assistance of your transfer agent will be needed.
 - ii. **Deposit and Withdrawal at Custodian (DWAC).** DWAC is the main component of the FAST system. It allows DTCC participants to instruct DTCC regarding electronic deposits and withdrawals of eligible securities via a FAST Agent. As noted above, this obviates the movement of physical stock certificates for the transfers of securities.
 - iii. **The Direct Registration System (DRS).** DRS is another system for the electronic transfer of securities that is maintained by DTCC. The primary distinction between the DWAC and DRS systems is that a shareholder who does not wish to hold shares in their brokerage account can hold them in a DRS account with the transfer agent and seamlessly move them to a brokerage account with no additional paperwork needed to be delivered to the transfer agent. It allows for greater ease and flexibility in the way a shareholder holds her securities. Both The Nasdaq Stock Market and the NYSE currently require all securities listed for trading on their exchanges be eligible for DRS services.

The Transfer Agent's Role in Closing the Offering

Once all necessary pre-closing arrangements have been completed and the securities are eligible with DTCC for all necessary services, counsel should prepare for the closing.

During the closing, the funds raised are delivered to the company and almost simultaneously the securities sold are delivered to the clearing firm. Typically, the company and the underwriter will determine the final pricing of the securities the day before trading of the securities is to commence. The closing would then occur two days after the trading date, based on the SEC's rules for trade date plus 2 days for settlement (T+2) delivery. Prior to September 5, 2017, the standard was T+3. The underwriter will schedule the actual closing call with DTCC, who will need to participate to confirm the initial delivery of securities by the transfer agent. Additionally, the underwriter will arrange to have all the necessary participants on the call as well. Prior to this closing, call the transfer agent will require final instructions from the company regarding the number of securities to be delivered at the closing and will likely also require a legal opinion from company counsel to confirm that the requirements of the registration process have been met and that the securities in the closing can be delivered without restriction. For an example, see the form [Company's Transfer Agent Instructions \(IPO\)](#).

Although more common in subsequent public offerings than during the IPO, founding shareholders/investors may be selling the shares they have previously held in connection with the IPO. This will allow for the company to raise capital and simultaneously provide some liquidity for the applicable investor. When this occurs, the applicable shareholders will normally enter into custody agreements with the underwriter to allow for the delivery of their shares in connection with the closing and to provide the arrangements for such. In addition, the shareholder will need to provide a stock power for the benefit of the transfer agent granting authority to the underwriter to effectuate the transfer of the securities on behalf of the shareholder.

During the closing call, all participants (i.e., authorized officers of the company with their legal counsel, underwriters with their legal

counsel, and the transfer agent) will confirm the final dollar and security amounts and information regarding appropriate distribution of funds. Once all has been confirmed, the DTCC representative will join the conference call and confirm the identity of the transfer agent representative, the CUSIP number of the securities to be delivered, and the number of shares. Once this information is confirmed by the transfer agent, the DTCC representative will confirm that the shares can be electronically delivered and DTCC's participation in the call will be completed. The company at that time will instruct the transfer agent to deliver the securities and the underwriter will confirm the wire of the funds to the company. When this is complete, the IPO has closed. Once the transfer agent delivers the securities to DTCC, the shares will then be distributed to the appropriate clearing firm for dissemination to the applicable brokerage firms and accounts.

Post-closing and Ongoing Transfer Agent Services

When a company closes its IPO and becomes a public company, in addition to taking on a number of reporting obligations under the Exchange Act (see the [Periodic and Current Reporting Resource Kit](#)), it expands its shareholder base significantly. These usually unidentified shareholders buy and sell the securities of the company on a public exchange such as the NYSE or The Nasdaq Stock Market. The transfer agent can perform a number of services to help the company manage the shareholders' share-related inquiries, transfers, and other administrative matters.

After the closing, the transfer agent will be responsible for the maintenance of shareholder records. However, the transfer agent will only have information regarding the "record holders" of the security. These are shareholders with direct ownership in the form of a stock certificate or a book entry position listed in the transfer agent's records. Shareholders with stock in a brokerage account, who received shares in connection with the IPO or subsequently transferred their ownership to a brokerage account, are referred to as "beneficial owners." Their shares are amalgamated in a shareholder account under the name "Cede & Co.," which is the nominee holder on behalf of DTCC and is reflected as the record holder of the shares. The shares held by Cede & Co. reflect the shares of all public investors. Information about the beneficial owner of securities may be obtained from various third parties and a company can coordinate with their transfer agent to request this information.

Shares delivered through DTCC at the closing of the IPO are unrestricted and eligible for transfer since they were the subject of a registration statement filed with the SEC. However, any shares issued prior to the IPO to founders and private investors will still be restricted (unless registered or eligible for an exemption from registration) and will bear a restrictive legend. When counsel for the selling shareholders determines that the security is no longer restricted and the legend may be removed, the transfer agent will assist shareholders (or the custodian of their shares) with the removal of applicable restrictive legends and transfer of their securities to their brokerage accounts. For more information on restricted securities, see [Domestic Resales of Unregistered Securities — Rule 144, Section 4\(a\)\(1½\) and Section 4\(a\)\(7\)](#).

In addition, the transfer agent can provide the following post-IPO services:

- Coordinating annual or special shareholder meetings (see the [Proxy Statement and Annual Meeting Resource Kit](#))
- Acting as paying agent to process dividend payments to shareholders, as well as assisting with relevant IRS filings
- Assisting the company with any subsequent public or private offerings of securities (see the [Follow-On Offerings Resource Kit](#))

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