

**MEMO# 25035**

March 21, 2011

## **SEC Seeks Comment on Requiring Payment Agents to Provide Notice of Uncashed Checks; Comments Due to ICI by April 15**

[25035]

March 21, 2011

TO: BROKER/DEALER ADVISORY COMMITTEE No. 17-11  
CHIEF COMPLIANCE OFFICER COMMITTEE No. 7-11  
INVESTMENT ADVISERS COMMITTEE No. 3-11  
TRANSFER AGENT ADVISORY COMMITTEE No. 21-11 RE: SEC SEEKS COMMENT ON  
REQUIRING PAYMENT AGENTS TO PROVIDE NOTICE OF UNCASHED CHECKS; COMMENTS  
DUE TO ICI BY APRIL 15

Section 929W of the Dodd-Frank Act require the SEC, within one year of the Act's enactment, to revise the rules under Section 17A of the Securities Exchange Act of 1934, relating to lost security holders. As revised, the rules must (1) extend to broker-dealers and (2) require all "paying agents" to notify "missing security holders" of certain uncashed checks. On March 18, the SEC [published rules](#) to implement these requirements. [1] The provisions in the proposed rules implementing (2), above, are briefly summarized below.

Comments on the Commission's proposal are due no later than 45 days after the proposal is published in the Federal Register, which is expected shortly. Persons with comments on the proposal should provide them to the undersigned no later Friday, April 15th. Comments should be submitted by phone (202-326-5825) or email ([tamara@ici.org](mailto:tamara@ici.org)).

### **Section 929W**

Pursuant to Section 929W, the SEC must adopt rules under Section 17A that require a paying agent to "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." [2] The notice may be sent along with a check or other mailing subsequently sent to the missing security holder, but must be provided no later than 7 months after the sending of

the unnegotiated check. Checks for less than \$25 are excluded from this requirement. Section 929W includes the following definitions:

- Paying agent – includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or other person that accepts payments from the issuer of a security and distributes the payments to holders of the security.
- Missing security holder – is a security holder who has not negotiated check before the earlier of the paying agent’s sending the next regularly scheduled check or the elapsing of six months after the sending of the not-yet-negotiated check. (Emphasis added.)

## **The SEC’s Proposed Revisions to Rule 17Ad-17**

The SEC’s proposed revisions to Rule 17Ad-17 track the statutory language. [3] They include a new subsection (c) in the rule that defines “paying agent” and “missing security holder,” and requires each paying agent to provide not less than one written notification to each missing security holder stating that such security holder has been sent a check that has not yet been negotiated. The notice may be sent with a check or other mailing subsequently sent to the missing security holder so long as it is provided no later than seven months after the sending of the not yet negotiated check.

Tamara K. Salmon  
Senior Associate Counsel

### **endnotes**

[1] See Proposed Amendments to Rule 17Ad-17; Transfer agents’, brokers’, and dealers’ obligation to search for lost securityholders; paying agents’ obligation to search for missing security holders, SEC Release No. 34-64099 (March 18, 2011), which is available at <http://www.sec.gov/rules/proposed/2011/34-64099.pdf>.

[2] The Act and the Commission’s proposed rule expressly state that this new requirement “shall have no effect on state escheatment laws.”

[3] In addition, proposed revisions to Rule 17Ad-17(a) expand the reach of the rule’s lost shareholder provisions to each broker or dealer that holds customer security accounts. The Institute does not plan to comment on this portion of the rule in our comment letter.