



Filed Electronically

April 13, 2016

Mr. Brent Fields, Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549

Re: Transfer Agent Regulations; File No. S7-28-15

Dear Mr. Fields:

The Securities Information Center ("SIC"), an operating division of Thomson Reuters and the administrator of the SEC's Lost and Stolen Securities Program ("LSSP" or "Program"), is pleased to submit these comments in response to two specific questions the Commission has posed in the above-referenced Advance Notice of Proposed Rulemaking, Concept Release and Request for Comment on Transfer Agent Regulations.¹ SIC applauds the Commission's efforts to tackle the long-standing and multi-faceted challenge of modernizing the transfer agent regulatory regime. However, as an immediate first step in what promises to be an extended and complex process, SIC urges the Commission to address a separate, but related, problem and add cancelled securities certificates to the scope of the LSSP as directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") almost six years ago. Upgrading the LSSP in this fashion should then enable the Commission to reduce some of the costs and burdens associated with existing transfer agent rules.

Responses to Requests for Comment

*4. Are there other rule changes besides those discussed in this Advance Notice of Proposed Rulemaking that the Commission should prioritize?*²

Response: Yes. Before undertaking a comprehensive overhaul of transfer agent regulation, the Commission should first implement the Dodd-Frank Act changes to the LSSP. Congress's decision to designate cancelled securities certificates as a mandatory reporting category under Section 17(f)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and the industry's history of voluntary reports in this category effectively establish both the need for and feasibility of these modest changes. There is no reason to entangle the LSSP in the comprehensive modernization of the transfer agent rules.

¹ Transfer Agent Regulations, SEC Rel. No. 34-76743 (December 22, 2015), 80 Fed. Reg. 81948 (December 31, 2015) (hereafter, "Transfer Agent Release").

² *Id.* at 110, 80 Fed. Reg. at 81976.

Background of the LSSP

Created pursuant to Section 17(f) of the Securities Exchange Act of 1934 and Rule 17f-1 thereunder,³ the LSSP is designed to curtail trafficking in lost, stolen, missing and counterfeit securities certificates. It does this by requiring financial institutions, including broker-dealers, banks and transfer agents (known collectively as "reporting institutions") to report such securities certificates to the LSSP database. These institutions must also inquire whether certificates valued at more than \$10,000 that come into their possession have been reported to the database in one of these categories. When an institution inquires about a particular certificate that has been reported to the database, a "hit" or match occurs, and the inquiring party can pull the certificate in question, thereby avoiding a rejection later in the settlement cycle. While the LSSP's original statutory mandate covered only lost, stolen, missing or counterfeit securities certificates, the Commission's implementing rule permits voluntary reports and inquiries relating to other types of compromised certificates as well.⁴

SIC has operated the LSSP on the Commission's behalf since the Program's inception in 1977.⁵ During this time, SIC has witnessed the LSSP's enormous success in enhancing the efficiency of the clearance and settlement process, reducing the cost and risk attributable to rejected trades and preventing fraud. Unfortunately, SIC has also observed the Program's limitations when it comes to compromised certificates that are not subject to mandatory reporting and inquiry under Rule 17f-1. In this regard, cancelled certificates pose a particular threat to the safety and soundness of the securities markets because these certificates are often processed, shipped and stored in bulk. Over the years, there have been a number of spectacular mishaps involving billions of dollars of cancelled certificates that eventually resurfaced in the marketplace either through sales or as collateral for loans.

Efforts to Expand the LSSP

Recognizing the problems caused by gaps in the LSSP, the Securities Industry Association (now the Securities Industry and Financial Markets Association or "SIFMA") launched an industry-wide initiative in 2000 to have cancelled and other kinds of compromised certificates such as stopped and escheated certificates added to the Program's database. As a result of this initiative, approximately 95% by volume of the transfer agent community now submits cancelled certificate details to the Program. The effect of this voluntary reporting has been dramatic.

Prior to the addition of these permissive categories of certificates to the LSSP database, the average "hit" rate was 3%. Today, with the more robust database, the hit rate is 9%. In 2015, 94% of this increase was due to the addition of the cancelled certificates. Each hit helps the participant avoid reject fees of approximately \$180 per item, while incurring an inquiry cost of less than \$1.

³ 15 U.S.C. 78q(f)(1); 17 CFR 240.17f-1.

⁴ Rule 17f-1(e).

⁵ In 1978, SIC was designated to succeed its affiliate, Aut-Ex, Inc. as Program administrator. SEC Rel. No. 34-15289, 43 Fed. Reg. 52418 (November 1, 1978).

Identifying problem certificates early in the transaction cycle not only avoids the risks and costs attendant to the rejection of the security at or after settlement, but it also inspires confidence that the remaining certificates will advance through the settlement cycle in a timely fashion, and thwarts attempts to collateralize compromised securities. The LSSP database presents an effective early-warning system that can address some of the thorniest problems associated with the continued existence of physical certificates.

In addition to the industry's voluntary efforts, interested parties have also asked the Commission over the years to add a variety of mandatory reporting categories to Rule 17f-1. Noting that Section 17(f)(1) expressly addresses only lost, stolen, missing and counterfeit securities, and the availability of voluntary reporting, the Commission has declined these requests.⁶ In 2003, the Commission did, however, amend Rule 17f-1 to clarify that cancelled certificates that have been lost, stolen or are missing, are reportable to the LSSP.⁷ At the same time, the Commission adopted Exchange Act Rule 17Ad-19 to impose new processing requirements on transfer agents with regard to cancelled securities certificates. As discussed below, these requirements include a duty to maintain a retrievable database of all cancelled and destroyed or otherwise disposed-of certificates, as well as a manifest of cancelled certificates in transit.⁸

While voluntary reporting of cancelled certificates to the LSSP coupled with the processing requirements of Rule 17Ad-19 helped address some of the most egregious problems associated with these compromised certificates, gaps remained.⁹ That is why, at the behest of the Commission and other interested parties, Congress amended Section 17(f)(1) as part of the Dodd-Frank Act, to add cancelled securities certificates as a distinct category under the LSSP.¹⁰ However, as the sixth anniversary of this legislation approaches, the Commission has yet to implement the expansion of the Program by rulemaking.

⁶ Processing Requirements for Cancelled Security Certificates, SEC Rel. No. 34-48931 (December 16, 2003), 68 Fed. Reg. 74390 (December 23, 2003) ("Cancelled Securities Release").

⁷ *Id.* 68 Fed. Reg. at 74394; Rule 17f-1(a)(6).

⁸ Rule 17Ad-19(c)(3), (4) and (5).

⁹ Although the Commission observes the absence of spectacular mishaps involving cancelled certificates since the adoption of 17Ad-19, the Commission fails to acknowledge the substantial role that voluntary reporting to the LSSP played in that development. Transfer Agent Release at note 277.

¹⁰ Pub. L. No. 111-203, 124 Stat. 1376, § 929D (2010). While the *reporting* obligations under Section 17(f)(1)(A) were expanded to include only cancelled securities certificates, the *inquiry* obligations under 17(f)(1)(B) were expanded to include both cancelled securities and such other reported securities as the Commission, by rule, may prescribe. The legislative history of Section 929D is devoid of any explanation of this asynchronous treatment of reporting and inquiring duties. Since the duty to inquire logically cannot exceed the duty to report, and given the efforts over the years to incorporate escheated, stopped and other compromised securities certificates into the Program, the most reasonable interpretation of 17(f)(1) is that the Commission's authority to establish additional categories of mandatory LSSP reporting is co-extensive with its authority to establish categories of mandated inquiry. Nevertheless, the focus of this comment letter is limited to an amendment of Rule 17f-1 relating to cancelled certificates.

Amending Rule 17f-1.

SIC respectfully submits that, before embarking on a comprehensive update of the transfer agent regulatory regime, the Commission should first implement the Dodd-Frank amendment to the LSSP.

With connectivity to transfer agents, banks and broker-dealers, the LSSP sits at the center of physical certificate processing in the United States. It is a one-stop shop that obviates the need for parties that buy, sell or accept physical certificates as collateral to interrogate multiple transfer agents. Non-US banks and broker-dealers with offices or affiliates in the US also have access to the LSSP database, thereby extending the Program's protections to many overseas investors. Closing the remaining gap in the cancelled certificate category of the LSSP will benefit individual investors, issuers and intermediaries who still deal with physical certificates by deterring fraud, speeding settlements and reducing cost.

Adding cancelled certificates to the list of required reports and inquiries under Rule 17f-1 could also enable the Commission to eliminate some of the recordkeeping duties included in the current transfer agent rules.

72. *Are any of the current transfer agent rules outdated or obsolete?*¹¹

Response. As noted above, Exchange Act Rule 17Ad-19 requires transfer agents, among other things, to maintain records of all cancelled and destroyed or otherwise disposed-of certificates, indexed and retrievable by CUSIP and certificate number.¹² In addition to the CUSIP and certificate numbers, these records must contain the denomination, registration, issue date, and cancellation date of the subject securities. This is the very same information about cancelled certificates that the LSSP database collects today. In fact, the Commission cited the need for uniformity between 17Ad-19 and the LSSP as a reason for rejecting a suggestion that transfer agents be allowed to use something other than CUSIP numbers to identify cancelled securities for purposes of 17Ad-19 compliance.¹³

Expanding the LSSP to encompass all cancelled certificates could relieve transfer agents of the duty to maintain duplicate records of the same information. The Program's ability to supplant the recordkeeping provisions of Rule 17Ad-19 can be further enhanced in at least two ways. First, if a transfer agent supplies SIC with information regarding the transfer agent's certificate destruction policy, the LSSP database can be programmed to automatically update the status of a cancelled certificate to show when it is destroyed. Second, a transfer agent can use the "Comments" field in the Program database to identify the storage box in which a particular cancelled certificate is packed for shipment. If that box is lost, stolen or goes missing in transit, the transfer agent can

¹¹ Transfer Agent Release at 147, 80 Fed Reg. at 81987.

¹² Rule 17Ad-19(c)(3) and (4).

¹³ Cancelled Securities Release, *supra*, 68 Fed. Reg. at 74396.

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interrogate the LSSP database by box number to identify the CUSIP and certificate numbers of all the affected certificates. Transfer agents could use this reverse tracking mechanism to notify the Program that a certificate that already has been reported as cancelled is now also lost, stolen or missing. This use would eliminate the need for transfer agents to maintain a separate manifest of the cancelled certificates in transit, thereby further reducing their cost.¹⁴

SIC would be pleased to work with the SEC and the industry to explore these and other modifications to the LSSP to enhance the utility of the Program, eliminate duplication between Rule 17f-1 and Rule 17Ad-19, and reduce cost.

Conclusion

For the reasons expressed above, SIC respectfully asks the Commission to make cancelled certificates a mandatory reporting and inquiry category under Rule 17f-1 without further delay. Please contact the undersigned if you need more information about this matter.

Very truly yours,



Michael Manton
Head of Securities Information Center

cc: Hon. Mary Jo White
Hon. Kara M. Stein
Hon. Michael S. Piwowar
Division of Trading and Markets:
Stephen Luparello, Director
Moshe Rothman, Branch Chief
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¹⁴ Rule 17Ad-19(c)(5). Transfer agents could also interrogate the LSSP to respond to inquiries from non-US parties who do not otherwise have access to the LSSP database.