

May 23, 2011

Via Electronic Mail

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

Re: Rule 17Ad-17; Transfer Agents', Brokers', and Dealers' Obligation To Search for Lost Securityholders; Paying Agents' Obligation To Search for Missing Securityholders; 76 Federal Register 16707 (March 25, 2011).

Dear Ms. Murphy:

The American Bankers Association¹ (ABA) appreciates this opportunity to comment on the proposal implementing Section 929W of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act). Section 929W directs the Securities and Exchange Commission (Commission) to amend Exchange Act Rule 17Ad-17, "Transfer Agents' Obligation to Search for Lost Securityholders": (1) to extend the lost securityholder rule to apply to brokers and dealers; and (2) to add a new requirement for "paying agents" to notify in writing "missing securityholders" that they have not yet negotiated a check sent to them by the paying agent. Many of our member institutions act as transfer agents or may fall within the new definition of "paying agent" and thus would be subject to this rule. We believe the objectives of Section 929W can be fully achieved by aligning the scope of the rulemaking more closely with the scope of Section 929W and by avoiding unnecessary burden as set out below.

We are commenting on aspects of Section 929W that direct the Commission to revise Rule 17Ad-17 to provide a requirement that the "paying agent provide a single written notification to each missing securityholder that the missing securityholder has been sent a check that has not yet been negotiated." This notification must be sent to a missing securityholder no later than seven months after the sending of the not-yet-negotiated check. Section 929W defines "paying agent" to include "any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security." A primary purpose of Section 929W is to ensure that securityholders are protected when a paying agent issues them a check. Section 929W notification requirements do not apply to checks for less than \$25.

Discussion

As "paying agents," our member institutions receive payments from issuers in the form of dividends on stocks or interest on bonds. Depending on the circumstances of the client account, the bank

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees.

may: (1) distribute the dividend/interest as income to the client; (2) reinvest the dividend/interest into the client account; or (3) pay certain obligations of the client or beneficiary. For example, as “paying agent” the bank might pay a client's electric bill, lawn care bill, or other similar types of payments.

Many of our member institutions in their capacity as a “paying agent” send thousands of checks per month to clients or third parties on behalf of clients. A significant number of these checks are recurring payments, sometimes monthly. Though these banks currently track outstanding checks, many banks currently do not have the capability to track those particular checks that fall within the purview of the proposal (i.e., those that have not been negotiated before the next recurring payment or six months after being sent). In addition, many banks do not have the ability to track “outstanding” recurring checks in order to notify the securityholders before the next check is sent. To meet these new requirements, these institutions will have to make considerable changes to their operations and information technology that could be quite expensive to implement. While they are prepared to do so, we urge the Commission to implement the statute in a way that achieves the statute’s purpose without requiring unnecessary burdens.

We believe securityholders will receive the full protection of the statute in a less burdensome manner if the Commission were to provide guidance and relief in the following areas. First, with respect to the requirement that “paying agents” send a written notice to securityholders, we request that the Commission explicitly allow electronic communications to those customers who prefer that means of communication. The statute does not dictate that the written communication must be by postal mail and for those clients who are out of town and not able to access their mail, electronic notification may be more effective.

Second, the proposal does not address the situation in which a missing securityholder becomes a lost securityholder or is known to have died. In those cases, it would seem reasonable from a risk and burden perspective for the Commission to allow the current lost securityholder rules or other practices that exist for deceased customers to preempt the missing securityholder rule. To do otherwise may result in the paying agent sending subsequent checks or notifications to an outdated address.

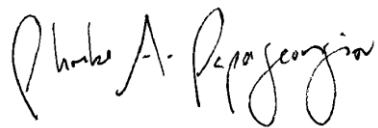
Third, if a missing securityholder subsequently negotiates a check before the notification is sent, we ask that the paying agent have no notification obligation. As noted above, some “paying agents” send checks to securityholders every month. It is not unreasonable that many recipients may wait a few months before depositing several checks at the bank. In those cases, if the checks are submitted before the six month period has lapsed, we believe that there remains no obligation for the “paying agent” to notify the securityholder.

Fourth, the proposal does not specify which checks are subject to the notification requirement. We believe that given the language of Section 929W and its purpose, the requirement should only apply to those checks sent to the securityholder by the “paying agent” pursuant to its contractual obligation to pass along dividends and other distributions from an issuer of a security to the securityholder. Some of our member institutions may write checks to third parties on behalf of the securityholder, or may send checks that constitute the proceeds of a sale and not, for example, an issuer’s dividend. We ask that the Commission confirm that those checks are outside the purview of the rule.

Conclusion

ABA appreciates this opportunity to comment on the Proposed Regulation. We urge the SEC to provide the much-needed clarification and relief we request. Should you have any questions or comments with respect to the issues raised in this letter, please do not hesitate to call the undersigned at (202) 663-5053.

Sincerely,

A handwritten signature in black ink, reading "Phoebe A. Papageorgiou". The signature is fluid and cursive, with the first name "Phoebe" and last name "Papageorgiou" clearly legible, and a middle initial "A." in between.

Phoebe Papageorgiou
Senior Counsel