



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

March 31, 2010

Mr. Mike Manton  
Securities Information Center  
22 Thomson Place  
Boston, MA 02210

Dear Mr. Manton:

This letter is in response to your December 15, 2009, letter which references Form X-17F-1A,<sup>1</sup> a paper form formerly used by subscribers of the Lost and Stolen Securities Program ("Program") to report lost, stolen, missing, or counterfeit securities pursuant to Section 17(f)(1)<sup>2</sup> of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17f-1<sup>3</sup> thereunder. We have attached a copy of your letter to avoid reciting all the facts.

In essence, your letter states that the Program's subscribers currently submit all their reports required by Rule 17f-1 to the Securities Information Center ("SIC") electronically as expressly required by the SIC's contract with the Securities and Exchange Commission ("Commission"). However, as your letter indicates, Paragraph (c) (7) of Rule 17f-1 may require these reports to be submitted in hard copy format on Form X-17F-1A. Accordingly, you request no-action relief from the Commission's Division of Trading and Markets ("Division") in connection with the Program's continued use of electronic reporting.

I. Reporting requirements under Section 17(f)(1) and Rule 17f-1

Exchange Act Section 17(f)(1)(A) requires enumerated financial institutions to "report to the Commission or other person designated by the Commission ... such information about missing, lost, counterfeit, or stolen securities, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors...."<sup>4</sup>

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<sup>1</sup> 17 CFR 249.1200.

<sup>2</sup> 15 USC 78q(f)(1).

<sup>3</sup> 17 CFR 240.17f-1.

<sup>4</sup> 15 USC 78g(f)(1)(A).

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Rule 17f-1(c) (1)-(4) thereunder requires every reporting institution to report to the Commission or its designee any lost, stolen, missing, or counterfeit security.<sup>5</sup> A security reported as lost, stolen, missing, or counterfeit that is later recovered must also be reported to the Commission or its designee by the reporting institution.<sup>6</sup>

Rule 17f-1(c) (7) requires each reporting institution to make all its reports on Form X-17F-1A.<sup>7</sup> While Rule 17f-1(c)(7) does not specify the medium in which Form X-17F-1A must be filed, the form's adopting release states that the form "may be reproduced in any manner by entities subject to the section so long as the graphics of the Form are not altered and 8 ½' by 11' paper is used."<sup>8</sup>

## II. Discussion

In a May 24, 1994, letter to First Chicago Trust Company of New York, the Division of Market Regulation<sup>9</sup> granted First Chicago no-action relief with respect to its filing of reports required by Rule 17f-1 by electronic transmission, magnetic tape, or diskette.<sup>10</sup> The Division stated that Rule 17f-1 does not explicitly require the hard copy submission of Form X-17F-1As. Moreover, the Division said it agreed with First Chicago's view that electronic reporting would provide the securities industry with more timely and reliable data regarding lost, stolen, missing, and counterfeit securities than was available with hard copy submissions.

In a June 14, 1999, letter to SunGard Shareholder Systems, Inc., the Division likewise granted SunGard no-action relief with respect to the filing of reports required by Rule 17f-1 by electronically transmitted data on behalf of its clients (i.e., transfer

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<sup>5</sup> 17 CFR 240.17f-1(c)(1)-(4).

<sup>6</sup> 17 CFR 240.17f-1(c)(5).

<sup>7</sup> 17 CFR 240.17f-1(c)(7).

<sup>8</sup> Exchange Act Release No. 34-13832 (August 5, 1977).

<sup>9</sup> In November of 2007, the Division of Market Regulation was renamed the Division of Trading and Markets.

<sup>10</sup> Letter from Jonathan Kallman, Associate Director, Division of Market Regulation, Securities and Exchange Commission, to Dale R. Granchalek, Counsel, First Chicago Trust Company of New York (May 24, 1994).

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agents).<sup>11</sup> The Division noted that SunGard would be submitting the same information in an electronic format as would be reported on Form X-17F-1A.

Accordingly, with respect to SIC and the reports required by Rule 17f-1, it is well-established that no-action relief is available from the Division for the submission of electronic reports in place of hard copy reports on Form X-17F-1A as long as the electronic reports contain the same information as the hard copy reports. We note that the electronic reports currently submitted to SIC contain the same information in the same fields as required by Form X-17F-1A. Moreover, SIC's use of electronic reporting of the data required by Rule 17f-1 provide important time efficiencies, cost savings, and safety to the marketplace. In addition, since 1995 the Division has had substantial correspondence keeping the Division's staff aware of SIC's efforts to use electronic transmissions in place of hard copy submissions of Form X-17F-1A. We also note that the contract between the Commission and SIC, whereby SIC serves as the Commission's designee for operating the Program for the five-year period commencing May 5, 2008, authorizes only electronic reporting and expressly prohibits the use of manual communications.<sup>12</sup>

### III. Conclusion

Based on the above and the facts and representations set forth in your letter dated December 15, 2009, the Division will not recommend that the Commission take enforcement action against SIC or its subscribers with respect to the use of electronic transmissions to submit the data required by Rule 17f-1. You should understand that this position is based on the facts and representations set forth in your letter and that any change in the facts or circumstances could warrant a different conclusion and should be brought immediately to the Division's attention. You should also understand that this position is a staff position only with respect to enforcement and does not purport to state any legal conclusion on this matter. This position is subject to modification or revocation at any time that the Commission or the Division determines that such modification or revocation is consistent with the public interest or the protection of investors.

Sincerely,



Jerry W. Carpenter  
Assistant Director

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<sup>11</sup> Letter from Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, to Joseph R. Fleming, Dechert, Price & Rhoads (June 14, 1999).

<sup>12</sup> Contract SECHQ1-08-C-0126 between U.S. Securities and Exchange Commission and Securities Information Center (May 5, 2008).



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SECURITIES AND EXCHANGE COMMISSION  
RECEIVED

December 15, 2009

DEC 17 2009

Mr. Jerry W. Carpenter  
Assistant Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.W.  
Washington, D.C. 20549-7010

DIVISION OF TRADING & MARKETS

Dear Mr. Carpenter:

We are writing with respect to Form X-17F-1A, a paper form formerly used by subscribers of the Lost and Stolen Securities Program ("Program") to report lost, stolen, missing, or counterfeit securities pursuant to Section 17(f)(1) of the Securities Exchange Act and Rule 17f-1 thereunder. Form X-17F-1A was part of the Program's paper reporting format.

During the 1990s, the Program's subscribers showed a gradually increasing preference for electronic reporting as opposed to paper reporting (e.g., reporting by mail or facsimile). This was due to paper reporting being less efficient in that it was slower and required more human handling. Both electronic and paper reporting formats use the same reporting fields, so that the information being reported is identical. In any case, during the five-year period from 1999 through 2004, total reports to the Securities Information Center ("SIC") by paper format dropped from 20.1% in 1999 to 0.63% in 2004. During 2005, paper reporting approached zero, and it became financially inefficient for SIC to continue maintaining paper reporting facilities and the related staffing.

Accordingly, on June 30, 2006, after substantial notice to the industry, the paper form was formally superseded by electronic reporting, which resulted in the elimination of all reporting by manual communications. These changes were consistent with the spirit of the Securities Acts Amendments of 1975, which mandated the Program, and which called for automation and efficiency. See, for example, Section 11A(a)(1)(B) of the Securities Exchange Act; SEC, "Lost and Stolen Securities Background Paper," (January 1975) at pages 82-86.

Additionally, the current five-year operating contract between the Commission and SIC, which was approved by the Commission's contract office (Office of Acquisitions), and which commenced on July 1, 2008, authorizes only electronic reporting. The contract expressly calls for "the elimination of manual communications (such as regular mail)." See contract at Section C.5, page 11 of 32.

Nevertheless, we have recently learned that Paragraph (c)(7) of Securities Exchange Act Rule 17f-1 still requires that all of the Program's reports be submitted on

Form X-17F-1A and that no amendment to this rule is expected in the near term. As noted above, the electronic reports currently being used include the same fields as the paper reports of Form X-17F-1A, and our contract with the Commission expressly requires the use of electronic reports. We are concerned that we or one of our subscribers may be accused of a technical rule violation for not using the paper form. Accordingly, we request that the Division agree that it will not recommend any enforcement action due to the Program's continued use of electronic reporting forms as described above.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Manton", with a stylized flourish at the end.

Mike Manton  
Securities Information Center  
22 Thomson Place  
Boston MA 02210