

SECURITIES AND EXCHANGE COMMISSION**17 CFR Part 240**

[Release No. 34-48931; File No. S7-18-00]

RIN 3235-AH94

Processing Requirements for Cancelled Security Certificates**AGENCY:** Securities and Exchange Commission ("Commission").**ACTION:** Final rule.

SUMMARY: The Commission is revising its rules governing cancelled securities certificates to improve the processing of securities certificates by transfer agents. The Commission is adopting a new rule under the Securities Exchange Act of 1934 that will require every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. This rule will require transfer agents to: Mark each cancelled securities certificate with the word "cancelled"; maintain a secure storage area for cancelled certificates; maintain a retrievable database of all of its cancelled, destroyed, or otherwise disposed of certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, the Commission is amending its lost and stolen securities rule and its transfer agent safekeeping rule to make it clear that these rules apply to unissued and cancelled certificates.

EFFECTIVE DATE: The amendments will become effective on January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Thomas C. Etter, Jr., Special Counsel, at (202) 942-0178, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION: The Commission is today adopting new Rule 17Ad-19 and adopting amendments to existing Rules 17f-1, 17Ad-7, and 17Ad-12.

I. Introduction*A. The Proposal*

On October 2, 2000, the Commission published for comment a release ("Proposing Release") that proposed Rule 17Ad-19 under the Securities Exchange Act of 1934 ("Exchange Act")¹ and proposed amendments to Exchange Act Rules 17f-1 and 17Ad-

12.² The proposed rule and rule amendments principally were designed to address problems associated with cancelled securities certificates. Rule 17Ad-19 as proposed would have required every transfer agent that handles, processes, or stores securities certificates to establish and implement written procedures for the cancellation, storage, transportation, and destruction of retired securities certificates. The rule would require transfer agents to: Mark each cancelled securities certificate with the word "cancelled"; maintain a secure storage area for cancelled certificates; maintain a retrievable database of all of its cancelled and destroyed certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, proposed amendments to Rule 17f-1 (the lost and stolen securities rule) would have: Required the tracking of securities certificates, cancelled or otherwise, in transit between reporting institutions; established time frames for making required "inquiries" about lost, stolen, missing, or counterfeit securities under Rule 17f-1; and defined certain terms for purposes of the rules. Finally, proposed amendments to Rule 17f-1 and Rule 17Ad-12 (the transfer agent safekeeping rule) would have made clear that unissued and cancelled securities certificates must be safeguarded under Rule 17Ad-12 and that they fall within the Commission's Lost and Stolen Securities Program under Rule 17f-1.

We are adopting the proposed new rule and rule amendments, with minor modifications as discussed below, substantially as they were proposed. Further, as discussed below, we have modified Rule 17Ad-19 from the proposal in response to comments to address situations where cancelled securities are "otherwise disposed of."

B. The Commission's Goals

The new rule and rule amendments promote several fundamental Commission goals: Improving the safety and efficiency in processing and transferring securities; reducing or eliminating the physical movement of securities certificates; and reducing the potential for fraudulent use of cancelled securities certificates.³ The rules primarily relate to problems and costs

associated with cancelled securities certificates.

In particular, we address the problem that, until properly destroyed or disposed of, cancelled securities certificates can resurface in the marketplace and can be and have been used to defraud members of the public or financial institutions. Requiring better procedures for processing and destroying cancelled certificates will reduce this potential for harm.

C. Comment Letters

The Commission received 13 comment letters on the proposed rule and proposed rule amendments.⁴ Ten commenters generally expressed support for proposed Rule 17Ad-19 and the proposed amendments to Rules 17f-1 and 17Ad-12 and for the Commission's efforts to address cancelled certificate fraud, and offered suggestions for modification or requests for clarification with respect to specific provisions of the proposal. As discussed below, we have adopted some of the suggestions. The remaining three commenters addressed only the issue of certificate destruction, arguing that because securities certificates are culturally important due to their historical, aesthetic, and collectors' values, they should be preserved and not destroyed. We discuss these comments below.

⁴ The Commission received comment letters from five transfer agents, one broker-dealer, one bank, one business corporation, one trade group representing transfer agents, one trade group representing investment companies, the president of an organization representing collectors of securities certificates, a finance professor, and a group of business students at Florida State University. Letters from James J. Angel, Ph.D., George Washington University (October 19, 2000); Loren Hanson, Manager, Shareholder Relations, Otter Tail Power Co. (October 24, 2000); Frank Hammelbacher, Norrico, Inc. (October 30, 2000); John E. Nolan, Senior Vice President, Raymond James & Associates, Inc. (November 2, 2000); Charles V. Rossi, Division President, EquiServe (December 4, 2000); Steven Turowski, Senior Regulatory Counsel, PFPC Inc. (December 4, 2000); Kathleen C. Joaquin, Director, Transfer Agency & International Operations, Investment Company Institute ("ICI") (December 5, 2000); Daniel M. Hill, Assistant Vice President, U.S. Bank Trust National Association (December 6, 2000); John F. Kuntz, Vice President and Assistant General Counsel, Chase-Mellon Shareholder Services (December 14, 2000); Keith G. Berkheimer, President, CTA (December 14, 2000); Robert A. Kerstein, President, Scripophily.com (March 5, 2001); and Robert Serrano *et al.*, business students at Florida State University (dated November 29, 2000, received at the Commission February 19, 2002). These comment letters are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

² 17 CFR 240.17f-1 and 240.17Ad-12; Securities Exchange Act Release No. 43401 (October 2, 2000), 65 FR 59766 (October 6, 2000).

³ See, generally, Exchange Act Section 17A(a), 15 U.S.C. 78q-1(a); Section 17(f)(1), 15 U.S.C. 78q(f)(1); *Securities Act Amendments of 1975*, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. 94 to accompany S.249, 58-59 (1975); *Securities Industry Study*, H.R. Report of the Subcom. on Commerce & Finance, House Rep. No. 92-1519, pp. 68-70, 75-76 (1972).

¹ 15 U.S.C. 78a *et seq.*