



Invested in America

Via Electronic Mail – (rule-comments@sec.gov)

May 9, 2011

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SEC Proposed Rule 17Ad-17; Transfer Agents', Brokers', and Dealers' Obligation To Search for Lost Securityholders; Paying Agents' Obligation To Search for Missing Securityholders; File No. S7-11-11; Release No. 34-649099 (March 25, 2011)

Dear Ms. Murphy:

SIFMA¹ appreciates the opportunity to comment on the Securities and Exchange Commission's ("Commission") proposed amendments to Rule 17Ad-17 ("Proposed Rule"), under the Securities Exchange Act of 1934 ("Exchange Act") promulgated pursuant to Section 929W of the Dodd-Frank Act. The Proposed Rule would impose certain obligations on broker-dealers to search for "lost securityholders" and would also require that "paying agents" provide a single written notification within a designated timeframe to each "missing securityholder" that the missing securityholder has been sent a check that has not yet been negotiated. SIFMA strongly supports protecting the rights and interests of shareholders who would be deemed lost or missing under the Proposed Rule and ensuring that reasonable efforts are undertaken by broker-dealers to locate them and notify them of outstanding checks. In fact, many broker-dealers currently have processes in place to ensure the proper follow-up and handling of these items. As explained in detail below, SIFMA believes that certain aspects of the proposed amendments to Rule 17Ad-17 should be reconsidered or clarified.

I. Missing Securityholder

As proposed Rule 17Ad-17(c)(3) states, a "securityholder shall be considered a *missing securityholder* if a check is sent to the securityholder and the check is not negotiated before the

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

earlier of the paying agent sending the next regularly scheduled check or the elapsing of six (6) months after the sending of the not yet negotiated check." Broker-dealers may be engaged with the securityholder in the normal course of business, and may issue checks for a multitude of business purposes. These checks are not necessarily related to scheduled dividend and interest payments as implied under this amendment, and therefore may not be expected to occur as a "regularly scheduled" payment.

As a result, SIFMA requests that the Commission consider providing guidance as to when broker-dealers may deem a securityholder to not be a missing securityholder for the purposes of the rule. SIFMA believes that if a broker-dealer is able to redeposit the funds into the account after receiving a returned check or as a matter of practice deposits a non-negotiated check into the account after specified time period, that securityholder should not be considered missing for the purposes of this rule. Such a clarification would alleviate customer confusion in receiving a notification that they have not negotiated a check whose proceeds are already in their account. In addition, this clarification would relieve broker-dealers from incurring unnecessary time and expense in a process to locate a missing securityholder based on an event (check not negotiated), when in actuality the securityholder is an active client and, therefore, not missing.

II. Missing Securityholder Definition

The Commission is seeking comment as to potential confusion between the definitions of "missing securityholder" and "lost securityholder." The term "missing securityholder" implies that a security holder is "missing" or cannot be located. The definition of "missing securityholder," however, is designed to address the fact that the securityholder has not negotiated a check that has been sent to them. To avoid confusion with the "lost securityholder" provisions of this rule, SIFMA suggests using more descriptive terminology such as "Unresponsive Payee" instead of "missing securityholder." This change in terminology is especially important because the treatment of lost securityholders and missing securityholders may overlap at certain points in time, as further described below.

III. Lost Securityholder Definition

Proposed amended SEC Rule 17Ad-17(b)(2)(i) states, a "lost securityholder means a securityholder to whom an item of correspondence that was sent to the securityholder at the address contained in the...customer security account records of a broker or dealer has been returned as undeliverable..." SIFMA believes that the broad expansion of this definition to all correspondence sent by a broker-dealer will not serve the purpose and intent of the rule and adopting legislation. Unlike transfer agents, broker-dealers often send a wide variety of correspondence to customers, and imposing a designation such as this for any piece of returned mail regardless of the subject matter would be unnecessarily burdensome for broker-dealers. SIFMA proposes to limit the type of correspondence which triggers the "lost securityholder" designation to returned annual tax forms (*e.g.*, Forms 1099), returned checks, or account statements returned in two consecutive periods.

IV. Overlap Between Missing and Lost Securityholders

SIFMA believes that there may be limited instances where a customer may be deemed both a "missing securityholder" and "lost securityholder." For example, if a piece of

correspondence goes out in close time proximity to a check, it is possible that the returned correspondence may not come back to the firm until after the check has been mailed. It is not clear if a securityholder is deemed “lost” under Proposed Rule 17Ad-17, the missing securityholder obligations still apply. In such case, the broker-dealer would not have a valid address to send the required notification under Proposed Rule 17Ad-17(c)(1). We request that the Commission clarify that firms need not send such notifications to missing securityholders who have also been deemed lost securityholders.

V. Effect on Escheatment Laws

Proposed Rule 17Ad-17(c)(5) would provide that paragraph (c)(1) shall have "no effect on state escheatment laws." As dormancy requirements among the states are constantly changing, and there is a general trending toward reduced dormancy requirements for property types deemed most pertinent to the broker-dealers, it is likely that future timelines required by individual states for statutory due diligence and escheatment will directly conflict with the due diligence timelines for locating missing securityholders extended under the Proposed Rule. Although SIFMA would prefer that the Proposed Rule supersede state law, SIFMA acknowledges that this provision was dictated by the Dodd-Frank Act. SIFMA requests that the Commission clarify in the adopting release how firms should apply the Proposed Rule when there is a conflict with state escheatment laws (*e.g.*, if escheatment must occur prior to the expiration of the allowable time period for searching for lost securityholders, including the second required search).

VI. Clearing Firm and Introducing Firm Obligations

In the accompanying release with the Proposed Rule, the Commission states that as a practical matter only "clearing firms" should have obligations under the amended rule as they would carry securities for the accounts of "customers" within the meaning of Exchange Act Rule 15c3-3. While clearing firms do, in fact, carry the accounts of introducing brokers, it is the introducing broker that has the actual relationship with the customer account that has been introduced.

The current FINRA rules (NASD and NYSE rules effectively) governing carrying (or clearing) agreements provide for the allocation of responsibility, within the carrying agreement between the clearing firm and the introducing broker, for the opening and approving of accounts and the maintenance of books and records.² In this regard, as would be implied by the term “introduced account,” typically the introducing broker obtains the appropriate information regarding the customer, including the customer’s address, at the opening of an account and which documents that information for its own and the clearing firm’s books and records. The introducing broker has the majority of communication with the customer, and only in rare instances would a clearing firm have any direct communication with the introduced customer beyond certain mailings that the clearing firm has contracted to undertake in the carrying agreement. In practice, the introducing broker is typically notified of returned mail sent by the clearing firm and would take operational responsibility to perform the necessary due diligence in locating the client they have introduced to the carrying firm. As such, SIFMA proposes that Rule 17Ad-17 explicitly

² This requirement to explicitly allocate such responsibilities in the carrying agreement has not changed in the recently approved, but not yet effective, FINRA Rule 4311 – Carrying Agreements.

permit that the responsibilities of compliance with the Proposed Rule be allocated to the broker-dealer with which the customer has the primary relationship.

VII. Electronic Delivery

The Proposed Rule states that the paying agent must provide no less than one “written notification” to each missing securityholder stating that such securityholder has been sent a check that has not yet been negotiated. SIFMA proposes that the Commission clearly state that any notice may be sent by electronic means if the customer has approved electronic communications for the account. SIFMA believes that this would be a particularly effective methodology of notifying customers of a returned check or item of correspondence since a customer may have moved but not have changed their e-mail address.

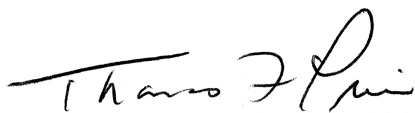
VIII. Increased Burden

SIFMA believes that the estimates of paperwork and hours of work in the Proposed Rule may be extremely low. SIFMA member firms estimate that the number of searches and notifications could be significantly more than the Commission’s stated estimates – perhaps as much as four times more. SIFMA also believes the Commission’s estimated costs are also low, particularly taking into account paper and the increasing postage costs for each mailing. SIFMA believes that this number could be significantly reduced if, for example, the threshold for returned checks was \$100 instead of \$25 as required by the Dodd-Frank Act and the Proposed Rule. Many firms currently use a \$100 threshold based on state escheatment laws. Those firms estimate that there could be a 25% increase in mailings to clients. The burden would also be significantly reduced by narrowing the definition of correspondence, as suggested above. SIFMA urges the Commission to assess whether there are ways in which the burden on firms could be reduced without materially lessening the benefits to shareholders.

* * *

We appreciate this opportunity to comment on the Proposed Rule. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact me at 212-313-1260 or via email at tprice@sifma.org.

Sincerely,

A handwritten signature in black ink that reads "Tom Price". The signature is written in a cursive, flowing style.

Tom Price
Managing Director