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May 9, 2011

Via E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: File No. S7-11-11 - Proposed Amendments to Rule 17Ad-17; Transfer Agents', Brokers' and Dealers' Obligation to Search for Lost Securityholders; Paying Agents' Obligation to Search for Missing Securityholders

Dear Ms. Murphy:

Wells Fargo Advisors ("WFA") appreciates this opportunity to comment briefly on SEC's proposed amendments to Rule 17Ad-17, as directed by Section 929W of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), concerning the obligation to search for lost securityholders and notify missing securityholders. We understand the intention of the proposed amendments, however, we believe modifications need to be made to the proposal.

WFA consists of brokerage operations that administer almost \$1 trillion in client assets. It accomplishes this task through 15,088 full-service financial advisors in 1,100 branch offices in all 50 states and 4,569 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>1</sup>

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<sup>1</sup> WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across North America and internationally. Wells Fargo has \$1.2 trillion in assets and more than 278,000 team members across 80+ businesses. Wells Fargo's brokerage affiliates also include HD Vest Financial Services with 5,100 independent advisors and First Clearing LLC which provides clearing services to 98 correspondent clients and WFA. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

### **Lost Securityholder**

The proposed amendments to Exchange Act Rule 17Ad-17 extends the transfer agents' obligation to search for lost securityholders to brokers and dealers. A lost securityholder is defined as:

"A securityholder to whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; and for whom the transfer agent has not received information regarding the securityholder's new address."<sup>2</sup>

We believe the obligation to consider a securityholder lost after any single correspondence is returned is burdensome. There are any number of reasons why a single correspondence could be returned, such as the expiration of a forward mail request. WFA suggests the SEC contemplate expanding the number of returned correspondence to no less than three before deeming a securityholder lost. ✓

### **Missing Securityholder**

An individual is considered a missing securityholder "if a check is sent to the securityholder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check."<sup>3</sup> The proposal would require us to provide notification to "missing securityholders" in writing that the firm sent a check and it has not yet been negotiated. Broker-dealers notify clients in writing at least monthly when a disbursement has been made from any account on their monthly statement. Asking a broker-dealer to send additional notification is unnecessary as it has already provided notification. Additionally, if the check is not negotiated within 180 days, most firms will place a stop payment on the check and credit the amount back to the client. That deposit would be noted on the monthly statement as well, and serves as another notification. Requiring a broker-dealer to provide additional notifications no later than 7 months after the not yet negotiated check is sent is redundant and costly.

### **The Proposal is too Prescriptive**

The rule proposal is too prescriptive and diminishes a firm's ability to determine appropriate means of communication with their clients regarding disbursements and notifications. The detailed requirements of when and how a firm must search for or notify a client should be left to the broker-dealer to determine. The rule proposal limits a firms' ability to establish applicable policies and procedures based on their business model and scope of operations. Firms have policies and procedures in place to handle lost or missing securityholders. The SEC should

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<sup>2</sup> Rule 17Ad-17(b)(2)

<sup>3</sup> Section 17A(g)(1)(D)(i)

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consider providing less stringent requirements on how a firm finds or notifies a lost or missing securityholder.

### **The Cost of Enforcement is Burdensome**

WFA acknowledges the SEC has attempted to quantify the additional hours and finances it would take to accomplish the amended rule proposal.<sup>4</sup> However, the cost goes beyond hours of labor. One must recognize that information databases, supplementary printing material and postage all have associated fees or cost which are likely greater than the estimated \$750,000. The objective of the rule proposal is to “reduce the number of lost or missing securityholders and protect investors.” Nevertheless, the proposed amendments fail to reduce the amount of lost or missing securityholders. In fact, completing a search for a lost securityholder after only one notification of returned correspondence actually increases the number of lost securityholders.

### **Potential Conflicts with State Escheatment Laws**

Proposed Rule 17Ad-17 (c)(5) states the proposal does not have an “effect on state escheatment laws”. We believe that the ever changing escheatment laws could pose a potential conflict with the rule proposal in regards to statutory due diligence. We would encourage the SEC to clarify the proper course of action when a conflict arises with state escheatment laws.

### **Conclusion**

The comments in this letter ideally will allow the SEC to make adjustments to the rule that will allow member firms to comply in a manner that is both cost-effective and beneficial to the industry at large. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long  
Director of Regulatory Affairs

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<sup>4</sup> Rule proposal Section IV (C), page 14.