

# THE STA

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*Established 1911*

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November 4, 2014

Ms. Katie Robinson  
Staff Liaison  
Uniform Law Commission  
11 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602

### **Re: Project to Revise the Uniform Unclaimed Property Act**

Dear Ms. Robinson:

I am writing on behalf of The Securities Transfer Association (“STA”) to provide several recommendations to the Uniform Law Commission’s Drafting Committee (the “Committee”) which is revising the Uniform Unclaimed Property Act (the “UUPA”). The STA appreciates the opportunity to provide input to the Committee in relation to this important process.

The STA is an organization of professional recordkeepers that interact daily with both issuers and their investors. Founded in 1911, the STA’s membership is comprised of over 150 large and small transfer agents in the United States maintaining records of more than 100 million registered shareholders on behalf of more than 15,000 issuers (from the largest public companies to small privately held companies). Because of our involvement with the issuer community on a daily basis, we can offer expert views with respect to some aspects of the proposed changes to the UUPA. As an organization of agents for Issuers, or “Holders”, the STA’s comments are directly related to those sections of the legislation that cover Intangible Interests in Business Associations and other securities related property.

We ask the Committee to consider the following recommendations;

#### **1. Securities should be “Lost” prior to being eligible for escheat/Holding period prior to liquidation.**

The STA notes the position of the National Association of Unclaimed Property Administrators (“NAUPA”) in relation to this issue, and

NAUPA's position that activity should be the only standard applied in determining whether securities are eligible for escheatment to a state. The STA is concerned that there is no clear definition of "activity" that is applied uniformly by state administrators. The implementation/continuation of a "lost" standard would provide certainty as to the requirements for securities to be deemed eligible, as the term "Lost Securityholder" is clearly defined within rule 17Ad-17 of the Securities Exchange Act of 1934.

As securities, whose value are subject to market fluctuation, are the only intangible property type that is converted by the states through their liquidation procedures, the STA believes that taking the most conservative approach when transferring property from the owner is in the best interests of the property owner.

In line with the goal of protecting shareholder value, we also recommend that a minimum holding period of 24 months be adopted to allow owners the time and opportunity to re-claim their assets before they are liquidated.

Securities property is administered by transfer agents on behalf of issuer holders, and transfer agents are subject to federal regulation in this area, in particular rule 17Ad-17 under the Securities Exchange Act of 1934. The implementation of an activity only standard, coupled with prompt liquidation, render meaningless the federal regulation which was enacted specifically to protect security holders' rights. Utilizing the lost standard mandated by our federal regulator will allow the state and federal laws to be read harmoniously, while protecting rightful owners, as they were intended.

## **2. Securities held in plans that allow for re-investment of dividends:**

Absent the adoption of a "Lost" standard for all securities, at a minimum, the Committee must consider adopting a lost standard on securities ownership vehicles that are designed to be passive by nature. Generally, dividend re-investment and direct stock purchase plans are seen as long term investment vehicles that require no owner initiated interaction with the holder.

The nature of these plans and expectation of their participants is that dividends will continue to be re-invested and that their investment will be available to them at a time of their choosing. Participants receive regular periodic statements, and IRS information returns, and if these documents are not returned as undeliverable, the STA believes that it is reasonable to assume that the owner is fully aware of their investment.

## **3. Payments delivered by electronic means and not returned as undeliverable, should be considered valid activity on the account of the owner.**

STA members act as paying agents on behalf of our issuer clients and deliver substantial numbers of dividend and other payments to owners via electronic methods. Our members utilize the National Automated Clearing House Association ("NACHA") Operating Rules and Guidelines which govern the delivery and receipt of a large percentage of such payments.

The NACHA rules contain set procedures that must be followed if payments cannot be posted to recipient accounts. Therefore, if a payment is not returned as undeliverable, we believe this provides clear evidence that the intended recipient has received the payment.

The owner's account (and the securities generating the payment) should not be considered dormant in the absence of additional, owner initiated activity. Successful remittance of funds via electronic payment systems should be construed in the same light as the cashing of a check.

**4. Securities held under an Employee Benefits/Share Plan(s):**

Securities subject to employee ownership plans which are registered to existing employees of an issuer holder should be exempt from escheat while the owner remains in the employment of the holder.

Many of these plans are maintained by third party administrators and not by the employer. In the normal course of plan operations, it would not be uncommon for an employee to have only passive involvement with the administrator, while obviously maintaining an active dialogue with her employer. Again, continued employment should exempt these securities from escheat.

**5. Restricted Securities should be exempt.**

Ownership interests that place restrictions on the actions of the owner until such time as certain conditions are satisfied should be exempted from escheat until such time as the conditions are met. Restricted securities by definition are not freely available to the owner, and therefore should not be freely available to the states.

**6. Retention Periods should be clearly defined.**

Current audit practices place a burden on holders and transfer agents to produce records well past typical retention periods. The law should define what documents need to be retained and for how long. Otherwise, holders must either keep records indefinitely at considerable cost or accept the risk of estimations against "assumed" errors of the past. Neither of these outcomes serves the interests of asset owners. Estimated payments can never be paid back to owners and therefore exist only as a revenue stream for the states and a penalty against holders who have chosen to adhere to internal record retention policies.

Again, the STA is happy for the opportunity to provide input to the Committee as it progresses with redrafting the UUPA. Several of our members, Jennifer Borden of Unclaimed Property Recovery and Reporting, Cynthia Nisley of Georgeson, Debbie Zumoff of Keane, and Mario Passudetti, a member of our Board of Directors, will be attending the upcoming Committee meetings on November 7<sup>th</sup> and 8<sup>th</sup>. We look forward to the discussion.

Very truly yours,



Todd J. May  
President