

SEC Adopts New Obligations for Broker-Dealers Regarding Lost Securityholders and Unresponsive Payees

January 3, 2013

On December 21, 2012, the SEC unanimously adopted [rules](#) required by the [Dodd-Frank Act](#) that require broker-dealers and certain other market participants to search for holders of securities with whom they have lost contact and provide notifications to persons who have not negotiated checks that have been sent to them.

The rules will become effective 60 days after they are published in the *Federal Register*, and compliance will be required one year later.¹

Obligation to Search for Lost Securityholders

Amended Exchange Act Rule 17Ad-17 will require broker-dealers with customer security accounts to use reasonable care to ascertain the addresses of lost securityholders. Specifically, broker-dealers must conduct two database searches to ascertain the address of securityholders to whom any correspondence was sent and returned as undeliverable and for whom the broker-dealer has not received updated address information ("**lost securityholders**"). Under this rule, the broker-dealer must conduct mandatory searches through an information database service that contains addresses from the entire U.S. geographic area, contains the names of at least 50% of the U.S. adult population, is indexed by taxpayer identification number or name and is updated at least four times a year. The searches must be conducted by taxpayer identification number, or if a search based on taxpayer identification number is not likely to locate the securityholder, by name. The securityholder may not be charged for these mandated searches.

The mandatory database searches must be conducted between three and twelve months from the later of (i) the date upon which a correspondence is returned as undeliverable or (ii) if a returned correspondence is re-sent within one month from the date it was returned and is again returned as undeliverable, the date on which the re-sent item is returned as undeliverable. The second required database search must be performed between six and twelve months after the first search.

The obligation to search does not apply when:

- the broker-dealer has received documentation that the securityholder is deceased,
- the total value of assets in the securityholder's account is less than \$25, or
- the securityholder is not a natural person.

This rule also applies to certain transfer agents.

¹ Publication of these rules in the *Federal Register* may be delayed, pending review by the Office of Management and Budget.

Obligation to Send Notice to Unresponsive Payees

Broker-dealers, transfer agents, investment advisers, custodians, issuers, indenture trustees and any other person who accepts payments from an issuer of securities and distributes the payments to holders of the security will be required to provide written notice to any securityholders who do not negotiate a check sent to them within a specified period (generally six months). There is an exception for unnegotiated checks worth less than \$25. The rule clarifies that the new notification requirement shall have no effect on a state's ability to collect funds that it deems abandoned under state escheatment laws.

Recordkeeping and Procedure Requirements

Broker-dealers with customer accounts and transfer agents must maintain records demonstrating compliance with the lost securityholders rule, and broker-dealers and other persons subject to the unresponsive payee notification rule must maintain records demonstrating compliance with the unresponsive payee notification rule. These records must include written procedures that describe the entity's methodology for complying with the rules.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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