

MEMO# 35404

August 17, 2023

SEC Sanctions DST for Violations Related to Lost Securityholder Searches

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TO: Operations Committee

Transfer Agent Advisory Committee RE: SEC Sanctions DST for Violations Related to Lost Securityholder Searches

The SEC has announced the settlement of an administration action involving DST Asset Manager Solutions, Inc. (DST), a registered transfer agent, for violations of the lost securityholder rule under the Securities Exchange Act of 1934, Rule 17Ad-17.[\[1\]](#) According to the SEC's Order, "approximately 78 lost securityholders whom DST did not contact regarding their 'lost securityholder' status had assets totaling approximately \$651,000 escheated to the states for the period from January 1, 2017 to July 31, 2022." While DST neither admitted nor denied the SEC allegations, the SEC found that the firm willfully violated the law as alleged. As a result, the firm was censured, ordered to cease and desist from further violations, and fined \$500,000. It also voluntarily agreed to certain undertakings set forth in the Order. The fact of this case and DST's undertakings are briefly described below. Also discussed is the dissent Commissioners Peirce and Uyeda filed in this case.[\[2\]](#)

DST's Violations

As discussed in the Order, SEC Rule 17Ad-17 sets forth the minimum search requirements for finding "lost securityholders," as such term is defined in the Rule.[\[3\]](#) The Rule requires transfer agents to conduct searches to find a valid address of every lost securityholder using national databases. These searches are to be conducted by taxpayer identification number or by name if a search based on the taxpayer identification number is not reasonably likely to locate the securityholder. The Rule also requires transfer agents to establish written policies and procedures to ensuring compliance with the Rule's requirements.

The Order describes DST's approach to the searches required by the Rule:

From the 1997 effective date of the Rule through late 2021, DST's written policies and procedures pursuant to the Rule required a database search by social security number ('SSN,' used herein interchangeably with 'taxpayer identification number'), but if the database search returned a potential better

address for the lost securityholder, DST's written procedures added an additional filtering step. Instead of attempting to make contact based on the better address, DST's written procedures instead called for contact to be reestablished with a lost securityholder only if a further search, based on the potential better address yielded by the first search, matched the SSN and the first name of the lost securityholder on file at DST . This written procedure violated the Rule, which requires that a name should only be used when a SSN search is not reasonably likely to locate the securityholder. [4]

The Order additionally notes that DST "failed to follow even those deficient written policies and procedures." In particular, the firm "utilized potential better addresses yielded by its initial search by SSM to attempt to make contact with lost securityholders only if a further search, based on the potential better address yielded by the first search, matched the SSN, first name and last name of the lost securityholder on file at DST." [5] The SEC found that this "unwritten practice" by DST "also violated the Rule and further reduced the universe of lost securityholder to be contacted by DST."

The Order found that, for the period of January 1, 2017 to July 31, 2022, contact may have been reestablished with 78 lost securityholders if DST had reached out to those lost securityholders based on their first search based on the lost securityholders' SSN alone. The amount escheated to the states from these lost securityholders accounts amounted to over \$650,000. The Order also found that "DST's lost securityholder data revealed a 44.07% higher rate (3.14% as compared to 2.17%) of escheatment to state unclaimed property administrators when DST failed to contact lost securityholders at potentially better addresses yielded from a search by SSN alone versus when DST contacted lost securityholders at a potentially better address after its unreasonable further filtering of the SSN search results." [6]

DST's Undertakings

The Order notes that DST has undertaken to do each of the following:

- To try to establish contact with the lost securityholders whose accounts were escheated due to DST's deficient policies and procedures and, if such persons are found, to provide them information regarding the process to make application to the applicable State to attempt recovery of escheated funds;
- "Request that its mutual fund clients periodically send out notifications to their client shareholder base informing them of the risk of escheatment and educating them on steps to take to avoid dormancy, including updating their addresses and otherwise establishing contact with the funds or DST;" [7] and
- Provide written certifications to the SEC for a period of five years beginning in September 2023 that its written policies and procedures are in compliance with Rule 17Ad-17 and it is following those policies and procedures in practice.

Within ninety days from the completion of the undertakings, DST must additionally certify in writing that it is in compliance with the undertakings. "The certification shall identify the undertakings, provide written evident of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and [DST] agrees to provide such evidence." [8]

The Dissent of Commissioners Peirce and Uyeda

As mentioned above, Commissioners' Peirce and Uyeda filed a written dissent to the

Commission's Order. The basis for this dissent, which is consistent with their previous dissents from Commission orders, is that the "Commission once again uses an enforcement action as a substitute for notice and comment rulemaking." According to their dissent, "Tucked into the Commission's Order is an undertaking that effectively imposes a substantive new disclosure requirement on mutual funds." In their view, the second bullet above:

. . . although disguised as a 'request' from the transfer agent to its mutual fund clients, the additional disclosures referenced in the undertaking are effectively a requirement by the Commission. If a mutual fund receives a request from its transfer agent that the Commission required the transfer agent to make, fund counsel reasonably will view it as tantamount to a Commission requirement. While the Order addresses only one transfer agent, its reach is broader. The undertaking implies that all mutual funds, with prompting from their transfer agents, should be sending periodic escheatment notices and conducting escheatment education for their shareholders.

In their view, while many mutual funds already include voluntary registration statement disclosure regarding escheatment, the Order "creates the implication that mutual funds' existing disclosures regarding escheatment are inadequate." Also, because the Commission rules already subject mutual funds to robust disclosure requirements, the Commission should use its rulemaking process to supplement or amend these existing requirements. The Dissent concludes by stating "What is a regulator to do when it cannot fit one more robust rulemaking on the calendar? The answer appears to be 'send enforcement to do the rulemaking.'"

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Notes

[1] See In the Matter of DST Asset Manager Solutions, Inc., Administrative Proceeding No. 3-21565 (August 17, 2023) (the "Order"), which is available at:

<https://www.sec.gov/files/litigation/admin/2023/ap-34-98153.pdf>. The Order notes that on January 11, 2018, DST was acquired by SS&C Technologies Holdings, Inc. and that "as of year-end 2022, DST maintained master securityholder files for 6,020,045 individual securityholder accounts as a transfer agent for over 100 mutual fund clients in the United States." Order at ¶ 2.

[2] See "UnRulemaking: Statement Regarding DST Asset Manager Solutions, Inc." by Commissioners Hester M. Peirce and Mark T. Uyeda (August 17, 2023), which is available at:

https://www.sec.gov/news/statement/peirce-uyeda-statement-dst-asset-manager-solutions-inc-081723?utm_medium=email&utm_source=govdelivery.

[3] Generally speaking, under Paragraph (b)(2) of the Rule, a person is a "lost securityholder" if mail sent to that person's address of record is returned to the sender as undeliverable.

[4] Order at ¶ 5.

[5] Order at ¶ 6. Emphasis in original.

[6] Order at ¶ 8.

[7] This Undertaking is the primary basis for the Dissent filed by Commissioners Peirce and Uyeda.

[8] Order at ¶ 10.

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