

17Ad–19 for cancelled certificates require retrievable information both for certificates that are (1) cancelled but not destroyed and (2) cancelled and destroyed. The rule requires that the applicable information be kept for both types of cancelled certificates.

ChaseMellon asked whether maintaining cancelled certificate data based solely on cancellation dates would be adequate under Rule 17Ad–19. Cancellation date recordkeeping has led to identification problems in the past when cancelled certificates were lost or stolen. Data organized by cancellation date, rather than by CUSIP and certificate number, has proved to be of little value when there is a need for prompt identification of lost, missing, or stolen certificates. It is important that CUSIP numbers and certificate numbers are readily available for the prompt reporting of lost, missing, or stolen certificates to the Lost and Stolen Securities Program and for the prompt alerting of law enforcement authorities and other financial institutions. Accordingly, this requirement is contained in Rule 17Ad–19.

ICI asked whether the new recordkeeping provisions applicable to cancelled certificates would apply retroactively (*i.e.*, apply to certificates previously cancelled), in which case ICI suggested the provisions would be burdensome on transfer agents. The new recordkeeping provisions will apply only prospectively, becoming effective sixty days after the date of adoption of the rule.

B. Rule 17f–1: Lost and Stolen Securities Program

1. Background of Lost and Stolen Securities Program

Section 17(f)(1) of the Exchange Act requires the Commission to operate a Lost and Stolen Securities Program (“LSSP” or “Program”).²² Congress directed the establishment of the Program in 1975 to curtail trafficking in lost, stolen, missing, and counterfeit securities certificates.²³ Rule 17f–1 under the Exchange Act governs LSSP operations. The Program consists mainly of a database for securities that have been reported lost, stolen, missing,

or counterfeit. Operationally, the Program has two essential parts: “reports” and “inquiries.” Most financial institutions (including exchanges, banks, brokers, clearing agencies, and transfer agents), which Rule 17f–1 designates “reporting institutions,”²⁴ are required to report any certificates that they discover to be lost, stolen, missing, or counterfeit.²⁵ These institutions also must inquire of the Program about any securities certificate valued at more than \$10,000 that comes into their “possession or keeping.”²⁶ These financial institutions also may voluntarily report or inquire about other certificates.²⁷

The Program is operated by the Securities Information Center (“SIC”) as the Commission’s designee pursuant to a contract. SIC receives all reports and inquiries, responds to inquiries, and maintains the Program’s database. As of December 31, 2002, the Program’s database reflected securities with a value of approximately \$672 billion. There were 26,011 reporting institutions.²⁸ During the year 2002, reports were made on 926,475 certificates (an average of 3,676 certificates per business day); inquiries were made on 5,231,310 certificates (an average of 20,759 certificates per business day); and matches or “hits” resulting from inquiries occurred on 224,338 certificates, which had a value of approximately \$36.5 billion.²⁹ The hits essentially warned the inquirers that the certificates had been reported as lost, stolen, missing, or counterfeit and were not eligible for transfer.

²⁴ The term “reporting institution” is defined in 17 CFR 240.17f–1(a)(1).

²⁵ 17 CFR 240.17f–1(c) and (d).

²⁶ 17 CFR 240.17f–1(d)(iv). The rule’s inquiry requirement applies to any securities certificate received as part of a transaction whose aggregate value (face value in the case of debt or market value in the case of stocks) exceeds \$10,000. Required inquiries under existing Rule 17f–1(d) would not be changed by the amendment.

²⁷ *E.g.*, inquiries on securities certificates valued at less than \$10,000. 17 CFR 17f–1(e).

²⁸ Reporting instructions were comprised of 13,948 banks, 11,116 securities organizations, and 947 non-bank transfer agents. “Securities organizations” are: (1) National securities exchanges, (2) national securities exchange members, (3) national securities exchange member firms, (4) registered securities associations, (5) registered securities association members, (6) securities brokers, (7) securities dealers, and (8) municipal securities dealers.

²⁹ Securities Information Center, “Annual Statistics for the Period January 1, 2002, through December 31, 2002.”

2. Rule 17f–1 “Requirements for Reporting and Inquiry With Respect to Missing, Lost, Counterfeit or Stolen Securities”

a. “Securities Certificate”. We have amended Rule 17f–1 by adding subparagraph (a)(6), which defines “securities certificate” to clarify that the scope of Rule 17f–1 covers the life span of a certificate from the time it is printed until the time it is destroyed. Accordingly, the rule covers: (1) Certificates that have been printed but not issued; (2) certificates that have been issued and remain outstanding; (3) certificates that have been issued and reacquired by the issuer; and (4) certificates that have been cancelled.³⁰ It likewise includes certificates that are counterfeit or reasonably believed to be counterfeit. As discussed below, we also have incorporated this definition of “securities certificate” into Rules 17Ad–12(b) and 17Ad–19(a)(8).³¹

We received several comments on this proposal. ICI and Otter Tail requested clarification of the term “printed but not issued.” Specifically, they asked what identifying information must be included on certificates to qualify such certificates for reporting to LSSP. Under Rule 17f–1, as amended, a securities certificate is “printed but not issued” when it sets forth: The name of the issuer, the CUSIP number, the certificate number, and the authenticating signatures of the issuer. Therefore, a securities certificate to be considered “printed but not issued” does not have to set forth: the name of the registrant, the number of units, or the countersignature of the transfer agent.

U.S. Bank asked whether the proposed definition of “securities certificate” would include both registered and bearer certificates, noting that including bearers and their coupons would be burdensome on transfer agents. U.S. Bank suggested that if coupons are to be included, they should be subject to cancellation practices at the transfer agent’s discretion which could include such methods as “hole punching” of coupons as an acceptable means of cancellation. In the rule as amended, the definition of “securities certificate” in subparagraph (a)(6) of Rule 17f–1 includes both registered and bearer certificates. Although processing bearer certificates may in some ways be more onerous to transfer agents than processing registered certificates, we do

³⁰ For purposes of market value under the inquiry requirements of Rule 17f–1(d), the cancelled certificates would be given the market value of “live” securities of the same issue.

³¹ 17 CFR 240.17Ad–12(b) and 240.17Ad–19(a)(8).

²² 17 U.S.C. 78q(f)(1).

²³ See Lost and Stolen Securities Program, Hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, 93d Cong., 1st Sess. (1973), 2d Sess. (1974). S.249, which became the Securities Acts Amendments of 1975, was amended on the floor of the Senate to add legislation concerning lost, stolen, missing, and counterfeit securities. 121 Cong. Rec. 6186 (April 17, 1975). See also Conference Report to Accompany S.249, 94th Cong., 1st Sess. 103–104 (1975).