

LOST SECURITY HOLDERS: REUNITING SECURITY HOLDERS WITH THEIR INVESTMENTS

HEARING BEFORE THE SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS OF THE COMMITTEE ON COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS SECOND SESSION

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LOST SECURITY HOLDERS: REUNITING SECURITY HOLDERS WITH THEIR INVESTMENTS

WEDNESDAY, OCTOBER 4, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. Michael G. Oxley (chairman) presiding.

Members present: Representatives Oxley, Shimkus, Ehrlich, Towns, Barrett, and Luther.

Staff present: Shannon Vildostegui, professional staff member; Robert Simison, legislative clerk; and Consuela Washington, minority counsel.

Mr. OXLEY. The subcommittee will come to order. The Chair would recognize himself for an opening statement.

The market boom of the past decade was spurred by technological progress that reduced costs of trading and facilitated access to information. Opening a brokerage or a mutual fund account is simply easier and cheaper than it was just a few years ago, and that was before e-signature.

So, with millions of new investors opening accounts each year, reliable data management systems are essential to a properly functioning marketplace. To further complicate matters, it is becoming the norm in the securities industry for an account holder of securities to be held in "street name." The investor never takes physical custody of the asset. Broker/dealers, for example, hold the asset for the benefit of the investor. Therefore, it is essential that account holder information be accurate to avoid a situation in which an investor loses an asset. This is no small task in an environment that exchanges billions of shares of stock annually.

The potential for investors being separated from their assets exists, and the value of lost assets can be quite large. This concern was brought to the attention of the industry and the SEC in the early 1990's. In 1997, the SEC issued regulations to address the problem. These regulations apply to transfer agents who deliver assets to investors on behalf of public companies. The regulations do not apply to other entities that may hold assets for shareholders such as broker/dealers or investment companies. However, all custodians of shareholder property are covered under various State laws.

Laws vary from State to State but, generally, unclaimed property escheats to the State after 7 years. Even with State escheatment

laws and SEC regulations, lost security holders still exist. Some believe additional regulation may provide a benefit in reuniting lost security holders with their assets.

As we consider this matter, it is important to understand what the success rate is for returning securities and dividends to their owners under current laws and regulations. We should also consider the potential benefits of increasing efforts to reach lost security holders. However, in doing so, it is important to understand the costs involved and avoid forcing shareholders to foot the bill for others who become lost by their own fault.

Hopefully, our witnesses will shed some light on this issue so that this committee might have a better understanding of the situation. I thank the witnesses for coming and I look forward to hearing what each has to say.

With that, let me now recognize the ranking member of the subcommittee, the gentleman from New York, Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman, for holding this hearing. As our distinguished witnesses will testify, there are a relative small number of security holders that become "lost" in our system. By lost, we mean that these are investors who have lost contact with the financial institutions or other entities holding some of their investments. While our security holders become lost for a number of different reasons, the Securities and Exchange Commission placed a great deal of the burden for staying in contact with these lost investors on the transfer agents monitoring these investments.

Specifically, in 1997, the SEC adopted new transfer agent rules and amended other rules in an effort to require uniformity and cost-effective actions to locate lost security holders and reunite them with their assets. We are fortunate to be joined here today by Larry Bergmann, who will discuss the effectiveness of regulations like rule 17.

In closing, Mr. Chairman, I want to emphasize the importance of this effort to our society. As Congress debates numerous Social Security reform options, many of which include placing a greater portion of America's retirement savings in the financial markets, the importance of preventing lost security holders becomes clear. The SEC conducted a survey of the seven largest transfer agents and they estimated at least 94 million were in lost accounts. As we prepare to place a greater emphasis on the financial markets for the retirement securities of an increasingly mobile job force, we must take action today to reduce the potential that security holder accounts will be lost.

I salute you, Mr. Chairman, for holding this hearing today, and I look forward to hearing from our witnesses and working with you to begin to address these very important issues as we talk about how we invest.

Thank you very much. I yield back.

Mr. OXLEY. The gentleman yields back.

The gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Just briefly, I too want to join the ranking member in asking and following up on whether the 1997 SEC regulations have been a help to this problem and, if not, what other things can be adjusted

to help, what other options are in place, and just for my own sake, because this is my first term on this subcommittee, to find out the extent of the lost security holder problem and what percentage of investor assets are lost and what this all represents. So that is why I am here, to learn.

I thank you for holding the hearing, and I yield back my time.
[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

Mr. Chairman, I want to thank you for calling this hearing on lost security holders. I think this is an important issue and am glad you have allowed us an opportunity to delve deeper into this subject.

Three years ago, in 1997, the Securities Exchange Commission (SEC) finalized a rule to address the "lost security holder" problem. The regulations, designed to speak to investors who have lost contact with entities holding some property related to their investment, require record keeping transfer agents to use appropriate caution in finding the proper addresses of lost security holders. The 1997 regulations, though, do not extend this reporting mandate to stock brokers, dealers, investment companies or other traditional sources used as a caretaker of a shareholder's property.

Today's hearing gives us a chance to examine whether the present law is adequate for our nation's needs and I look forward to hearing the testimony of our witnesses in this regard. Some have argued that the SEC's regulations should be expanded to include all custodians of shareholder property. Since security holders who are not reunited with their property within five (5) to seven (7) years have their property given to the state, I think it is essential that we understand if enough shareholder protections are in place to prevent future inadvertent losses of assets. I also look forward to the discussion as to how the 1997 SEC regulations, as well as other Federal and state statutes, have been effective in lowering lost security holder problems.

Mr. Chairman, again, I want to thank you for calling this hearing. Before I close my statement, I want to welcome fellow Buckeye Robert Shamansky, who is visiting us from Columbus. As a former member of the House and one who has been active in many public and private groups, I think we will all find his testimony to be very enlightening.

As our country's citizens get more deeply in stocks and other forms of investment, it is important that we ensure their long-term rights and money is protected. I think today's panels will give us an opportunity to look into some very significant questions.

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you Mr. Chairman. It is no secret to those of us here today that we have been experiencing a bull market for the last 10 years. As the market has continued to flourish, we are seeing more investors than ever before using securities investments when planning for their future.

This being the case, it is necessary for us to ask whether these investors have appropriate safeguards. America's retiree's can't fall through the cracks of a system which handles millions of transactions annually. While the SEC exists to protect investors, it is not in a position to act as a liaison between an investor and their investment. That is the responsibility of the public companies and the broker/dealers who maintain the records for investors and their assets. Long gone are the days when someone would buy a piece of stock and receive a certificate for their purchase. Today, one is more likely to receive an account statement showing an investor's current holdings, since more and more securities are registered in "street name".

What would happen if the investor became separated from their broker/dealer and became what is known as a "lost security holder"? We must encourage a system of personal responsibility coupled with rules like those which were adopted by the SEC in 1997 to protect investors in cases where they may become separated from their investments, especially those who have become lost through no fault of their own.

I look forward to hearing from our witnesses today and I yield back.

Mr. OXLEY. The gentleman yields back. To that end, we have our first distinguished witness, who is Mr. Larry Bergmann, Senior Associate Director for the Division of Market Regulation at the SEC.

Mr. Bergmann, welcome to the subcommittee. We look forward to your testimony.

STATEMENT OF LARRY E. BERGMANN, SENIOR ASSOCIATE DIRECTOR, DIVISION OF MARKET REGULATION, SECURITIES AND EXCHANGE COMMISSION

Mr. BERGMANN. Thank you very much, Chairman Oxley and Ranking Member Towns and members of the subcommittee. I appreciate this opportunity to appear before the subcommittee to testify about the SEC's efforts to reunite lost security holders with their assets.

As one commentator has said, "People get lost inevitably." Sometimes it is the individual's fault; for example, when they change addresses and forget to tell their friends or businesses about their new address. Sometimes it is a recordkeeper's fault, where they make perhaps an inaccurate entry in their records. When this happens to a security holder and the transfer agent attempts to communicate with the security holder, the communication is likely to be returned as undeliverable. This shareholder is then considered to be lost. If a contact is not reestablished over a period of time, the issuer must turn the assets over to the States under their escheatment laws.

This morning I will discuss what the SEC has done to address the situation. First of all, I think it is helpful to consider how big this problem is. The Commission believes that the number of lost security holders compared to the total accounts at transfer agents is small. In 1997 we estimated the figure to be 1.34 percent of total accounts. More recently, an informal survey has been mentioned of transfer agents holding about 75 percent of equity accounts, estimated that the percentage was 2.23 percent. In 1997, we estimated the related value to be \$450 million, and our recent informal survey indicated that this value is about \$120 million, taking the 75 percent as being \$94 million, which would give you a figure of \$120 million.

However, I think we have to keep these figures in perspective. One other commentator stated that about 80 million Americans are entitled to an estimated \$300 billion in unclaimed and abandoned assets. We believe that most of these assets are held by entities that are not within the Commission's jurisdiction and that the lost security holder assets held by entities in our jurisdiction are a small fraction of these total amounts lost or abandoned. This does not mean, however, that the assets are unimportant, or that reasonable efforts should not be made to reunite the holders and their assets.

So what has the SEC done in this area? As has been also mentioned, in 1997 we took action which we believed was effective and prudent. Specifically, we adopted new transfer agent rules and amended other rules that require uniform and cost-effective actions to locate lost security holders. The new rules were intended to collect data and better gauge the scope of the problem.

Rule 17Ad-17 requires transfer agents to exercise reasonable care to ascertain the correct addresses of lost security holders. At a minimum, transfer agents must conduct two searches using a robust information data base. Transfer agents may not use any service designed to locate their security holder that results in a charge to the security holder until after the two data base searches have been completed.

As originally adopted, rule 17a-24 required transfer agents to report annually to the Commission the aggregate number of lost security holder accounts as of June 30 each year and the total number of accounts represented by these lost security holder accounts. The Commission also required information on lost security holder accounts that were remitted to the State under the escheatment laws to be reported.

When it proposed these rules, the Commission also asked for comments about establishing a lost security holder data base where certain entities that hold assets for others; for example, transfer agents and broker/dealers, would file annually with the Commission a list of the taxpayer information numbers of all lost security holders in their records. We suggested that this lost security holder data base could be maintained by the Commission or its delegee, and that data base could be searched by individuals, or it could be available for commercial use. Most commentators objected to this idea. Many commentators believed that such a data base would result in a loss of privacy for security holders and others suggested that it could be used for fraudulent means.

In response to these concerns, the Commission adopted a rule requiring the aggregate reporting of information rather than individualized data. The Commission focused on the need to gather the data on lost security holders in order to better obtain information as to the extent of the problem and whether or not the searches that we required were effective.

What has happened since the rules were adopted? The search requirements have been in effect since December 1997 and the reporting requirement took effect in February 1998. The numbers were to be reported on form TA-2, an annual transfer agent filing due in August that reports data as of the preceding June. Therefore, the first year's data was obtained in August 1999.

Unfortunately, we have encountered some difficulties with the data requested in the forms. As transfer agents were preparing to report this data, it became clear that the questions on the form were subject to varying interpretations and we would not get consistent information across transfer agents. The Division of Market Regulation was also in the process of overhauling Form TA-2 and, in light of the experience with lost security holder information, we included that in our review.

As a result, on March 23, 1999, the Commission proposed changes to the reporting information about lost security holders on Form TA-2, and these proposals were adopted on June 2 of this year. The report is now required to be filed on a calendar year basis, and the first set of this new information will be filed in March 2001 for calendar year 2000. We expect that the revised reporting requirement will provide us with more consistent and more accurate information.

In preparing for this testimony, we obtained a snapshot of lost security holder activity from the seven largest nonbank transfer agents. Approximately 990,000 accounts out of 44.5 million maintained by these agents, that is, 2.23 percent, were considered to be lost. Of these accounts, 384,000, or 0.87 percent, were remitted to the States last year under the escheatment laws.

I should point out that the estimated average balance of these escheated accounts was \$243.

All transfer agents with whom we spoke agreed that the search requirements have substantially reduced the number of lost security holder accounts. From anecdotal evidence it appears that the agents currently find up to 60 percent of lost security holder accounts when they submit these two data base searches.

Another benefit achieved by the Commission rulemaking is heightened awareness of the problem of lost security holders and an effort to find other solutions to resolve this problem. While our rules set the minimum requirements, one of the largest transfer agents we understand is now moving to a new process where the agent on a monthly basis sends a list to a vendor who then conducts a search over three data bases, and we believe, the agent believes this new process may improve its percentage of finding lost security holders.

There has been some question as to why the Commission's lost security holder rules only apply to transfer agents. While the Commission's lost security holder rule by its terms only applies to recordkeeping transactions, in effect, the rule covers lost security holders of issuers and investment companies for mutual funds because both of them must use registered transfer agents to maintain their books and records. Now that the Commission has clarified transfer agents' obligations regarding lost security holders, we are researching whether similar efforts should be extended to other entities that hold assets for investors, such as broker/dealers.

From preliminary information about lost security holder accounts held by broker/dealers, it appears that the lost security holder situation is much smaller there. Of 39.8 million security holder accounts held by 17 representative broker/dealers, only 0.79 percent were considered to be accounts of lost security holders as defined in our rule. However, we are currently reviewing whether rulemaking in this area would be appropriate.

Mr. Chairman and members of the subcommittee, I hope this overview has been helpful to you, and if you have any questions, I will be happy to answer them.

[The prepared statement of Larry E. Bergmann follows:]

PREPARED STATEMENT OF LARRY E. BERGMANN, SENIOR ASSOCIATE DIRECTOR,
DIVISION OF MARKET REGULATION, U.S. SECURITIES AND EXCHANGE COMMISSION

Chairman Oxley, Ranking Member Towns, and Members of the Subcommittee:

On behalf of the Securities and Exchange Commission ("SEC" or "Commission"), I appreciate this opportunity to appear before the Subcommittee today to testify about the SEC's rules designed to reunite lost securityholders with their assets.

As one commenter has said, "People inevitably get lost." Sometimes it is the individual's fault, such as when he or she moves to another town but forgets to give friends and businesses the new address. Sometimes it is the recordkeeper's fault, possibly from the result of an inaccurate entry in its records. In either case, when this happens to a securityholder and the issuer's transfer agent attempts to communicate with the securityholder, the communication is likely to be returned as un-

deliverable. The shareholder is then considered "lost." If contact is not reestablished with a securityholder prior to the expiration of the appropriate state's escheat period, the issuer must turn the securityholder's assets over to the state unclaimed property administrator.

This morning I will discuss what actions the Commission has taken to address this situation.

I. HOW BIG IS THE PROBLEM?

The Commission believes that the number of lost securityholders compared to the total accounts held by transfer agents is small. In 1997, we estimated the figure to be 1.34% of total accounts. More recently, an informal survey of seven large transfer agents, representing about 75% of shareholder accounts, estimated that lost securityholder accounts were 2.23% of total accounts. While the proportion of lost accounts is small, the aggregate dollar amounts of the assets in these accounts can be significant. In 1997, we estimated the amount to be around \$450 million. Our recent informal survey estimated that at seven large transfer agents, the amount totaled about \$94 million. These figures must be put in perspective. For example, one commentator has stated that "about 80 million Americans are entitled to an estimated \$300 billion in unclaimed and abandoned assets."¹ We believe that most of these assets are held by entities that are not within the Commission's jurisdiction, and the amounts owing to lost securityholders by entities within our jurisdiction are a tiny fraction of the total amounts lost or abandoned.

II. WHAT HAS THE SEC DONE IN THIS AREA?

Transfer agents serve as the custodians of securityholder records for issuers. In this capacity, transfer agents frequently are responsible for disseminating shareholder communications and dividend and interest payments. For various reasons, transfer agents occasionally have outdated or incorrect addresses for some securityholders. Regardless of how securityholders get lost, however, the end result is the same—these shareholders do not receive dividend and interest payments to which they are entitled and, if the error is not corrected, may eventually lose the assets.

In 1997 the Commission took action that it believed would be effective and prudent. Specifically, the Commission adopted new transfer agent rules and amended other rules in an effort to require uniform and cost-effective actions to locate lost securityholders and reunite them with their assets. The new rules also were intended to collect data to better gauge the scope of the problem.²

Rule 17Ad-17 requires transfer agents to exercise reasonable care to ascertain the correct addresses of lost securityholders. At a minimum, transfer agents must conduct two searches using a robust information database, as defined in the rule. Transfer agents may not use any service designed to locate their lost securityholders that results in a charge to a securityholder until after the two database searches have been conducted. The search for the lost securityholder must be based on the taxpayer's identification number ("TIN") or the name of the lost securityholder if a search based on the TIN is not reasonably likely to locate the lost securityholder.

The rule requires that the transfer agent must conduct the initial search between 3 and 12 months of a securityholder being classified as lost. If the lost securityholder is not found, the transfer agent must conduct a second search between 6 and 12 months after the initial search. There are only three exceptions to the search requirement: (1) where the value of all dividend, interest, and other payments due to the securityholder plus the value of all assets listed in the securityholder's account is less than \$25; (2) where the transfer agent has received documentation of the securityholder's death; and (3) where the securityholder is not a natural person.

As originally adopted, Rule 17a-24 required transfer agents to report annually to the Commission the aggregate number of lost securityholder accounts as of June 30 of each year and the percentage of total accounts represented by these lost securityholder accounts. These figures were to be reported for specified periods of time: one year or less, three years or less, five years or less, or greater than five years. The Commission also required information on lost securityholder accounts that were remitted to the state unclaimed property administrators under state escheatment laws.

¹Dugas, "Your Money," USA Today, Nov. 12, 1997, at p. 3B.

²Securities Exchange Act Release No. 39176 (October 1, 1997), 62 FR 52229 (October 7, 1997)[S7-21-96].

When it proposed these rules, the Commission also asked for comments about establishing a lost securityholder database where certain entities that hold assets for others (e.g., transfer agents and broker-dealers) would file annually with the Commission a list of the TINs of all lost securityholders contained in their records. This lost securityholder database could be maintained by the Commission or its delegate, and the database could be searched or obtained by private entities that could create commercial databases. Most commenters objected to this idea. Many commenters believed that such a database would result in a loss of privacy for securityholders. Others suggested that the database could result in fraudulent claims.

In response to these concerns, the Commission adopted a rule requiring the annual reporting of aggregate rather than individualized data. The Commission focused on the need to gather data on lost securityholders in order to obtain better information as to the extent of the lost securityholder problem and to assess the effectiveness of search techniques employed by transfer agents.

III. WHAT HAS HAPPENED SINCE THE RULES WERE ADOPTED?

The search requirements have been in effect since December 1997. The reporting requirement took effect in February 1998. The numbers were to be reported on Form TA-2, an annual filing due in August that reports data as of the preceding June. Therefore, the first full year's data was obtained in August 1999. Unfortunately, we have encountered some difficulties with the lost securityholder data requests in the Form. As transfer agents were preparing to report this data, it became clear that the questions on the form were subject to differing interpretations, and that the data is not consistent across transfer agents. In addition, recently the Division of Market Regulation has undertaken a comprehensive overhaul of Form TA-2. In light of the experience with the lost securityholder reporting provision, we reviewed the lost securityholder questions as part of this process. As a result, on March 23, 1999, the Commission proposed changes to the lost securityholder reporting requirements as a part of the proposed Form TA-2 changes.³ The new Form TA-2 was adopted by the Commission on June 2, 2000.⁴ This report is now required to be filed on a calendar year basis. The first set of this new lost securityholder data will be filed in March 2001 for calendar year 2000. We expect that the revised reporting requirement will provide us with more consistent and more accurate data.

In preparing for this testimony, we obtained a "snapshot" of lost securityholder activity from seven of the largest non-bank transfer agents. Approximately 990,900 out of 44,417,000 of the accounts maintained by these agents, or 2.23%, were considered to be accounts of "lost securityholders" as defined in our rule. Of these accounts, 384,700 accounts, or 0.87% of the accounts maintained, with an average account balance of \$243, were remitted last year to state unclaimed property administrators under state escheatment laws.

All the transfer agents with whom we spoke agreed that the search requirements have substantially reduced the number of lost securityholder accounts. From anecdotal evidence, it appears that agents find current addresses for up to 60% of the lost accounts they submit for database searches.

Another benefit achieved by the Commission's rulemaking is heightened awareness of the problem of lost securityholders and an effort to find innovative solutions to resolve the problem. While our rules set minimum standards for lost securityholder searches, one of the largest agents is now moving to a new process where the transfer agent sends a lost securityholder file monthly to a vendor, who then conducts a search across multiple databases (including all three credit reporting agencies, the Internal Revenue Service and the Social Security Administration). This new process may improve the percentage of lost securityholders found.

There have been some questions raised as to why the Commission's lost securityholder rules apply only to transfer agents. While the Commission's lost securityholder rule by its terms only applies to recordkeeping transfer agents, in effect, the rule covers the lost securityholders of issuers and investment companies because both investment companies and issuers of reporting companies must use registered transfer agents to maintain their books and records. Now that the Commission has clarified transfer agents' obligations regarding lost securityholders, we are researching whether similar efforts should be extended to other entities that hold assets for investors, such as broker-dealers. From preliminary information about lost securityholder accounts held by broker-dealers, it appears the lost

³ Securities Exchange Act Release No. 41204 (March 23, 1999), 64 FR 15310 (March 31, 1999) (Release proposing amendments to Rule 17Ac2-2 and related Form TA-2).

⁴ Securities Exchange Act Release No. 42892 (June 2, 2000), 65 FR 36602 (June 9, 2000) (Release adopting amendments to Rule 17Ac2-2 and related Form TA-2).

securityholder situation is much smaller than at transfer agents: of 39,786,000 securityholder accounts held by 17 representative broker-dealers, only 0.79% were considered to be accounts of "lost securityholders" as defined by our rule. Nonetheless, we are currently reviewing whether rulemaking in this area is appropriate.

Mr. Chairman and members of the Committee, I hope this overview has been helpful for you. If you have any questions, I will try to answer them.

Mr. OXLEY. Thank you, Mr. Bergmann. Indeed we do have a few questions.

I kind of got lost on the first part of your statement regarding the percentage of lost securities. I started writing down 1.34 percent and then I went to 2.4 percent. Could you help us a little bit with that?

Mr. BERGMANN. I wish I had a very good answer to this question, but unfortunately, all of the information that we have seen, including the ones generated by the Commission, have been based on assumptions and estimates and extrapolations from those numbers, and this has been part of the issue that the Commission is hoping is addressed by its rules; that is, to get consistent, accurate information from transfer agents who hold these accounts, and to find out how big this problem is, and whether or not any improvements are being made by the rules we have adopted.

So that is the reason why you got different percentages.

Mr. OXLEY. Okay. But we should not be particularly concerned about the difference between 1.34 percent and 2.3 percent. The issue here, it is not overwhelming.

Mr. BERGMANN. Exactly.

Mr. OXLEY. And indeed the figure you used in terms of the average account size of like \$243, but is that also somewhat apocryphal?

Mr. BERGMANN. These are all estimates based upon informal conversation.

Mr. OXLEY. Okay. You mentioned the use of a robust information data base. Are we talking about Internet capabilities here?

Mr. BERGMANN. Well, the data base I was referring to was the data base held by credit agencies and the IRS, for example. These are geographically broad and have a lot of depth to them. So those are the data bases which are used by a transfer agent looking for better addresses for security holders.

Mr. OXLEY. So take us through how that works. Let's say that there is an allegation that there is a lost security. What obligation does the transfer agent have currently? How does he go about his work?

Mr. BERGMANN. Well, the sequence would be that a transfer agent would send out a mailing of some kind to his security holder and it gets returned as undeliverable. Then typically, what the transfer agents do, although we don't require this, is to immediately send it out again, because sometimes, it is the fault of the deliverer, the Postal Service or whatever, and so they try it again and actually a number of the problems are taken care of in that way. However, if it is returned again, then it is considered a lost security holder, and then the transfer agent is obligated to perform two searches, as I mentioned, the first one after at least 3 months, between 3 and 12 months, and then the second one between—up to 12 months after the first one. So there is a hope that in the in-

intervening period, the address will have been corrected either by the shareholder itself or in one of these data bases.

Mr. OXLEY. Do you have any idea how many of these folks are deceased?

Mr. BERGMANN. I don't know the number, but we are advised by the transfer agents that—well, again, I have heard 10 percent, but it would be an estimate.

Mr. OXLEY. Only 10 percent?

Mr. BERGMANN. I believe. That is a number I have heard, although I could get back to you on that if you would like.

Mr. OXLEY. Okay. Well, I was thinking about data bases and robust information data bases and the like, and it struck me that our son is in charge of his class reunion, and they have this—there is this company, apparently, on the Internet that can find your long lost classmates, and apparently pretty successfully. So clearly, there is in today's modern Internet world, the ability, I guess, to locate people. That is correct, right?

Mr. BERGMANN. I certainly believe it is.

Mr. OXLEY. And somebody who has to do due diligence on this, the transfer agent or even the broker/dealer, would be considered not doing due diligence, would you say, if they were not to use that great capability?

Mr. BERGMANN. Well, we require that they use due diligence and the rule requires them to use these data bases which, as we understand it, is the best means to find new addresses, which is what is required under the rule. I mean that is how you find a lost security holder, is you get a new address.

So I think that what we require them to do as a minimum is acceptable searching. Now, whether they want to go beyond that and use other data bases, that would be certainly something they could do.

Mr. OXLEY. And you indicated that about 60 percent of the searches are successful and returned to the owner.

Mr. BERGMANN. Again, that is our information from these transfer agents we contacted, yes.

Mr. OXLEY. Also, can you do all of this that we talked about, what you talked about by rulemaking, or do you need statutory authority?

Mr. BERGMANN. Well, it depends. We certainly believe we have the statutory authority to require transfer agents to take the actions that we—the rules we have adopted. There may be some other areas—there have been various proposals requiring transfer agents or even some other parties to take certain actions and those might require legislation.

Mr. OXLEY. Well, for example, extending it to broker/dealers, does that require legislation or can you do it by rulemaking?

Mr. BERGMANN. We believe we have the authority to do that under our existing legislation.

Mr. OXLEY. So under what circumstances would you envision that you would need further legislative authority?

Mr. BERGMANN. Well, there have been some suggestions that we somehow regulate these search firms, also called heir finders. I think that would raise an area where they are clearly not regulated by the Commission.

Mr. OXLEY. What are they called?

Mr. BERGMANN. Heir finders, or search firms.

Mr. OXLEY. H-E-I-R.

Mr. BERGMANN. Commercial enterprises are not within the Commission's jurisdiction. However, as I say, with respect to broker/dealers, we have thought about this issue and we have discussed it with the Securities Industry Association, and I think they point out a valid point, which is that the relationship in a broker-dealer/customer relationship is different from the transfer agent/shareholder relationship, because there is an ongoing person usually assigned to deal with that account and the activities are generally much more extensive than in a transfer agent's account. So if a customer loses touch with a broker/dealer, there is more incentive on both sides actually to try to reestablish that contact. So that is one reason why I believe the numbers which we have obtained from the SIA about the number of lost security holder accounts is very low.

Mr. OXLEY. Part of it would be driven by April 15 every year, I assume.

Mr. BERGMANN. Exactly. There would be an annual communication, typically with respect to all of these entities, the transfer agents, mutual funds, broker/dealers, which if the shareholder looked at it would provide perhaps some alert that maybe they hadn't received something in the prior year, for example, a check.

Mr. OXLEY. Thank you.

The gentleman from New York.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Let me ask, with the forms, now that they have been worked on, do you feel that they are consistent enough to be able to give you the kind of information you need, now that they have been worked on? Do you feel very comfortable with them?

Mr. BERGMANN. Yes. I think we have now asked the right questions which will give us consistent information that we can use as a baseline and a test as to whether or not it is working.

Mr. TOWNS. When you talk about using the best means necessary, what do you really mean? When you say use the best means necessary, if the chance for an agent does not—I mean the point is what would you consider that to be?

Mr. BERGMANN. Well, that was a question before we adopted the rules, first of all, what is a lost security holder and what do they really have to do to satisfy their due diligence obligation? What was the best means necessary? Our rules defined what is the minimum standard that they have to do, which are the two searches of a robust data base, as we were discussing earlier. So that satisfies—I don't know if it is the best, but that is adequate to address this problem. They can go beyond that, as some transfer agents have done.

Mr. TOWNS. But you don't think that three would be necessary?

Mr. BERGMANN. No, we didn't.

Mr. TOWNS. Let me sort of—I know one thing in terms of return mail would be one way, but what are some of the other reasons you think people get lost in terms of—

Mr. BERGMANN. Well, I think the three most common ones that we have seen are moving without giving a forwarding address,

death, which I guess is the ultimate example of not giving a forwarding address, and——

Mr. TOWNS. I think that person should be excused.

Mr. BERGMANN. And the record holder just making a mistake in his records.

Mr. TOWNS. Thank you.

Let me just sort of go back in terms of when you say regulate search firms, basically what are you really talking about there? I am trying to make certain that we have an understanding.

Mr. BERGMANN. There are some commercial enterprises which identify individuals who may have assets that they have lost contact with, and they provide a service to put the person back into communication with their assets. It could be property, it could be securities, it could be bank accounts or whatever. Typically, they charge a percentage of the assets in order to make this—put them back with their assets. Sometimes those percentages can be quite high.

Mr. TOWNS. Last question, the privacy issue. Have you thought about that at all in terms of now that you have had some experience with the rule?

Mr. BERGMANN. Well, we have thought about it a lot, although largely we were going by the comments we received on our proposal, and I think it was by a margin of 2 to 1, the commenters objected to having a data base set up for a variety of reasons. One of the commenters was Senator Arlen Specter, for example, in raising the privacy issue. The concern was that there would be private information about an individual's Social Security number or their assets up on the Web site, or at least publicly available through the Commission, and that would raise a lot of concerns. So we felt it was not appropriate to adopt that proposal at that time.

Once we get information about how these search requirements that we have put in place are working, we may need to consider further measures which might be other rulemaking and it might be facilitating the establishment of a data base. But we haven't made that decision yet.

Mr. TOWNS. But you don't see it as being something that we would get involved with in terms of legislation? You think that you could do it within the rules?

Mr. BERGMANN. I think that we could do it within the rules. We haven't fully researched that, but I think we—at the time we thought we had the authority to do that, if the Commission was going to run it. If another entity was going to run it on behalf of the Commission, such as our Securities Information Center, I think that it is called, for the lost and stolen securities program, that was based on legislation. The Commission was authorized to hire an outside entity to run a no-cost contract for that program.

So if we set it up that way, legislation might be required.

Mr. TOWNS. Thank you very much, Mr. Chairman. I yield back.

Mr. OXLEY. Let me just follow up if I can before we turn to our next witness. The gentleman from New York raised the privacy issue. The same kind of issues could be addressed on the fraud side. That is, if you put this information on the Internet, are they similar concerns, fraud and privacy, or do they have some new answers?

Mr. BERGMANN. I think they are very similar. As a matter of fact, I think every commenter that raised the privacy issue also raised the fraud question.

Mr. OXLEY. Very good.

Does the gentleman from Illinois have any questions?

Mr. SHIMKUS. Yes, sir. Thank you.

Mr. Bergmann, what procedures do those not covered by the 1997 regulations have in place to address lost security holder issues?

Mr. BERGMANN. I think we are probably talking about broker/dealers, because they are probably the largest holders of assets, customer assets in the securities area. We spoke to the SIA, Securities Industry Association, about this, and what they do is, as I mentioned before, the relationship is very different between a broker/dealer and his customer and a transfer agent and a shareholder. So if the firm loses contact with the customer, typically an individual at the firm would go out and try to find that individual to reestablish the link.

If that were unsuccessful, then we understand that the firms actually do similar data base searches to what is required under the transfer agent rule and they typically do a couple of searches over a 2-year period. So we understand that the process is quite similar to what we require for transfer agents.

Mr. SHIMKUS. Thank you. Do you believe the potential benefits of expanding lost security holder regulations would be worth the potential cost?

Mr. BERGMANN. Well, that is the at least \$64 million question, which was at the top of our list when we imposed the rules that we did impose. So we thought it was—what we did was a prudent first step, and we need to see how it works, and if it does not work the way it should, we will have to consider other cost beneficial measures.

Mr. SHIMKUS. That is all I have, Mr. Chairman. I yield back.

Mr. OXLEY. The gentleman yields back. Mr. Bergmann, thank you very much for your participation in the panel.

Mr. BERGMANN. Thank you very much.

Mr. OXLEY. The Chair would like to call our second panel and our witness, Mr. Robert Shamansky, from the law firm of Benesch, Friedlander, Coplan & Aronoff in the capital city of Ohio. For those members who do not know, Mr. Shamansky is a former Member from Ohio, and I guess I am the only one who served with you, Bob.

Mr. SHAMANSKY. A long time ago.

Mr. OXLEY. Welcome back to Washington. I know that through the efforts of John Kasich, the entire issue was brought to our attention, and I know you have been working with Congressman Kasich on this issue for some time. So I am pleased that we were able to schedule this hearing and give you an opportunity to indicate your concerns about the present state of affairs regarding lost securities.

So welcome, and we look forward to your testimony.

STATEMENT OF ROBERT N. SHAMANSKY, BENESCH, FRIEDLANDER, COPLAN & ARONOFF; ACCOMPANIED BY DANIEL C. DeSIMONE, OFFICE OF FEDERAL RELATIONS, NATIONAL ASSOCIATION OF STATE TREASURERS

Mr. SHAMANSKY. Thank you, Mr. Chairman, and to members of the committee, I appreciate this opportunity. It has been mentioned that I am of counsel to my law firm, which means that I am a lot older than they are.

I am here as an individual shareholder. I am the guy that was lost. That is how I became aware of it. There is a full page editorial in Money Magazine, the managing editor, in January 1994 who wrote the following, talking about my experience. They said, I asked the transfer agent, why didn't you look me up in the phone book? And they said, well, we never do that. And I said, really? How long would it have taken you to find me if I owed you the \$500? And that is the question they do not want to answer.

I then approached now Senator Wyden, who is my congressional classmate, and he made some inquiries into the SEC, and reading again from Money Magazine's full page editorial, the Securities and Exchange Commission estimates that "One shareholder account out of every 20 is lost, and transfer agents are sitting on a staggering \$10 billion worth of securities accruing \$500 million a year in dividends that they are failing to deliver." This is what he wrote, after having checked with the SEC.

Very frankly, I don't have a lot of faith in the expertise, the numbers produced by the SEC. In their release in October 1997, they said that they originally thought there were 250,000 lost shareholders, but then they concluded that there were 3 million lost shareholders owed \$450 million. I think you have to recognize that they were off by a factor of 12, that is 1,200 percent. If you divide 250,000 into 3 million, you get 12. That is 1,200 percent. They didn't know that it was a problem, but there is a problem, because I am living proof of it.

Now, this is a national problem. The gentleman sitting here with me is Dan DeSimone of the National Association of State Treasurers, which is affiliated with the National Association of Unclaimed Property, State Property Administrators. These are the people in every one of our 50 States who have the job of going and making sure that the citizens of the States get their money. What we are talking about here is people getting their money promptly, and this is where the States are saying don't wait for our 5 years or 7 years or whatever to kick in when you have the data right up to date.

Now, it is a very simple question, and mentioning John Kasich, I think the members should know that John Kasich beat me, defeated me, a Democrat, in 1982, and I am pleased to acknowledge his splendid cooperation. This is not a partisan issue. It is not a partisan issue that shareholders are entitled to get their dividends. That is what we are talking about. Nothing more than that.

With the illustration as to how things happen, I got out of law school in 1950. That is 50 years ago. Had somebody graduated from a medical school in 1950 and was still doing the same kind of examination, using the same kind of technology that he did 50 years ago, he would be sued all over the place for negligence. What has

happened here is that the securities industries, as regulated by the SEC, did not do a thing when it came to delivering the money they owed, the same technologies that they were using simultaneously to collect money that was due them, and there is simply no reason for that.

The national data bases that every person in this room, I am willing to say, is in that, as your son found out for his class reunion, we are all in there. And the cost, the SEC did it, when they made the 1997 release, found that the cost, and my own inquiry, it costs less than \$1, they are all done on tape, batches, electronic. It is like less than \$1, approximately \$1, and takes less than a minute. And all of this is done by the computer bases.

With respect to the Internet and the privacy issues which were raised legitimately, I have to point out that the 50 States for decades have published people's names. There is not one person here in any State and the District of Columbia that there is a list saying somebody holds money for you. It does not say how much, it just says, here is where you can find your money.

Now, there have been no privacy or securities matters. It is interesting to me that Mr. Bergmann asked the commenters. The commenters he got responses from were the people who do not want to give up the money. Why would they? Because for every day that a dollar is left with these holders, they keep the interest. They are the ones who keep the interest. When you show up 3, 5, or whatever years later, they only give you whatever the original amount was. Somebody else has kept that money.

All we are saying is, anybody regulated by the SEC should utilize this very cheap, very easy to use technology. This is a list I got from my friends in the unclaimed property world: An issuer, a broker, a dealer, mutual fund, investment company, investment advisor, indentured trustee, custodian, anyone holding money for someone else which is regulated by the SEC.

I want to dispel the notion here that we are not talking about much money. A famous case, at least in this world, of Delaware v. New York in the 1990's involved \$890 million disputed. Delaware claimed that from the State of New York, it originated in the U.S. Supreme Court, that represented brokered moneys held by brokered dealers for their customers. Now, when you say small percentages, but of trillions of dollars, you are talking about big money, in Senator Dirksen's range, billions of dollars.

Now, it is easy to play the percentage thing. But for the people who are lost and they are disproportionately older, and oftentimes sick, they are the victims of this. All we are asking is that the SEC, or the Federal Government one way or the other, if there has to be legislation, simply have them use the same tools they use when people owe them money.

Now, this is not a blame game. There are millions of dollars represented by checks that have been sent out, but not delivered, or sent out, and even if some old person, whatever it is, does not cash it, it doesn't change the fact that that money belongs to that person.

I met with these different transfer agents, the biggest in the country. For those people who have shares of stock and get quarterly checks, question: Why can't you in the next dividend check on

the stub simply say, previously we sent you a check, it is not cashed. Please cash it, or notify us, 1-800, or e-mail or whatever, and we will get your money to you. They said—that is a couple of lines in their software program so people could get their money and they will not do it, because they do not want them found. That is the only conclusion. That idea came from prudential insurance which sent a friend of mine a letter that said we previously sent you a check, it isn't cashed, please contact us. We are dealing with these millions of checks that go out quarterly, and those computers know which checks have not been cashed.

The main thing here is, it is the money we are talking about belongs to individuals; there is not one penny of government money, no tax money, no corporate money. This money does not belong to any of these people we are talking about, to treat them fairly. It belongs to us shareholders. The people who hold it are making the interest on that, and the shareholder does not.

So we have the technology and the way you correct that, you simply tell the holder of the money, you have that money in an account, you just call it a trust account for any of the lawyers on the committee, it is the same money, except with that moves on to the claimant or goes to the State, the States are—they then get for their own citizens, they get the interest earned by the citizen's money, instead of being siphoned off. You are rewarding now the person who did not deliver the money. That is wrong, and it makes no sense.

I would like to address the idea of the Internet. There are no privacy problems because 50 States publish lists, a majority of the States have their lists on the Internet and there are no problems. I had our computer man check the list from the Swiss Bankers Association of holocaust-era accounts that the American Government and the World Jewish Community shamed the Swiss Bankers Association into putting it on the Internet. They suddenly found thousands of these accounts. And from my office in Columbus, he entered the name Klein, and came up with three hits. This is a technology which is everywhere today. It costs nothing; there are not any costs. But it is a technology that is available to give the citizen a chance to find himself his money.

Reference was made to the heir finders or search firms. In the world of unclaimed property among the States, they are called other things sometimes, like vampires or whatever you might suggest, because 25 percent to 50 percent is where—they call you up and say well, for 25 to 50 percent, we will tell you where your money is.

Now, the suggestion is not to regulate them, but for those who hold the money before they engage them to say, we will do so by open bidding and let the market, let some competition come in here. Because the problem is, this is all done behind closed doors. So you never know what is really happening. There is no follow up on what they do. And I want you to know that my friends in the transfer business have finally revealed why they do not want this known. Because in Columbus, we would say, kickbacks. I don't want to shock anybody here, but they are dressed up as service fees or something like that.

The SEC has the power, and I think it has the duty, to tell the holder of the money for someone else, the conditions under which they turn those accounts over to these search firms for 25 to 50 percent that the owner has to pay, let's get it out in the open, let's get market forces in there, and let's—and if nobody is doing this, then there is no problem about kickbacks, however it is dressed up. Let's get it out in the open.

The cost is absolutely negligible. Because we are dealing—it is all electronic, it is all on computers, and everyone who holds money for someone else under the jurisdiction of the SEC, especially the broker/dealers and anyone else, can all play by the same rules. There is no special expertise. Either the SEC or with me, it is simply common sense, and this is what we are talking about.

[The prepared statement of Robert N. Shamansky follows:]

PREPARED STATEMENT OF ROBERT N. SHAMANSKY

The first thing that must be said is that promptly delivering dividends to their rightful owners is not a partisan issue. No Republican, nor any Democrat I have ever known, has ever been opposed to that, nor will they ever be. As proof of that non-partisanship, I am pleased to acknowledge that Representative John R. Kasich, Chairman of the House Budget Committee, as you know, a Republican, who defeated me, a Democrat, in November, 1982 in my effort to be re-elected to represent the 12th District of Ohio in the United States House of Representatives, has taken a leadership role in this effort to get our capital markets to treat the individual investor in a fair manner, which will ultimately improve our national economy by encouraging everyone to invest in the national securities market, because he or she will be treated fairly.

Frank Lalli, Managing Editor of *Money Magazine*, in his Editor's Notes entitled, "Playing Lost and Found with Your Money" in the January 1994 issue wrote:

"The Securities and Exchange Commission estimates that one shareholder out of every 20 is 'lost'. In all, transfer agents are sitting on a staggering \$10 billion worth of securities accruing \$500 million a year in dividends that they are failing to deliver."

My experience starting in 1993 has taught me to be skeptical of the data advanced by the SEC's Division of Market Regulation ("Market Reg."). Even after being informed of the problem of "lost" securityholders, Market Reg. seriously underestimated the scope of the problem. The remedies finally adopted by the SEC excluded a majority of securities owners, e.g., customers of broker/dealers and mutual funds among them. All securities owners "lost" before December 8, 1997 were excluded from the new database check for good addresses, thus remaining prey for the predations of search firms, who may have paid so-called "service fees" for obtaining lists from transfer agents.

In its Tuesday, October 7, 1997 release, the SEC in Footnote 39, on page 52235 of the *Federal Register*, Vol. 62, No. 194, Rules and Regulations, said the following:

"The Commission staff contacted several transfer agents to obtain an estimated success rate. Only one of the transfer agents contacted currently uses data base searches to find lost securityholders. That transfer agent, which has been conducting searches on a monthly basis for over a year, stated that its success rate using data base searches is never less than 75% and sometimes is as high as 94%. For purposes of the cost-benefit analysis, the Commission is assuming a 60% success rate in order to be conservative."

My research leads me to believe that a 60% success rate is too conservative, and that 70% to 80% is a reasonable rate, especially when the search is made as early as possible.

With the lackluster performance from the SEC's Division of Market Regulation, individual investors in every Congressional District in this country must now rely on the Congress to help them get their own dividend money back in a timely fashion. It is not only *Money Magazine* and the *Washington Post's* Jane Bryant Quinn who have written on this problem. Organizations like the National Association of State Treasurers ("NAST"), whose state treasurer members in a majority of states handle unclaimed property, and the affiliated National Association of Unclaimed Property Administrators ("NAUPA") have expressed their views on needed changes to the SEC, but have failed to get from the SEC needed help in obtaining better delivery of dividends from paying agents to the owners of securities across the entire

country. Mr. John Rother, Director, Legislation and Public Policy for the AARP, wrote me on May 12, 2000 that the issue of lost shareholders will be brought to the attention of the AARP's policy body, the National Legislative Council, when it meets this fall. (A disproportionate number of "lost" securities owners are the elderly, especially those who are sick.)

I have recently met in Washington with Senator Howard Metzenbaum in his capacity as Chairman of the Consumer Federation of America on this matter. Senator Metzenbaum told me he has expressed his interest in this situation to Chairman Arthur Levitt of the SEC. Senator Metzenbaum left with Chairman Levitt a copy of Jane Bryant Quinn's article on the abuses of "lost" investors that still remain to be corrected after the SEC's timid and inadequate rule change in 1997. (A copy of that article is a part of this testimony.)

We are talking about "real money" here, that is billions of dollars. It is also vital to understand that not one dollar of these billions is coming from taxes at any level of government, whether it be local, state, or federal. Equally important, not one dollar of these billions is coming from any corporation or any other business. Every one of these billions of dollars belongs without question to the "lost" owners of securities, which simply means the one obligated to send the money to its rightful owner does not have a good address for that owner; or in the case of mailed, but undelivered or uncashed checks, won't tell the owner, even if the sender has a good address.

Millions of investors, unknown to them, are being denied billions of their own dollars because of the practices of financial organizations regulated by the United States Securities and Exchange Commission ("SEC"). For the first time in history, American households now have cumulatively more money invested in securities one way or another than their total equity in their homes, so the work of the SEC is more important to these millions of investors than ever before.

It was not long ago that a very small percentage of Americans owned stock or any other securities. In effect, only the few rich owned securities, and those securities were represented by pieces of paper called, for instance, stock certificates or bonds. The records of these securities were kept in those days on other pieces of paper, like ledgers or 3" x 5" cards or whatever. At that time, there was no way that the outfit that held undelivered dividends for a security owner, whose address had changed, could quickly and cheaply find a good current address for that "lost" security owner.

All of that is different today—totally and spectacularly different! First and most significantly, the number of persons with investments in securities either directly or through various retirement accounts is approaching 80 million. The values, of course, are in the trillions of dollars.

It is a safe bet that virtually every person in this hearing room today has some kind of a stake in securities, including even the young people here. Owners of securities are not trying to hide from their own dividends. Securities owners want to receive their dividends. If "lost" for any reason, they are found quickly and cheaply by referring at the very least to one of the three national databases which overwhelmingly list those who own securities. We—you and I—and our family members and friends who have two nickels to rub together—are in those databases for any number of reasons. All anyone has to do is inquire, and for batch electronic inquiries, the cost can be close to \$1 per name and the time needed as short as a minute or less.

The spectacular growth of the securities markets in the United States and elsewhere has been an outgrowth of the advances in technology like computers and the Internet. In order to sell and make money, the financial community is using the computer in all its various forms. The financial community has logically used technology to collect money from the public as quickly and as cheaply as possible.

The record also shows that the same financial community under the jurisdiction of the SEC has consistently refrained from using those same technologies when it comes to *delivering* monies belonging to the millions of so-called "lost" securities owners, who are certainly owed hundreds of millions, and most probably billions worth of shares held in "street name" by broker/dealers or in mutual funds. The needed fair treatment practices should apply to everyone in the financial community, whom I call a "paying agent," under the jurisdiction of the SEC, which directly or indirectly undertakes to deliver dividends, interest, or other valuable property rights to those legally entitled to them. The paying agents include any issuer, transfer agent, broker, dealer, investment company, mutual fund, investment advisor, indenture trustee, custodian, or any other person obligated to deliver dividends, interest or other valuable property rights. All of these paying agents have the obligation to deliver monies to their owners, and the technology to do so is already in place and cheap and easy to use.

Because of my own direct experiences with the financial community, as someone who had been “lost”, in 1992 I approached my House classmate, now Senator Ron Wyden of Oregon, to initiate a process, which resulted in 1996 in the SEC’s proposing simple changes in its rules to treat “lost” shareholders better.

I regret to inform you, however, that the changes actually implemented by the SEC on December 8, 1997, represent a classic case of the “Regulator captured by the Regulated”. For instance, the SEC in 1996 proposed changes to include record-keeping broker/dealers as well as transfer agents, but then reversed itself in 1997, saying that the changes only applied to recordkeeping transfer agents, who transfer shares worth less than the shares held by broker/dealers in “street name”. Besides transfer agents, the regulations regarding lost securityholders should also apply—as I mentioned above—to broker/dealers, corporate trustees, personal and institutional custodians and mutual funds, and issuers who do their own transfer work, because transfer agents maintain records for less than one-half ($\frac{1}{2}$) of the total value of the securities in the United States. Much greater assets are held in “street name” by broker/dealers and in mutual funds. (Richard Lindsey, who was head of the Division of Market Regulation at the SEC when it exempted broker/dealers from the new rules, then left the SEC and went to work for Bear Stearns, one of the exempted broker/dealers in New York.)

After issuing the rule change to take effect on December 8, 1997, the SEC in a totally arbitrary and unjustifiable interpretation of the rule change said that the requirement of looking up a “lost” shareholder twice in the national databases before turning over the accounts to search firms that specialize in locating “lost” securities owners applied *only* to those lost *after* December 8, 1997. This meant that 3 million “lost” securities owners owed \$450 million—those are the SEC’s numbers—were thrown to the dogs, i.e., to the search firms. These search firms usually charge from 25% to 50% of the money involved without the transfer agent ever having to use a national database to locate a good address, which would potentially save these 3 million people from \$125 million to \$250 million of their own money. (The SEC had originally estimated that there were only 250,000 lost securityholders, but they later estimated that there were really 3 million lost securityholders. This meant that the “experts” at the SEC were off by 1,200 percent, i.e., 3,000,000 divided by 250,000 equals 12.)

The lost securityholder regulations should apply to securityholders who meet the \$25.00 *de minimis* test adopted by the SEC in 1997, if their checks remain uncashed for seven months. The next regularly-sent dividend and interest checks should inform the payee that a previously sent check had not been cashed, and the notice should request a call to a toll-free number or other communication. There is a valuable precedent from Prudential Insurance for notices like this, and I have conferred with one of the most prominent transfer agents who verified that this can be easily done through their computers at insignificant cost.

All of the data on lost securityholders generated by transfer agents, broker/dealers, et al., should be sent to the SEC for listing on one Internet website. A majority of states put their unclaimed property lists on the Internet, and the NAUPA has a website where it is pooling various state lists. NAUPA created the website, because the SEC proposed such a website for itself in its 1996 release for a proposed rule change, only to reverse itself after it had been lobbied hard by those who did not want lost securityholders found. Common among those were search firms, “heir-finders”, or locators (or vampires) depending on who is describing them. The SEC already has had the Thomson Financial Network operate the SEC’s Lost and Stolen Securities Program under the name of Securities Information Center (“SIC”), which is designed to thwart trading in stolen stock certificates and bonds. If the SEC has a website for its list of lost or stolen pieces of paper, why can it not have a website for its list of the lost owners of securities? Why should a piece of paper be treated better than the owner of the piece of paper?

It must be pointed out that the United States Government and the world Jewish community shamed the Swiss Bankers Association into publishing on an Internet website a list of unclaimed Holocaust era accounts, which the Swiss Bankers Association had previously maintained had been lost or destroyed. (I checked this website from my office in Columbus, Ohio for the name “Klein” and I came up with three hits.) There is no reason why the few big American banks or other financial houses, which control the biggest transfer agents, do not do what the Swiss showed can easily be done, i.e., put on the Internet an SEC list of lost securityholders, which is what the states are already doing with their unclaimed property lists without any security or privacy concerns.

Based on my experience over the last twelve years, I believe there is sufficient interest in the private sector to distribute the information on the Internet at no cost to the SEC once the information has been delivered electronically to the SEC. There

is, of course, no reason to publish on the Internet the amount owed the lost securityholders, nor the quantities of securities owned by the lost securityholder. All that is needed is the simple fact that John Q. Public is owed something by an identified and reachable source like a transfer agent, etc. This is exactly what all fifty states and the District of Columbia are doing annually in newspapers and now on the Internet without privacy or security problems.

Money due lost securityholders, which is held by any paying agents, must be held in trust accounts so that the securityholder will get the interest earned by his or her dividends. Right now, unbeknownst to them, millions of "lost" securities owners are making interest free loans to those who are holding their money, and who won't tell the securities owners where their money is. In other words, the non-delivering holders of these monies are being rewarded for not telling the rightful owners where their money is.

A 1992 United States Supreme Court case vividly illustrates why broker/dealers must treat their lost customers, who bought stock held in the broker/dealers' "street names," just like all of the other paying agents. The case of *Delaware v. New York*, 507 U.S. 490, 113 S.Ct. 1550 (1992) is where New York and Delaware each claimed under their respective unclaimed property laws approximately \$890 million in dividends and their underlying stock generated in "street name" accounts owned by securityholders, who were "lost" customers of the major broker/dealers headquartered in New York City, but incorporated in Delaware. (Investors who leave their securities in "street name" with a broker/dealer can be as easily lost as any name on any transfer agent's list.) The SEC was right when it originally proposed in 1996 to apply the rules to broker/dealers. It was wrong when it exempted them.

Another important reason for requiring that securityholders' money be held in trust accounts can be gleaned from the \$63.5 million in fines in addition to the return of \$19.1 million illegally taken by Bankers Trust Corporation of New York in early 1994. This \$19.1 million was taken from unclaimed property due to lost customers of the bank, and it was illegally used to falsely increase the profits of the bank, instead of sending that money to the states as required.

A long line of state cases hold that undelivered dividends are held in constructive trust for the shareholders. Placing undelivered dividends in trust accounts ends the abusive practice of unknown non-interest bearing loans to the party that did not deliver the dividends as in the *Delaware v. New York* case and with reducing the chance for outright theft as in the Bankers Trust case.

If a search firm/heir-finder/locator is engaged by any transfer agent, et al., to locate lost securityholders at a cost to the securityholder after the obligatory two database checks, those lost securityholder accounts should be placed with search firm/heir-finder/locators only on the basis of open bidding by these search firm/heir-finder/locators for batches of such accounts, each account in each batch to receive due diligence with reporting to the SEC of their search results. In fact, the National Association of Unclaimed Property Administrators has urged the SEC to protect lost securityholders from the excessive charges of from 25% to 50% by these search firms/heir-finders/locators. There absolutely must be an explicit prohibition of kickbacks from these search firms/heir-finders/locators to those who place these lost accounts with them for locating the rightful owners. These kickbacks clothed in such euphemistic names as "service fees" are outrageous examples of conflicts of interest.

The United States of America, through its many departments and agencies, holds great sums of money due others. The Federal Government should create a commission or some other entity to locate all money owed to others. (See partial list of federal departments and/or agencies which hold money for others attached.) The U.S. Government should put the information on *one* Internet website; and then the Federal Government should simplify the method whereby any claimant can obtain his or her money from any department or agency of the United States Government. There is simply no reason for the U.S. Government not to use currently available technology to unite people with their money now held by the U.S. Government. The same principle applies to the securities industry.

No state law is changed by any of the suggestions made above. These regulations will only affect those who come within the clear jurisdiction of the Securities and Exchange Commission. The National Association of Unclaimed Property Administrators and the National Association of State Treasurers has encouraged the SEC to unite lost securityholders with their money years before the money becomes "unclaimed property" due for delivery to the states. The elected state officials know that it is the intent of the state laws on unclaimed property to have their respective citizens get the money that is due them; it simply makes no sense to those elected state officials to force their lost securityholder citizens into giving interest free loans with-

out their knowledge to those that are holding money belonging to the lost securityholders, who are residents of their respective states.



Editor's Notes in your interest

EXHIBIT

1

PLAYING LOST AND FOUND WITH YOUR MONEY

The problem began when Bob Shamansky finally realized he hadn't received \$500 in dividends on the 1,800 shares of The Limited that he had inherited from his Aunt Millie two years before. Manufacturers Hanover, the New York-based transfer agent the \$7.8 billion retailer had hired to distribute its dividends, had messed up his address. So the dividend checks it dutifully mailed to him kept coming back. In the parlance of the transfer trade, Shamansky had gotten "lost." That was bothersome enough, but what sent the Columbus, Ohio attorney scurrying to his law books was the bank's assertion that it is the lost customer's responsibility to make sure he gets found.

"I said, 'Why didn't you look me up in the phone book?' They said they never do that. 'Really,' I said. 'How long would it take you to find me if I owed you the \$500?' They were using my money for two years. That's illegal. Under American law, you are not allowed to benefit from your own negligence."

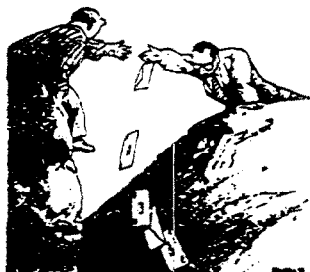
Shamansky, 66, refused to give in. As a former Democratic congressman as well as a lawyer, he was soon telling his story to Washington, D.C. authorities. You guessed it—his experience is almost commonplace. The Securities and Exchange Commission estimates that one shareholder account out of every 20 is "lost." In all, transfer agents are sitting on a staggering \$10 billion worth of securities accruing \$500 million a year in dividends that they are failing to deliver.

How could that be? As Shamansky suspected, stock issuers and their transfer agents aren't putting much effort into tracking down the rightful owners. For example, Mellon Bank, which has 400,700 lost accounts, has one person assigned to each 11,448—at most. (The bank's comment: "No comment.") Here's the industry's basic procedure:

First, they try to mail the problem away. If, say, a dividend check gets returned, the agent resends it to the same address in the hope that the post office messed up. If it comes back again, the agent sends it back again. Though the likelihood of the post office misdelivering a letter is around three-millionths of 1% (0.00000032%), this futile re-mailing ritual can continue for years.

Then they flag it and forget it. After perhaps two or three attempts, a symbol is placed on the account signifying that the dividends cannot be delivered and have not been claimed.

Finally, they surrender it to the state. If the account remains unclaimed after three to seven years, depending on local law, it must be handed over to the state. The state then steps up the



search somewhat, often by running fine-print newspaper ads listing the names on such accounts. The ads work, at least to the extent of attracting a third of the owners within the first year the state gets the accounts. Eventually, however, if no one comes forward, the states liquidate the accounts and pour the money into their treasuries. So many billions are involved that states have sued one another all the way to the Supreme Court over this loot.

The agents' trade group, the Securities Transfer Association, argues that administering lost accounts already costs 25% more than handling ordinary accounts; therefore, any extra effort to track down these typically small accounts would be uneconomical.

Others disagree with that analysis, however, led by one of Shamansky's former colleagues, Rep. Ron Wyden (D-Ore.), who sits on the committee that oversees the SEC. Last summer Wyden's subcommittee produced a detailed memo titled: "Individual Investors Lose Billions of Dollars of Shareholder Assets Because of Lax Transfer Rules, Indifference by Public Companies and Government Regulators."

"This situation has unfair written all over it," Wyden told MONEY's Elif Sinanoglu. "Billions are sloshing around outside the hands of the rightful owners. I'm going to stay after the SEC until they correct it. And I'm a persistent fellow."

Building on its clear authority to compel agents to maintain accurate records, Wyden wants the SEC to force the industry to adopt the same techniques to find shareholders that are used to trace debtors. Richard Schultz, president of the National Revenue Corp., a leading debt-collection agency, notes that he routinely spends only \$1.50 or less to track down a debtor—which is a fraction of what the typical agent wastes sending mail to the wrong address year after year. "With today's databases," says Schultz, "we can sometimes find a person in 90 seconds."

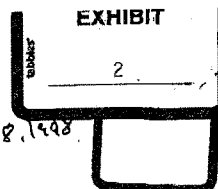
Shamansky wants one more thing. He believes the industry should pay interest to shareholders whenever their accounts go lost because of company negligence. "I demanded the interest on my \$500, and I finally got it," he says. "But not everyone is a lawyer with a loud voice. The companies should pay for their mistakes as a matter of simple apology. It's the least they could do."

Frank Palli

Managing Editor

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Reporter associate: ERIK SINANOGLU



Your Money

THE WASHINGTON POST

JANE BRYANT QUINN**Calling All—Some?—'Lost' Securities Owners**

What if you own securities you've forgotten about? You're not getting dividend payments because the company doesn't have a valid address for you.

You're probably easy to find—especially through a computer database. But the company never bothers to look.

The Securities and Exchange Commission has taken a first step toward breaking this logjam. There's more it can do, but not much interest in doing it.

The first step involves transfer agents, who transmit interest, dividends and stock distributions from corporations to their bondholders and stockholders.

People inevitably get lost. Sometimes it's your fault: You move without leaving a forwarding address. Sometimes it's the fault of the transfer agent, who might mishandle your address.

Either way, a dividend check goes back to the agent, stamped "addressee unknown."

The SEC believes that transfer agents are holding about 3 million lost accounts, with a value exceeding \$450 million. Each year, an additional 250,000 securities holders go missing.

When checks aren't cashed, the corporation keeps the money for two to seven years, depending on your state. Then it goes to the state's unclaimed-property office. Missing owners who turn up get the payment but not the interest the money earned.

Last Dec. 7, the SEC adopted a rule pushed through by former commissioner Steven Wallman to help track lost accounts worth \$25 or more.

Under the rule, transfer agents must conduct two searches of a national database for the name or Social Security number of a lost security holder. The searches must be roughly a year apart. With this simple step, the SEC estimates, about 60 percent of the checks can be delivered.

Corporations that handle their own shareholder accounts have to follow the new rule. One result will be to reveal many more account holders as "lost," said Thomas Montrone, president of the Registrar and Transfer Co. in Cranford, N.J.

But there's a big hole in this rule: It doesn't affect the brokerage firms. Stockbrokers hold the vast majority of shares for customers. Some of these customers are lost, but brokers aren't required to search for them.

An SEC official said brokers weren't included because the original proposal focused only on transfer

agents and there wasn't much comment about brokers.

Montrone said brokers claimed to "know their clients," but he added that the claim wasn't "factually supported."

There's a second hole in the rule. The transfer agents don't have to check all 3 million accounts that are currently lost; they have to search only for shareholders lost since last Dec. 7. They also don't have to search for heirs.

Shareholders can't be charged for the two database searches. But if you stay lost, your name can be turned over to a firm that searches for the owners of unclaimed property.

If such a firm finds you, it typically asks for 25 percent to 50 percent of the asset before delivering it to you.

The rule's chief cheerleader is lawyer Robert Shamansky of Benesch, Friedlander, Coplan & Aronoff in Columbus, Ohio. He was "lost" twice because of a wrong address.

Infuriated, he dogged the lost-shareholder issue at the SEC. "If I owed the money, how long do you think it would take for the corporation to find me?" he asked.

Shamansky is pushing for a law that would also cover stockbrokers and mutual funds. And why not ask banks, insurance companies, utilities and government entities to check databases, too, when a check is returned as undeliverable?

The SEC considered, and rejected, creating an Internet database of lost securities holders that would allow people (including heirs) to check for lost payments themselves. The SEC cites fraud and privacy problems.

But those aren't insurmountable issues. For example, a company called the CapitalLink Group in New York City has recently started just such a database (www.ifast.com).

CapitalLink covers only the lost security holders of its client companies. You enter your name, address and the first four digits of your Social Security number. If there's a match, you'll be given, at no charge, the toll-free number of the corporation holding your funds.

In addition, 25 states have Web sites that let you search by name for unclaimed property they hold; links to those sites can be found at www.unclaimed.org. So it could be done, if the SEC gave it a push.

Post-It® Fax Note	7671	Date		# of Pages	1
To	Robert Sharansky	From			
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	414-223-9330	Fax #			

EXHIBIT	
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NEWS	
NDS AND OTHER	
FEDERAL AGENCIES	

The State of Washington is currently locating the owners of U.S. Savings Bonds we have received from abandoned safe deposit boxes. Because there is usually a social security number, (and it usually was for a child), we are finding many of the bond owners via our link to our Employment Security database. Tracking by the SSM, we find out where they are working, contact their employer, and have them call us.

When we deliver the savings bonds, and to better track the value we are returning, we are using the Savings Bond Wizard put out by the Dept. of Public Debt. Their website is below. After you download and install the wizard, is a simple way to determine the current value of old savings bonds. You can create a file for each owner. We print out the report and enclose it with the delivery so the owner has some idea about the current value.

Savings Bond Operations at: Division of Transactions and Rulings, Bureau of Public Debt, 200 3rd Street, P.O. Box 1328 Parkersburg, West Virginia 26106-1328; (304) 480-8112. Visit the Bureau's web site at: <http://www.publicdebt.treas.gov> Social Security Administration - (800) 772-1213, or contact your local branch office. <http://www.ssa.gov>

OTHER FEDERAL AGENCIES/INFO

IRS—(800) 829-1040 to speak with a representative. <http://www.irs.us/treas.gov>

US Postal Service - Money Orders—U.S. Postal Service Department of Consumer Affairs at: (800) 397-4330; write: U.S.P.S., 475 L'Enfant Plaza S.W., Washington, D.C. 20260; <http://www.usps.gov> for more information.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

FDIC Division of Compliance & Consumer Affairs at: 550 17th Street, N.W., Washington, D.C. 20429. On the Internet: <http://www.fdic.gov>

Retirement Operations Center, Federal Employment Retirement System (successor to the Civil Service Retirement Fund) at: P.O. Box 440 Boilers, PA 18017; (412) 794-2005; use OPM's automated Retirement Information System at: (202) 806-0500; or visit their web site at: <http://www.opm.gov>. Also contact the Veteran's Administration at: (800) 827-1000; and the U.S. Railroad Retirement Board at 844 North Rush Street, Chicago, Illinois, 60611-2092, (312) 751-4500; to inquire about unclaimed benefits held for veterans and railroad workers.

Securities and Exchange Commission Office of Investor Education and Assistance, 450 5th Street, NW, Washington, D.C. 20549 (202) 942-7040. On the Internet <http://www.sec.gov>.

Bureau of Indian Affairs - Office of Trust Funds Management, Attention: Whereabouts Unknown, 505 Marquette, Suite 1000, Albuquerque, N.M., 87102; (505) 248-5708. Letters of inquiry should include full name, date of birth, current address, and signature. <http://www.doi.gov/bureau-indian-affairs.html> or <http://www.ost.doi.gov>.

All other inquiries regarding assets potentially being held by regulated industries and federal agencies should be directed to: Federal Information Center, P.O. Box 600, Cumberland, Maryland, 21501-0600 (800) 688-9889 / TDD (800) 326-2996 <http://www.info.gov>

Mr. OXLEY. Thank you, Mr. Shamansky.

Let me begin by asking you details of in your particular case how the securities happened to be lost or how they lost you. You are obviously not dead, so you passed that barrier. Take us through how this happened.

Mr. SHAMANSKY. In 1988 my CPA, I was gathering up my 1099s. I had inherited a number of stocks from my late aunt, and some time had passed and I gathered up in 1988 the 1099s for 1987. I sent them out, but I knew I had inherited some stock from the Limited headquartered in Columbus, but I didn't have a 1099 so I called my friends—

Mr. OXLEY. That is a good stock, by the way.

Mr. SHAMANSKY. It goes up and down. Go to the transfer agent in New York and they told me, yes, we didn't send you a 1099 and I said why not, and they said, well, we didn't send you any dividend either. I said, oh. Why not? They said we had an address of 88 E. Gay Street, but I am at 88 E. Broad Street right across from the statehouse, so they had the wrong address. I said, why didn't you look me up in the phone book? They said they never do that. Even if they were negligent, they said we don't look you up, you got to look us up. If I were dead or sick or whatever it is. They have the money and it is our problem. I had to ask them logically, well, what would you have done had I owed you the \$500? In the meantime, someone else was keeping my money. At that time it was \$500. It was an accumulation of dividends.

So I came into this with the awareness and I couldn't understand why the transfer agent acted that way when I was easily findable. It is just—there is no cause. And the SEC itself says in their 1997 release the cost is negligible.

Mr. OXLEY. So basically, they have no incentive whatsoever; as a matter of fact, they have a disincentive.

Mr. SHAMANSKY. Right, exactly.

Mr. OXLEY. And what were the, for example, the tax consequences in your aunt's estate—

Mr. SHAMANSKY. If I may suggest, sir, the stocks, the estate had been distributed, so I was then the owner, and I was—I really wanted to report, I mean I wanted to report my taxes. They didn't—and if a check comes back, they stop sending it. It seems strange that they stop sending it. My experience with the Massachusetts Financial Services, the original mutual fund, I got a letter, a notice saying that if I didn't get ahold of them, \$80 some of a dividend check was going to get escheated to the State of Ohio, and, Mr. Chairman, they had been sending me communications all the time. They knew that I had not cashed that check and they were still sending me stuff, and I was still getting it, and they never bothered to tell me that that check was still out.

Mr. OXLEY. You were getting that at the 88 East Broad address?

Mr. SHAMANSKY. Yes. And all of this information, there are three big data bases. Shareholders are not trying to hide from their money. This is not debt collection. This is not deadbeats who do not want to be found. These are shareholders who want their dividends, and the technology is there, and these outfits will not use it.

Mr. OXLEY. Let me ask you this. I am trying to recall. There is a division in the State treasurer's office, the unclaimed funds?

Mr. SHAMANSKY. It is the Department of Commerce now in Ohio.

Mr. OXLEY. And they on occasion will print in newspapers.

Mr. SHAMANSKY. Exactly.

Mr. OXLEY. And they are required to did that?

Mr. SHAMANSKY. Yes, sir, by law. I couldn't put a wig on and say I am Mary Poppins, give me somebody else's money. There are no privacy concerns, there are no security concerns. Whether those lists are published in the newspapers in every State or now in a majority of the States have these lists on the Internet. Why should not—why did the SEC say, oh, all of these things. And you notice they talked about what the commenters, the people who commented were those who do not want us found. That is the only reasonable conclusion you can reach.

Mr. OXLEY. Well, now, in Ohio, for example, does the law now require the Internet posting as well as the newspaper posting.

Mr. SHAMANSKY. I don't know whether the law requires it, Mr. Chairman. But it is just current technology. Why wouldn't you? It is a list.

Mr. OXLEY. And that is on there until somebody claims it, right?

Mr. SHAMANSKY. Sure, sure.

Mr. OXLEY. So your name is on there apparently forever until it is claimed?

Mr. SHAMANSKY. We are suggesting nothing that is not already done, it is just simply saying no longer can you pretend that this technology isn't there.

Mr. OXLEY. And your proposal is that in the situation of an escheatment—

Mr. SHAMANSKY. Mr. Chairman, we are coming in before then, because—

Mr. OXLEY. Right. But I gathered from your testimony that in the case of escheatment that the State of the domicile of the holder, of the stockholder ought to be the one that gets the money, is that correct?

Mr. SHAMANSKY. That is the way it is, yes. The broker/dealers or the transfer agents or whatever it is, whoever is holding that money, would send it to Ohio or to the 50 States and the District of Columbia. We are changing—the discussion that I am making changes no State laws whatsoever.

Mr. OXLEY. The escheatment laws are different, though, in each State, are they not?

Mr. SHAMANSKY. Yes. The periods range from 3 years to 5 years to 7 years. But the important thing here is, we are not dealing with State unclaimed property and the escheatment laws. What we are saying is that the technology available to the transfer agents and the other houses and financial institutions regulated by the SEC has this technology and before you turn this money over to these heir finders, you have to look people up in the phone book. Why would you give my money to an heir finder who is going to charge me 25 to 50 percent and you won't look me up in the phone book first? That is basically what we are talking about. And cumulatively, we are talking about very serious money. Forget the per-

centages. In a multi-trillion dollar economy, we are talking about really a lot of money.

Mr. OXLEY. Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman.

You used some pretty strong terms.

Mr. SHAMANSKY. Yes, sir, I did.

Mr. TOWNS. The term "kickback."

Mr. SHAMANSKY. Yes, sir. In Ohio we would call it that.

Mr. TOWNS. What do you mean? Could you just walk me through it in terms of how you get a kickback?

Mr. SHAMANSKY. Sure. We are talking about these companies that cultivate these relationships with these big transfer agents or whoever is holding the money. Before they turn it over to these accounts, before the holder of the money turns the money over to the States, like Ohio says, you have to send a notice to the last address, oftentimes they say, you also have to make an attempt to find that person. So these outside companies come in, get these accounts, and then they do the searching, and for 25 to 50—it is basically cherry picking too. In other words, they only bother with the big ones.

So if you have real money coming to you, they will say, we will tell you you are owed \$10,000, you pay us \$2,500 to \$5,000 and I will tell you where your money is. In the meantime, the people who have this money, they did not look you up. They do not have to. And what happens is, the search firm, the reality is, I have been informed, and I hope it is not true, gives service fees, in quotation marks, service fees to the outfit that turned the accounts over to them. Let's hope it isn't true, but the consequences are startling.

Mr. TOWNS. Thank you.

Mr. SHAMANSKY. And there is no reason not to prohibit it. Mind you, we are not regulating the search firm. Please understand that. We are saying to the financial entity regulated by the SEC, you don't—you don't give these accounts to anybody on that basis. We are not regulating anybody. You don't need statutory authority to tell the holder that you already have authority over, don't do that practice.

Mr. TOWNS. The privacy issue, you don't see that as an issue at all?

Mr. SHAMANSKY. The history of it is with every State and the District of Columbia, there is—it is simply, the old expression, a red herring. It does not exist. The experience of all of the 50 States show that. If you lose a stock, you have to go through all kinds of hoops to get the stock back. The idea of the SEC—yes, I had to point out to them, and I am glad Mr. Bergmann acknowledged, the SEC has on the Internet a whole list of stocks that have been lost and stolen securities. So if you lost a stock or it was stolen or a bond or something, it is listed already, and yet there is no problem with that.

So it is very selected precedent, shall we say, that they choose to acknowledge. There is precedent for all of the things that are being suggested here.

Mr. TOWNS. Thank you very much. I have no further questions, Mr. Chairman.

Mr. OXLEY. The gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Perfect timing. I am glad I got back.

It is an honor to meet you, sir, and to have you, and they should have put honorable up there instead of mister. I was going to cut into the chairman's opening comment, but we are pleased to have you here. As a relatively new Member, I have great appreciation for those who have come before us and tried to make this system work.

I want to apologize because I have been in and out on the phone and I may ask something that has already been asked, but you sat in during Mr. Bergmann's statement and his question and answering, and of course he is gone, which is always telling, that they are not going to stay around to hear the opposing view.

Do you agree with Mr. Bergmann's prepared statement saying that the lost security holders compared to the total accounts held by the transfer agents is small? I know you have addressed that.

Mr. SHAMANSKY. The only honest answer is, if you are going to play the percentage game of what, what we are having here is a small percentage of trillions as opposed to 25 percent of \$10. And we are talking about what we have to do to strengthen our national economy, the market economy, is to assure the individual investor that if you put your money in the market, you are going to be treated fairly, and that is the essence of the security and exchange laws of our country. You want to tell your constituent he is going to be treated fairly, even if he does not cash the check, the next dividend checks that comes by on the stub, the same stamp, the same envelope, the same piece of paper says a previously sent check of yours is not cashed, and they will not do that. Prudential Insurance does.

Mr. SHIMKUS. I found your opening testimony telling when I always have citizens who may say they have a hard time getting ahold of me. I say, well, my phone number and my address is in the phone book. I mean look it up. Fortunately I don't have a lot of constituents who call me at home, but it is there, it is not any big secret.

I also appreciate your comments on, I always like to, when you follow the money, you answer a lot of questions. And the issue about holding really what I would then term the principal for years, and then someone would appear, and then get in essence the principal back without any other rate of return.

Mr. SHAMANSKY. Correct.

Mr. SHIMKUS. I think we need to probably fully explore that, as to what is fair and what should be compensated to the lost person based upon—I mean, again, follow the money. If there was a disincentive to lose people, maybe a financial disincentive, maybe they would be a little more vigilant in ensuring that. But in siding with—you know, in today's society, when we are going to be able to track people going from point A to point B on their cell phones, I mean losing people is going to be more difficult, but we still seem to do it.

Mr. SHAMANSKY. What we are talking about here today is the fact that technology has changed, and whatever might have been a decent excuse, and as a lawyer, the word "reasonable" is terribly important to me. What was reasonable in the 1930's when you are dealing with 3 by 5 cards is unreasonable today. It was not neg-

ligent then, it is negligent now, because the technology has overcome.

A surgeon today has to use all of the latest techniques when he is operating that did not exist 30 years ago, but he cannot keep operating as if it were 30 years ago. That is what we are talking about. The cost is absolutely negligible.

Mr. SHIMKUS. I was reminded, and in fact, for some reason I pulled up my Web page this morning, I think it was an accident, because I never look at my own Web page, but then my staff reminded me that we have an IRS listing of lost income tax returns on our Web page for the people of our district, which brings up, and we not only in this subcommittee, but on the full committee, we are always debating privacy, encryption, security of data bases, and I know you probably went over that with the ranking member a little bit, but can you for me talk about the privacy of security holders and data base protection?

Mr. SHAMANSKY. Every State, your State, as I remember, Illinois, every State has lists of unclaimed property.

Mr. SHIMKUS. Our State treasurer, I see.

Mr. SHAMANSKY. Okay. And all we are saying is, the States have been doing this for decades. They don't have privacy problems, they don't have security problems. The list on the Internet is nothing but a list, like in the Chicago Tribune. You don't put the money down there, you don't tell—you don't say that Bob Shamansky had so many shares of the Limited; you just say that Manufacturers Hanover or whomever it is that holds the money is holding money, period. That is all.

The reason you are not going to have a problem is because a lot of them may be a dollar or \$2, I mean you simply don't—what happens in the present system is this cherry picking goes on. The heir finders or search firms, they only take the big ones, they are not going to bother with the little ones. So the people who get hit are really hit hard, and there is no reason for any of it, because we are dealing in batches. It is all on tape, it is all through the Internet. My testimony came from my Columbus office to the printer here and it came into the committee all on e-mail, and technology has made this difference.

You mentioned about the IRS. On the last page of my testimony is a partial list of the Federal agencies and departments which hold money for thousands of citizens. The suggestion is, as a precedent, the Federal Government should have one site for all of these and you would only have to go to the one site. The technology is there. The cost is negligible. I urge the members here of the fact that maybe 20 more million homes have access, have computers at home, and if the Federal Government would simply coordinate its information, what a boon it would be to anybody, regardless of all the different organizations, arms, departments, or whatever, agencies that have money for someone else.

Mr. SHIMKUS. Thank you.

Mr. Chairman, if I could just finish up, I used to be a tax collector in my previous life. We called it county treasurer in the State of Illinois. We collected property taxes, and we had a requirement by State law to publicly notice those people who failed to pay their taxes and then when we were going to settle the tax bill we

had to publicly notice that. It did not bring any comfort to the person whose taxes we ended up selling, but it did provide me with a lot more leverage when these very angry taxpayers came in to say it was in this paper on this date, publicly noticed. So when people lose their assets, lose their assets over the statute of limitations, I do not think it is beyond our scope to make sure that the public has every opportunity to—and defend ourselves before the statute of limitations runs out—that they have every opportunity to easily access unclaimed property.

Mr. SHAMANSKY. It is simply a list which is on there any time I choose to look myself up on the list. It truly is that simple. The idea that there is a lot of high technology, a lot of all these legal or whatever problems, it is not true. I am here because it is not true.

Mr. SHIMKUS. Thank you, Mr. Chairman. I yield back.

Mr. OXLEY. Thank you. Spoken like a true tax collector, I might add.

Bob, it is good to have you back.

The gentleman from New York.

Mr. TOWNS. Thank you very much. I just want to make certain that I am clear on one issue.

When it comes to the interest, I thought it was—I am not sure in terms of how it works, and maybe you can help me with this. I thought that the interest, the State received all of the interest along the line.

Mr. SHAMANSKY. That is fine, and let me clarify that, if I may. If you have a bank account, a savings account, say, in a bank in your district and that bank account, I think in New York it may be 3 years now instead of 5, and it has been earning interest during that 3 years, when the bank sends along to, I think it is the State treasurer in New York, or whoever it is that takes it, that is one account. But we are talking about something different here.

The broker/dealer incorporated in Delaware but has an office in New York City, but the shares are in street names, it means it is in the broker/dealer's name, and the broker/dealer gets the money, the dividends that year. However, it is holding it in its account, when it, if it loses me or I am lost to it, when it sends the money on to Ohio, it only sends the dividend. In the meantime, it has been holding that money. And money, Congressman Towns, is never idle. Every single second that money is working, and the broker—that is why you have the case of Delaware v. New York involving \$890 million. This is big money. So that interest—and it is a very simple solution. The money is simply held in a trust account. The same holder, the same outfit that gets the money just puts it—instead of its account, it puts it in the trust account for its customers. That seems to me eminently fair, and no problem to do. Do they want to give up that windfall? No. Should they have had the windfall in the first place? No.

Mr. TOWNS. Thank you very much. I am happy to know there is life after you leave this place.

Mr. OXLEY. Bob, thank you. It is good to have you with us.

The subcommittee stands adjourned.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF THE SECURITIES INDUSTRY ASSOCIATION

Chairman Oxley, Ranking Member Towns, and members of the Subcommittee, the Securities Industry Association ("SIA")¹ appreciates the opportunity to share our views on the *Money Return Act of 2000*, H.R. 3997, a bill designed to improve systems for the delivery of dividends, interest, and other valuable property rights to lost securityholders. The securities industry strongly supports the goals of the proposed legislation but we question whether legislation is necessary to accomplish these objectives. Moreover, we respectfully disagree with the notion of subjecting the industry to potentially devastating civil liability in the absence of a record of clear abuse.

Customers are the lifeblood of the securities industry. They are our single most important asset and we have strong incentives to maintain frequent contact with them. Consequently, the incidence of lost securityholders in the brokerage industry is low, primarily because firms have stringent procedures in place and act quickly to locate a securityholder who becomes "lost."

H.R. 3997 would, among other things, extend to all paying agents, including broker-dealers, obligations to exercise due diligence in the delivery of dividends, interest, and other valuable property rights to their owners by requiring them to conduct data base searches, similar to those required of transfer agents.² Paying agents that fail to exercise due diligence shall be liable to any lost securityholder or class of lost securityholders for damages, which may be trebled if the court determines that such failure constitutes gross negligence.

We respectfully submit that legislation is unnecessary as sufficient economic incentives exist to ensure the industry's due diligence in serving its customers. The SIA agrees that data base searches are an effective method of locating lost securityholders. In fact, most broker-dealers have been employing this technology for many years.

Unfortunately, we are not aware of any industry-wide statistics on lost securityholders; however, we believe the problem has been grossly overstated. Based on an informal survey of SIA member firms, we estimate that less than 1% of all customer accounts held at broker-dealers, which number in the tens of millions, are "lost." Therefore, we are confident that broker-dealer practices have been effective in locating lost securityholders and minimizing the amount of securities industry assets that escheat to the states. Moreover, we believe that regulations adopted in 1997, which impose due diligence obligations on transfer agents, have further reduced the number of lost securityholders. Without some evidence that current industry practices are ineffective, additional legislation at this time would appear to be a solution in search of a problem.

HOW SECURITYHOLDERS BECOME "LOST"

Abandoned property is tangible or intangible property that is unclaimed by its rightful owner. Although it seems inconceivable that a securityholder would "abandon" their property, for a variety of reasons, a considerable number of securityholders are "lost" each year when dividend or interest payments, or other correspondence sent to the securityholder, are returned as undeliverable. Although abandoned property is not unique to the securities industry, lost securities have been the subject of several news reports over the last several years.³ Other forms of abandoned property include, for example, savings and checking accounts, uncashed payroll checks, utility and rental deposits, retirement benefits, safe deposit box contents, tax and fee refunds, old life insurance policies, and accident benefits. Indeed, virtually every industry contributes to the hundreds of millions of dollars turned over to states each year under abandoned property laws.

In the securities industry, securityholders may become lost through no fault of the financial institution holding the assets. The most common situation occurs when a securityholder relocates and leaves no forwarding address. Additionally, a transfer of beneficial ownership, *e.g.*, through inheritance, can also result in a securityholder becoming lost. As a result, the securityholders do not receive principal, interest, or

¹ The Securities Industry Association ("SIA") brings together the shared interests of nearly 800 securities firms, employing more than 380,000 individuals, to accomplish common goals. SIA members—including investment banks, broker-dealers, and mutual fund companies—are active in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans, and accounts for \$270 billion of revenues in the U.S. economy.

² 17 CFR 240.17Ad-17.

³ See, *e.g.*, Quinn, *Calling All—Some?—Lost' Securities Owners*, The Washington Post, June 28, 1998.

dividend payments to which they are entitled, and the property ultimately can escheat to the state after the time period established under the applicable state abandoned property laws.

Customers of a broker-dealer who hold their securities in street-name on the books of the broker-dealer are less susceptible to becoming lost. Their securities are transferred by the broker-dealer, along with shares held by other customers in the same security, into nominee name and held at a securities depository, where purchases and sales are reflected as book entry movements in the account of the broker-dealer participant.

When securities are held in street-name, dividends and interest are credited to the account of the broker-dealer on the depository's books, and in turn to the customer account on the broker-dealer's books. Brokerage customers, **because their underlying assets are held on the broker-dealer's books**, are diligent about maintaining contact with the firm. Likewise, the firm has an economic incentive in maintaining contact with the securityholder who may purchase additional securities through the broker-dealer. Consequently, very few broker-dealer customers actually become "lost." If an account statement of such a securityholder is returned as undeliverable, diligent efforts, often at considerable expense to the firm, are undertaken to relocate the customer.

The more common situation where a securityholder is likely to become "lost" is when the original shares are held directly by the securityholder and, because the securityholder has moved without leaving a forwarding address, dividends and interest checks mailed to the securityholder by the transfer agent are returned as undeliverable. Unlike a brokerage account where the underlying securities are in the account, the amounts due to a lost securityholder on the books of a transfer agent can be minimal and may not justify the expense of extensive search procedures. However, as discussed in more detail below, the SEC has adopted rules requiring transfer agents to conduct data base searches when such a securityholder becomes lost.

BROKER-DEALERS EMPLOY EFFECTIVE PROCEDURES TO LOCATE LOST SECURITYHOLDERS

Securityholders represent a continuing stream of income for a broker-dealer and so the incentive to maintain close contact is great. Contact between the registered representative and the customer is frequent and the instances where an account holder is truly lost are few. Nevertheless, because the industry is holding huge sums of money on behalf of millions of investors, inevitably broker-dealers will have abandoned property that will escheat to the state each year. Broker-dealers generally have stringent procedures in place to locate lost securityholders before this happens.

Typically, broker-dealers handle three kinds of abandoned property. Generic abandoned property is the underlying assets, usually securities, in an account in which the broker-dealer has lost contact with the beneficial owner. Dividends and interest paid on the underlying securities can also cause cash to accrue in the beneficial owner's account. Finally, there is abandoned property that results from the failure of financial institutions to collect dividends and interest from each other.⁴

Accounts generally are considered abandoned if correspondence is returned as undeliverable anywhere from two to five times. Because self-regulatory organization ("SRO") rules require that quarterly account statements be sent to customers,⁵ within four months from the date of the first failed delivery, efforts may be underway to locate the lost securityholder. In most cases, the branch office where the account is maintained is notified and the registered representative is directed to try to obtain a current address. If the branch office is unable to make contact with the securityholder, the account is coded as undeliverable and is moved to an unclaimed property account range for the purpose of calculating the time of dormancy under state abandoned property laws. It remains here until it is required to be turned over

⁴For example, a security held by a customer in street name is sold shortly before a dividend is declared and paid. If the security has not been transferred into the name of the financial institution that purchased the security on behalf of a customer, the selling financial institution will receive the dividend. In such a case, the customer that purchased the security before dividend date will be credited with the dividend on payable date but the selling financial institution will have a dividend overage. The financial institution holding the security on behalf of the purchasing customer will have to make a claim against the selling financial institution for that amount. Because some financial institutions are not diligent about researching and collecting these amounts from each other, this discussion does not focus on this form of abandoned property. In these cases, however, all beneficial owners have been credited with the appropriate dividends and interest.

⁵See, e.g., New York Stock Exchange Rule 409 and National Association of Securities Dealers Rule 2340.

to the state pursuant to state abandoned property laws, generally between three and seven years.

Although the account has been moved to an unclaimed property range, efforts to locate the lost securityholder continue. Broker-dealers routinely search automated data bases such as leading credit bureaus by name and social security number in an effort to locate a current address. Other methods include using CD-ROM technology for searching telephone directories, and inquiring at the bank where previous disbursement checks were presented to learn if the bank has a current address.

Broker-dealers also may use professional search firms such as EquiSearch and Keane Tracers that charge a fee but employ more thorough search techniques. In no case is the fee passed on to the securityholder. The timing of such a search varies among broker-dealers but generally is conducted approximately two years after the recoding of the account. The waiting period is used because many accounts are reactivated during this period through internal efforts at the firm.

SIA believes these methods have proven to be effective in locating lost securityholders. Although we are not aware of any industry-wide statistics on the number of lost securityholders, over the last several years, in connection with SEC initiatives in this area, SIA polled member firms in an effort to quantify the amount of money escheating to the states each year from the brokerage industry as a result of lost securityholders. In May of 2000, we collected information from 17 firms representing a cross section of the industry. We extrapolated using numbers provided by this representative sampling and estimate that the number of lost securityholder accounts in relation to the total number of accounts is approximately 8/10 of one percent,⁶ an impressive statistic given the tens of millions of customer accounts that broker-dealers service.

SEC ACTIONS THAT ADDRESS LOST SECURITYHOLDERS

As we have noted, the SIA believes there is a higher incidence of lost securityholders when a securityholder who holds shares directly relocates without leaving a forwarding address and simply forgets about dividend and interest payments that may be forwarded by the paying agent. In 1997, the Commission acted to address this situation by adopting Rule 17Ad-17, which imposes an affirmative obligation on transfer agents to search for lost securityholders.⁷ At a minimum, transfer agents must conduct two searches using an information data base. In addition, transfer agents may not use any service designed to locate their lost securityholders that results in a charge to a securityholder until after two data base searches have been conducted. In adopting Rule 17Ad-17, the Commission directed its staff to review the operation of the adopted rules after three years and to report back to the Commission on its findings.⁸

In June 2000, the Commission revised the reporting obligations, requiring information to be submitted on Form TA-2, the annual report filed by all registered transfer agents, and rescinded Rule 17a-24.⁹ In adopting the amendments, the Commission stated that the new reporting requirements should enable the Commission to assess the scope of the lost securityholder problem and to assess the effectiveness of the search requirements of Rule 17Ad-17 more effectively. We believe when the Commission reviews this data, it will see that the magnitude of the problem is much less than news reports and other alarmists have projected. We urge the Subcommittee to evaluate this information before determining that additional measures are necessary to locate lost securityholders.

COMMISSION-RUN DATA BASE IS UNNECESSARY AND WOULD BE INCOMPLETE

The bill also would require the Securities and Exchange Commission ("Commission") to establish, or provide for the establishment of, a web-based data base that would contain the names of lost securityholders, paying agents, and issuers. Paying agents would be required to report information on lost securityholders to the Commission or its designee on a periodic basis.

As a practical matter, the web-based data base provided for in the bill would be inferior to public and private data bases that already exist. Because it would contain

⁶Seventeen reporting firms had 315,841 lost securityholder accounts out of 39,786,203 total accounts.

⁷Securities Exchange Act Release No. 34-39176 (October 1, 1997), 62 FR 52229.

⁸*Id.* At 52229. At the same time it adopted Rule 17Ad-17, the Commission adopted Rule 17a-24, which required transfer agents to disclose the aggregate number of lost securityholder accounts as of June 30 of each year and the percentage of total accounts represented by such lost securityholder accounts. This was designed to assess the effectiveness of the search requirements of Rule 17Ad-17.

⁹Securities Exchange Act Release No. 34-42892 (June 2, 2000), 65 FR 36602.

information *only on securityholders*, it would be an added level of bureaucracy that duplicates more complete information on unclaimed property from all sources that currently is available in other data bases. It is our understanding that most states now post information on unclaimed property on the Internet. The National Association of Unclaimed Property Administrators ("NAUPA") provides a link to these websites and also sponsors Missingmoney.com, a database containing unclaimed property records from participating states, that is searchable on the web. It is a free source for unclaimed property searches sponsored by participating states and the NAUPA.

Finally, the bill would establish a new federal agency to collect and publish information on unclaimed property held by the U.S., and to establish procedures for restoring such monies to rightful owners. The SIA believes there is simply no justification for creating another bureaucracy with such a narrow purpose, particularly in light of the proliferation of web-based databases that will enable owners to quickly and easily search for property they have inadvertently abandoned.

CONCLUSION

Despite inflammatory projections of millions of lost securityholders owed billions of dollars in dividends and interest, SIA believes the securities industry does an exemplary job of locating lost securityholders and reuniting them with their assets. Broker-dealers maintain close relationships with customers and have stringent procedures in place to locate securityholders who become lost. Informal survey results indicate that lost securityholders represent less than $\frac{8}{10}$ of 1 percent of all accounts held by broker-dealers. We respectfully submit that economic incentives, not legislation, ensure the industry's due diligence in serving its customers. Furthermore, advances in technology and public and private sector initiatives are making quicker and more thorough searches possible at little or no cost. The proposed bill is a solution for a problem that is *deminimis*.