

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

Release No. 34-64099; File No. S7-11-11]

RIN: 3235-AL11

Proposed amendments to Rule 17Ad-17; Transfer agents', brokers', and dealers' obligation to search for lost securityholders; paying agents' obligation to search for missing securityholders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Section 929W of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) added subsection (g), “Due Diligence for the Delivery of Dividends, Interest, and Other Valuable Property Rights” to Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”). Subsection (g) directs the Securities and Exchange Commission (“Commission”) to revise Exchange Act Rule 17Ad-17, “Transfer Agents’ Obligation to Search for Lost Securityholders” to: extend to brokers and dealers the requirement of Rule 17Ad-17 to search for lost securityholders; add to Rule 17Ad-17 a requirement that “paying agents” notify “missing security holders” in writing that the paying agent has sent the missing security holder a check that has not yet been negotiated; add to Rule 17Ad-17 an exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than \$25; and add to Rule 17Ad-17 a provision clarifying that the written notification requirements shall have no effect on State escheatment laws. Subsection (g) also requires the Commission to “adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after the date of enactment of this subsection.” The Commission is publishing for comment proposed amendments to Rule 17Ad-17 to implement the statutory requirements.

DATES: Comments should be received on or before [insert date 45 days after publication in the Federal Register].

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to rule-comments@sec.gov and include File Number S7-11-11 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>) and follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-11-11. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/proposed.shtml>).

Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Thomas C. Etter, Jr., Special Counsel, at (202) 551-5710, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION

I. Introduction

On July 21, 2010, the President signed the Dodd-Frank Act into law.¹ The Dodd-Frank Act was enacted to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system.² Title IX of the Dodd-Frank Act provides the Commission with new tools to protect investors and improve the regulation of securities.³

Section 929W of the Dodd-Frank Act added subsection (g) to Section 17A of the Exchange Act (“Section 17A(g)”), which requires the Commission to revise Rule 17Ad-17 under the Exchange Act (“Rule 17Ad-17”)⁴ to extend the rule’s requirement that transfer agents search for “lost securityholders” to brokers and dealers.⁵

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² See *id.* at Preamble.

³ See *id.* § 901 (“This section may be cited as the ‘Investor Protection and Securities Reform Act of 2010’.”); Title IX (“Investor Protections and Improvements to the Regulation of Securities”).

⁴ 17 CFR 240.17Ad-17.

⁵ Rule 17Ad-17(b)(2) defines a “lost securityholder” to mean “a securityholder: (i) to whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent’s master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the resent item is returned as undeliverable; and (ii) for whom the transfer agent has not received information regarding the securityholder’s new address.”

Section 17A(g) further directs the Commission to revise Rule 17Ad-17 to provide a requirement that the “paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated.”⁶ Under Section 17A(g), written notification must be sent to a missing security holder no later than seven months after the sending of the not yet negotiated check.⁷

Section 17A(g)(1)(D)(ii) 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.”⁸ In addition, Section 17A(g)(1)(D)(i) provides that “a security holder shall be considered a ‘missing security holder’ if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check.”⁹

Section 17A(g)(1)(B) and (C) also require that the revisions to the rule: (i) provide an exclusion for paying agents from the notification requirements when the value of the not yet

⁶ Section 17A(g)(1)(A), 15 U.S.C. 78q-1(g)(1)(A). We note that Congress, in drafting Exchange Act Section 17A(g), used a two-word formulation of the term “security holder”. In Rule 17Ad-17, however, there is a one-word formulation of the term “securityholder”. For the sake of consistency within Rule 17Ad-17, we are proposing to use the term “missing securityholder” in Rule 17Ad-17. Throughout this release, we have used the term “securityholder” when discussing Rule 17Ad-17, and we have used the term “security holder” when discussing Section 929W of the Dodd-Frank Act or Section 17A(g) of the Exchange Act.

⁷ Id. Section 17A(g) provides that written notification may be sent along with a check or other mailing subsequently sent to the missing security holder.

⁸ Section 17A(g)(1)(D)(ii), 15 U.S.C. 78q-1(g)(1)(D)(ii).

⁹ Section 17A(g)(1)(D)(i), 15 U.S.C. 78q-1(g)(1)(D)(i).

negotiated check is less than \$25 and (ii) add a provision to make clear that the notification requirements imposed on paying agents shall have no effect on state escheatment laws.¹⁰

Section 17A(g)(2) requires the Commission to adopt rules, regulations, or orders necessary to implement the provisions of Section 17A(g)(1) no later than one year after the date of enactment of the Dodd-Frank Act.¹¹ Section 17A(g)(2) further requires the Commission, in proposing such rules, to seek to minimize disruptions to the current systems used by or on behalf of paying agents to process payments to account holders and avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.¹²

II. Rule 17Ad-17

A. Background

The Commission adopted Rule 17Ad-17 in 1997 to address situations where recordkeeping transfer agents lose contact with securityholders by requiring transfer agents to conduct database searches for lost securityholders.¹³ As the Commission noted at that time, such loss of contact can be harmful to securityholders because they no longer receive corporate communications or the interest and dividend payments to which they may be entitled.¹⁴ Additionally, their securities and any related interest and dividend payments to which they may be entitled are often placed at risk of being deemed abandoned under operation of state

¹⁰ See Section 17A(g)(1)(B) and (C), 15 U.S.C. 78q-1(g)(1)(B) and (C).

¹¹ Section 17A(g)(2), 15 U.S.C. 78q-1(g)(2).

¹² Id.

¹³ See Exchange Act Release No. 39176 (Oct. 1, 1997), 62 FR 52229 (Oct. 7, 1997) (adopting Rule 17Ad-17).

¹⁴ See id.

escheatment laws.¹⁵ This loss of contact has various causes, but it most frequently results from: (1) failure of a securityholder to notify the transfer agent of his/her correct address, especially after relocating to a new address or (2) failure of the estate of a deceased securityholder to notify the transfer agent of the death of the securityholder and the name and address of the trustee for the estate.¹⁶

B. Discussion

The proposed amendments would implement the statutory directive to extend the application of Rule 17Ad-17 to brokers and dealers. Specifically, the Commission proposes to revise paragraph (a) of Rule 17Ad-17 to add the words “broker, or dealer” following the rule’s existing references to transfer agents.¹⁷

The Exchange Act generally defines a “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,”¹⁸ and a “dealer” as “any person engaged in the business of buying and selling securities for such person’s own account though a

¹⁵ See *id.* Generally, after expiration of a certain period of time, which varies from state to state but is usually three to seven years, an issuer or its transfer agent must remit abandoned property (e.g., securities and funds of lost securityholders) to a state’s unclaimed property administrator pursuant to the state’s escheatment laws.

¹⁶ See Exchange Act Release No. 37595 (Aug. 22, 1996), 61 FR 44249 (Aug. 28, 1996) (proposing Rule 17Ad-17).

¹⁷ The proposal also would amend paragraph (a)(1) of Rule 17Ad-17 by: (i) inserting the words “and every broker or dealer that holds customer security accounts” following the words “accounts of lost securityholders”; (ii) inserting the words “and each broker or dealer that holds customer security accounts” following the words “recordkeeping transfer agent”; and (iii) inserting the words “and broker or dealer” following the words “The transfer agent”. The proposal would amend paragraph (a)(2) by inserting the words “, or broker or dealer” following the words “transfer agent” and paragraph (a)(3) by inserting the words “, or broker or dealer” following the words “transfer agent” and the words “or customer security account records of the broker or dealer” following the words “master securityholder files”. In addition, the proposal would amend paragraph (b)(2)(i) of Rule 17Ad-17 by inserting “or customer security account records of a broker or a dealer” following the words “master securityholder file” and by inserting the words “, or broker or dealer” following the words “securityholder, the transfer agent”. The proposal would amend paragraph (b)(2)(ii) by inserting the words “or broker or dealer” following the words “transfer agent”.

¹⁸ Exchange Act Section 3(a)(4)(A), 15 U.S.C. 78c(a)(4)(A).

broker or otherwise.”¹⁹ The proposed rule would apply to all brokers and dealers. As a practical matter, however, the Commission preliminarily believes that the only brokers and dealers that would have obligations under the amended rule would be those that carry securities for the accounts of “customers” within the meaning of Exchange Act Rule 15c3-3.²⁰ Such brokers and dealers generally are referred to as “clearing firms” (as opposed to “introducing firms”) and tend to be the larger brokerage firms.

The Commission proposes to redesignate current paragraph (c) of Rule 17Ad-17 as paragraph (d) of the rule, as discussed below. Proposed new paragraph (c) would include a requirement that a “paying agent” must provide written notification no later than seven months after the sending of any not yet negotiated check to each “missing securityholder” to inform the missing securityholder that such missing securityholder has been sent a check that has not yet been negotiated. Proposed paragraph (c)(2) of Rule 17Ad-17 would define “paying agent,” consistent with the definition in Section 17A(g),²¹ to include “any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person” that accepts payments from an issuer of securities and distributes the payments to securityholders. Proposed paragraph (c)(3) of Rule 17Ad-17 would, again consistent with Section 17A(g),²² provide that a person would be considered a “missing securityholder” if a check is sent to the securityholder and the check is not negotiated before the earlier of the paying agent’s sending the next regularly

¹⁹ Exchange Act Section 3(a)(5)(A), 15 U.S.C. 78c(a)(5)(A).

²⁰ 17 CFR 240.15c3-3.

²¹ Section 17A(g)(1)(D)(ii), 15 U.S.C. 78q-1(g)(1)(D)(ii).

²² Section 17A(g)(1)(D)(i), 15 U.S.C. 78q-1(g)(1)(D)(i).

scheduled check or the elapsing of six months after the sending of the not yet negotiated check. Proposed paragraph (c)(4) of Rule 17Ad-17 would, as required by Section 17A(g),²³ exclude a paying agent from the notification requirements if the value of the not yet negotiated check is less than \$25. Proposed paragraph (c)(5) of Rule 17Ad-17 would, again as required by Section 17A(g),²⁴ provide that the requirements of paragraph (c)(1) of Rule 17Ad-17 would have no effect on state escheatment laws.

Currently, Rule 17Ad-17(c) requires that every recordkeeping transfer agent shall maintain records to demonstrate compliance with the requirements of the rule.²⁵ The Commission is proposing to redesignate this provision as paragraph (d) of the rule and to amend the paragraph to also require recordkeeping transfer agents, brokers, dealers, and paying agents to maintain records to demonstrate their compliance with the rule. The rule would require that such records be maintained for a period of not less than three years with the first year in an easily accessible place.²⁶

Section 17A(g) further directs the Commission to avoid requiring multiple paying agents to send written notification to a missing security holder regarding the same not yet negotiated check.²⁷ We do not believe that multiple notifications by different paying agents for a given

²³ Section 17A(g)(1)(B), 15 U.S.C. 78q-1(g)(1)(B).

²⁴ Section 17A(g)(1)(C), 15 U.S.C. 78q-1(g)(1)(C).

²⁵ 17 CFR 240.17Ad-17(c).

²⁶ Currently, pursuant to Rule 17Ad-7(i), 17 CFR 240.17Ad-7(i), transfer agents must maintain records to show their compliance with Rule 17Ad-17. This same requirement for transfer agents, brokers, dealers, and paying agents would be stated explicitly in proposed amended Rule 17Ad-17. In order to maintain consistency with proposed amended Rule 17Ad-17, we are also proposing a technical change to Rule 17Ad-7(i) so that it would cross-reference proposed amended Rule 17Ad-17(d) rather than proposed amended Rule 17Ad-17(c).

²⁷ See Section 17A(g)(2), 15 U.S.C. 78q-1(g)(2).

check is a likely scenario under our proposed rule amendments because we do not believe an issuer would use two paying agents for the same distribution. We request comment on the likelihood of such an occurrence and, if such an occurrence is probable with any frequency, on ways to avoid it from happening.

We are also proposing to amend the title of Rule 17Ad-17 to clarify that it would apply to entities other than transfer agents. Specifically, we propose to re-title the rule “Transfer agents’, brokers’, and dealers’ obligation to search for lost securityholders; paying agents’ obligation to search for missing securityholders”.

Finally, to provide brokers, dealers, and paying agents with sufficient time to develop systems to comply with the proposed amendments to Rule 17Ad-17, we propose to establish a compliance date for the amendments of one year following the date on which the Commission takes final action on this proposal. We preliminarily believe that one year would provide brokers, dealers, and paying agents with ample time to come into compliance without unduly delaying the benefits to securityholders that Congress intended in enacting Section 17A(g).

III. Request for Public Comment

The Commission requests comment on all aspects of the proposed amendments to Rule 17Ad-17. We request comments on how brokers and dealers anticipate complying with the proposed rule’s requirement to search for lost securityholders. We also request comment on whether the new term “missing securityholder,” and its related requirements and timeframes will be confused with the rule’s existing term “lost securityholder” and its related requirements and timeframes. We particularly request comment regarding whether brokers, dealers, and transfer agents, which are also included in the definition of “paying agent,” foresee issues that may result

from the use of the two terms.²⁸ With respect to Section 17A(g)(2)'s requirement that in preparing these amendments to Rule 17Ad-17 the Commission shall seek to “minimize disruptions to current systems,” we request comment on any potential disruptions that may result from the proposed revisions and how to minimize any such potential disruptions.²⁹ We are also requesting cost data for implementation of the proposed revisions by industry participants. We are soliciting comments on any burdens to commerce that might result from the proposed rule amendments. Commentators should provide empirical data to support their views.

Finally, we request comments on our proposal to establish a compliance date for the amendments of one year following final action by the Commission.

IV. Paperwork Reduction Act

The proposed amendments to Rule 17Ad-17 would require a new and mandatory “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”),³⁰ consisting of maintaining records in order to comply with and to demonstrate compliance with the rule by brokers and dealers who would be newly added to paragraph (a) of the rule³¹ and by paying agents who would be newly added to paragraphs (c) and (d) of the rule.³² Accordingly, the PRA would be applicable to the proposed rule and would require approval of the Office of Management and Budget. The relevant record collection requirements

²⁸ We note that the term “lost securityholder” was adopted as part of Rule 17Ad-17 in 1997, and Congress used the term “missing security holder” when it added new subsection (g) to Exchange Act Section 17A. For the sake of consistency within Rule 17Ad-17, we are proposing to use the term “missing securityholder” in Rule 17Ad-17.

²⁹ Section 17A(g)(2), 15 U.S.C. 78q-1(g)(2).

³⁰ 44 U.S.C. 3501 *et seq.*

³¹ 17 CFR 240.17Ad-17(a).

³² 17 CFR 240.17Ad-17(c) and (d).

would be covered by amendments to paragraph (a) to Rule 17Ad-17, new paragraph (c) of Rule 17Ad-17, and amended and renumbered paragraph (d) of Rule 17Ad-17.³³

The collection of information under the proposed paragraph (b) of Rule 17Ad-17 is necessary to enable transfer agents, brokers, and dealers and paying agents, as custodians of records that determine the ownership of securities and the entitlement to corporate distributions, to reduce the number of lost and missing securityholders.

The term “paying agents” would include the following approximate numbers of entities: 10,379 issuers that file reports with the Commission; 5,063 broker-dealers registered with the Commission; 536 transfer agents registered with the Commission and the banking agencies; 11,797 registered investment advisers registered with the Commission; 264 indenture trustees; and 896 custodians; for a total of approximately 28,931 entities plus an unknown number in the category of “any other person.”

Based on discussions with participants in the securities industry, we are assuming for the purposes of proposed Rule 17Ad-17, that on an annual basis, there will be approximately 250,000 searches by brokers and dealers and 50,000 notifications by paying agents.

A. Paragraph (a)

Under paragraph (a) of the proposed rule amendments, recordkeeping transfer agents, brokers, and dealers would collect the names and addresses of their lost securityholders, and the recordkeeping transfer agents, brokers, and dealers would submit this information to information data bases pursuant to paragraph (b) of the rule. Such data base searches must be conducted without charge to the lost securityholders. Much of the new information required to be collected

³³ Id.

(such as the taxpayer identification numbers of lost securityholders) generally is already maintained by brokers and dealers and transfer agents so there should not be an additional cost. Therefore, the Commission anticipates that the increased hourly burden imposed by these aspects of the rule revisions would be about two minutes per account per search.³⁴ Based upon discussions with market participants, adding a corrected address in the event one is found would require approximately three minutes. The burden per account would be no more than five minutes. Assuming 250,000 annual searches by brokers and dealers for lost security holders, the increased hourly burden would be 1,250,000 minutes, or 20,833 hours (1,250,000 divided by 60).

B. Paragraph (c)

Under proposed paragraph (c)(1) of the rule, a paying agent must provide not less than one written notification to each missing securityholder no later than seven months after such securityholder has been sent a check that has not yet been negotiated. The notification may be sent with a check or other mailing subsequently sent to the missing securityholder but must be provided no later than seven months after the sending of the not yet negotiated check. The rule further provides that a paying agent shall be excluded from the notification requirement where the value of the not yet negotiated check is less than \$25 and that the requirements of paragraph (c)(1) shall have no effect on state escheatment laws.

The paying agents could include approximately 28,931 identifiable entities as noted previously in this section. However, despite the large number of entities eligible to be paying agents, that number would be limited to those firms that would be able to provide financial

³⁴ Based on information provided by the industry, the Commission estimates that broker and dealers will annually search for approximately 250,000 lost securityholders. The Commission estimates that approximately \$3.00 will be spent per account in order to conduct a search (comprised of approximately \$2.00 for two searches and approximately \$1.00 in administration costs). Therefore, the total cost for all brokers and dealers would be \$750,000 (250,000 multiplied by \$3.00).

services relevant to the rule. The Commission estimates that there would likely be no more than 1,000 entities actually serving as paying agents and that these entities would consist primarily of broker-dealers and transfer agents (including bank transfer agents), the sort of financial institutions that are accustomed to processing checks and other commercial documents, dealing with securityholder issues, maintaining financial records, and serving as intermediaries between issuers and securityholders. We note that, technically, the startup costs to enter the paying agent business, for a business entity already in the financial industry, would appear to be exceedingly modest in that the basic elements of being a paying agent simply involve mailing notification letters, sometimes including checks, and maintaining related financial records. While the entry costs would appear modest, to operate this sort of low margin business profitably would require economies of scale and existing business relationships that presumably would limit the likely number of active paying agents.

If we assume 1,000 paying agents notifying 50,000 missing securityholders with each of the notifications requiring three minutes of labor, we estimate the burden imposed by Rule 17Ad-17(c) on “paying agents” for providing written notification to all “missing securityholders” who have been sent checks that after seven months have not yet been negotiated to be a total of 150,000 minutes or a burden of 2,500 hours (150,000 divided by 60).

C. Paragraph (d)

Proposed paragraph (d) of Rule 17Ad-17 would require that transfer agents, brokers, dealers, and paying agents that are subject to the rule to maintain records necessary to demonstrate their compliance with the rule. The rule also would require transfer agents, brokers, dealers, and paying agents to maintain written procedures that describe their methodology for compliance. The records required by the proposed rule must be maintained for a period of not

less than three years, with the first year in an easily accessible place, consistent with Exchange Act Section 17A. Based on discussions with participants in the securities industry, we believe that the annual recordkeeping function for records, which would be processed electronically, would require approximately one hour for every 500 missing securityholder accounts and every 500 lost securityholder accounts. For 250,000 searches by brokers and dealers, the recordkeeping time would be approximately 500 hours. For notification of 50,000 missing securityholders, the recordkeeping time for the paying agents (including any issuer, transfer agent, broker, dealer, investment advisor, indenture trustee, custodian, and any other person) would be approximately 100 hours.

In summary, assuming 250,000 searches by brokers and dealers (20,833 hours + 500 hours = 21,333 hours) and 50,000 notifications by paying agents (2,500 hours + 100 hours = 2,600 hours), the total estimated burden would be 23,933 hours (21,333 hours + 2,600 hours).

V. Costs and Benefits of Proposed Amendments

The costs of this proposal are imposed entirely by Section 929W of the Dodd-Frank Act and Section 17A(g). These statutory costs include, among other things, the application of the requirements of Rule 17Ad-17(a) to brokers and dealers, and the requirements imposed on “paying agents” by proposed Rule 17Ad-17(c) and (d). The costs are not imposed on brokers and dealers or paying agents by the Commission. Accordingly, it is not for the Commission to determine whether these costs are justified by the anticipated benefits of the revised rule.

Nevertheless, we request comment on the potential costs for any necessary modifications to information gathering, management, and record-keeping systems or procedures, as well as any potential costs or benefits resulting from the proposal for brokers, dealers, issuers, transfer agents, investment advisers, indenture trustees, custodians, regulators, or others. Commenters

should provide analysis and data to support their views on the costs and benefits associated with the proposal.

The proposed rule changes should provide specific benefits to issuers and U.S. investors, benefits which are not readily quantifiable in terms of dollar value. Nevertheless, the proposal would: (1) invoke the services of transfer agents and brokers and dealers to reduce the number of lost securityholders; (2) invoke the services of all paying agents to reduce the number of missing securityholders; and (3) improve the accuracy of securityholder records. We are seeking comment on how we may better identify and quantify the benefits that may result from the adoption of the proposed amendments.

VI. Initial Regulatory Flexibility Act Analysis

A. Reasons for Proposed Action

This action was expressly directed by legislation (i.e., Section 929W of the Dodd-Frank Act, which added paragraph (g) to Section 17A of the Exchange Act).

B. Objectives and Legal Basis

The objectives of this proposal, as discussed above in Sections I and II, are to help reduce the number of lost and missing securityholders and to further the Commission's mission of protecting investors. The legal basis for the proposal is set forth in Section 17A(g).

C. Small Entities Subject to the Rule

1. Brokers and Dealers

According to Exchange Act Rule 0-10(c),³⁵ a broker or dealer is a small entity if it: (1) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the

³⁵ 17 CFR 240.0-10(c).

prior fiscal year as of which its audited financial statements were prepared pursuant to Section 240.17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.³⁶ Of the 5,063 brokers and dealers registered with the Commission, approximately 879 are small brokers or dealers. We note that the proposed amendments to Rule 17Ad-17 would, as a practical matter, apply only to brokers and dealers that carry securities for customer accounts (i.e., clearing firms), which tend to be the larger broker and dealer firms. There are 503 clearing firms registered with the Commission, none of which qualifies as a small business. Accordingly, we do not expect small brokers or dealers to be affected by the amendments to Rule 17Ad-17.³⁷

2. Paying Agents

Section 17A(g)(D)(ii) defines the term “paying agent” as including “any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payment from the issuer of a security and distributes the payments to the holder of the security.” With respect to data for these entities: (1) 10,379 issuers file reports with the Commission of which 1,207 qualify as small businesses;³⁸ (2) 536 transfer agents registered with

³⁶ Paragraph (i) of Rule 0-10, 17 CFR 240.0-10, discusses the meaning of “affiliated person” as referenced in Paragraph (c) of Rule 0-10.

³⁷ 17 CFR 240.17Ad-17.

³⁸ See Exchange Act Rule 0-10(a). 17 CFR 240.0-10(a).

the Commission or with the Federal banking agencies of which 135 qualify as small businesses;³⁹ (3) 5,063 brokers-dealers registered with the Commission of which 879 qualify as small businesses;⁴⁰ (4) 11,797 investment advisers registered with the Commission of which 718 qualify as small businesses;⁴¹ (5) 264 indenture trustees of which four qualify as small businesses;⁴² and (6) 896 custodians of which 11 qualify as small businesses.⁴³ The Commission has no supportable basis to estimate the number of small entities with respect to the remaining category (i.e., any other person). As noted herein in Section IV, while approximately 28,931 entities have been identified as potential “paying agents,” the Commission preliminarily believes that no more than 1,000 such entities would actually serve as paying agents.

We preliminarily believe that the bulk of paying agent services would be provided by brokerage firms that handle customer securities (which as discussed above, as clearing firms, would not be small entities) and transfer agents (including bank transfer agents), both of which are firms that typically serve as intermediaries between issuers and securityholders.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Proposed new paragraph (d) of Rule 17Ad-17 would require recordkeeping transfer agents, or brokers, or dealers, and paying agents to demonstrate compliance with these provisions and to maintain written procedures that describe the methodology for complying with the provisions. Such records would be required to be maintained for not less than three years,

³⁹ See Exchange Act Rule 0-10(h). 17 CFR 240.0-10(h).

⁴⁰ See Exchange Act Rule 0-10(c). 17 CFR 240.0-10(c).

⁴¹ See Investment Advisers Act Rule 0-7(a). 17 CFR 275.0-7(a).

⁴² See Trust Indenture Act Rule 0-7. 17 CFR 260.0-7.

⁴³ See 13 CFR 121.201.

the first year in an easily accessible place. Their maintenance would be subject to examination by the appropriate regulatory agency as defined by Section 3(a)(34)(B) of the Exchange Act.⁴⁴

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission preliminarily believes there are no rules that duplicate, overlap, or conflict with the proposed rule.

F. Significant Alternatives

With respect to small entities, the Commission considered whether viable alternatives to the proposed rulemaking exist that could accomplish the stated objectives of Section 17A(g) of the Exchange Act and whether they would minimize any significant economic impact of proposed rules on small entities. Specifically, the Commission considered the following alternatives: (1) the establishment of different procedures that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules insofar as they affect small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. However, inasmuch as Section 929W of the Dodd-Frank Act, which added Section 17A(g) to the Exchange Act, expressly requires the proposed revisions, no alternative to the proposed rule amendment appears available at this time.

The Commission encourages the submission of written comments with respect to any aspect of the Initial Regulatory Flexibility Analysis (“IFRA”).⁴⁵ Those comments should specify costs of compliance with the proposed rule, and suggest alternatives that would accomplish the

⁴⁴ 15 U.S.C. 78c(a)(34)(B).

⁴⁵ 5 U.S.C. 603.

objective of the proposed amendments to Rule 17Ad-17. A copy of the IRFA may be obtained by contacting Thomas C. Etter, Jr., Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-7010, telephone no. (202) 551-5713.

VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

The proposed amendments to the rule should have a neutral effect on efficiency and capital formation and should have no material anticompetitive effects. While we believe the proposed amendments to the rule would apply to all transfer agents, brokers, dealers, and paying agents, they could in theory create a barrier to entry for potential new entrants if the compliance costs associated with searching for and contacting lost or missing securityholders are high enough. The Commission encourages the submission of written comments on Section VII.

VIII. SBREFA Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,⁴⁶ a rule is major if it has resulted in or is likely to result in:

- an annual effect on the economy of \$100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

We request comment regarding the potential impact of the proposed rule amendments on the economy on an annual basis. We also request that commenters provide empirical data and other factual support for their views.

⁴⁶ 5 U.S.C. 801, *et seq.* The Regulatory Flexibility Act requires regulatory agencies to consider the impact of their proposed and final regulations on small entities.

IX. Statutory Basis and Text of Proposed Amendments

Statutory Basis

Pursuant to Section 17A(g) of the Exchange Act, 15 U.S.C. 78q-1(g), the Commission proposes to amend § 240.17Ad-7 and § 240.17Ad-17 under the Exchange Act in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of the Amendments

In accordance with the foregoing, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE

ACT OF 1934

1. The general authority citation for Part 240 is revised and the following citation is added in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78mm, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

Section 240.17Ad-17 is also issued under Pub. L. 111-203, § 929W, 124 Stat. 1869 (2010).

2. Section 240.17Ad-7(i) is amended by removing “240.17Ad-17(c)” and adding in its place “240.17Ad-17(d)”.

3. Section 240.17Ad-17 is amended by:

a. Revising the heading.

b. Revising paragraph (a)(1).

c. In paragraph (a)(2) adding the phrase “, or broker or dealer” following the word “agent”.

d. In paragraph (a)(3) introductory text adding the phrase “, or broker or dealer” following the word “agent”.

e. In paragraph (a)(3)(ii) adding the phrase “or customer security account records of the broker or dealer” following the word “files”.

f. In paragraph (b)(2)(i) adding the phrase “or customer security account records of a broker or dealer” following the word “file” and adding the phrase “, or broker or dealer” following the phrase “securityholder, the transfer agent”.

g. In paragraph (b)(2)(ii) adding the phrase “or broker or dealer” following the word “agent”.

h. Redesignating paragraph (c) as paragraph (d), and adding new paragraph (c).

i. Revise newly redesignated paragraph (d).

The revisions read as follows:

§ 240.17Ad-17 Transfer agents’, brokers’, and dealers’ obligation to search for lost securityholders; paying agents’ obligation to search for missing securityholders.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders and each broker or dealer that holds customer security accounts shall exercise reasonable care to ascertain the correct addresses of such securityholders. In exercising reasonable care to ascertain such lost securityholders' correct addresses, each recordkeeping transfer agent and each broker or dealer shall conduct two data base searches using at least one information data base service. The transfer agent and broker or dealer shall search by taxpayer identification number or by name if a search based on taxpayer identification number is not reasonably likely to locate the securityholder. Such data searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Between three and twelve months of such securityholder becoming a lost securityholder and

(ii) Between six and twelve months after the transfer agent's or broker's or dealer's first search for such lost securityholder.

(c)(1) The paying agent, as defined in paragraph (c)(2) of this section, shall provide not less than one written notification to each missing securityholder stating that such securityholder has been sent a check that has not yet been negotiated. Such notification may be sent with a check or other mailing subsequently sent to the missing securityholder, but must be provided no later than seven (7) months after the sending of the not yet negotiated check.

(2) The term paying agent shall 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 holder of the security.

(3) The securityholder shall be considered a missing securityholder if a check is sent to the securityholder and the check is not negotiated before the earlier of the paying agent's sending the next regularly scheduled check or the elapsing of six (6) months after the sending of the not yet negotiated check.

(4) A paying agent shall be excluded from any notification requirement where the value of the not yet negotiated check is less than \$25.

(5) The requirements of paragraph (c)(1) of this section shall have no effect on state escheatment laws.

(d) Every recordkeeping transfer agent, broker, or dealer carrying securities for the accounts of customers, and every paying agent shall maintain records to demonstrate compliance with the requirements set forth in this section which shall include written procedures that describe the transfer agent's, or broker's or dealer's, or paying agent's methodology for complying with this section. Such records shall be maintained for a period of not less than three (3) years with the first year in an easily accessible place.

By the Commission.

Elizabeth M. Murphy

Secretary

Date: March 18, 2011