

May 3, 2017

David M. Gregor
State Escheator
Department of Finance

Via email: david.gregor@state.de.us

Re: Proposed Unclaimed Property Regulations

Dear Mr. Gregor:

I represent both the Securities Transfer Association (“STA”) and the Shareholder Services Association (“SSA”).¹The STA and SSA appreciate the opportunity to provide comments relating to the regulations proposed by your office in accordance with the directive of Senate Bill 13 (“SB13”). For the reasons discussed below, the STA and SSA think that minimal adjustments to certain sections of the regulations will provide much needed clarity for issuers and record keepers of securities which will facilitate their compliance with Delaware’s Escheat Law. The suggested modifications will also align the Department’s enforcement with relevant Internal Revenue Service guidance, existing law and the mandate of unclaimed property laws to protect owners’ interests.

2.5.2 – Indication of Owner Interest in the Property

In 2012, the STA communicated extensively with the Department regarding appropriate indications of interest in securities property. In May of 2012, the State Escheator recognized the non-return of 1099 forms as an indication of the owner’s interest in securities property. This was in response to the STA’s general concerns: specifically, investment theory typically dictates that shareholders buy and hold securities for extended periods of time, with no expectation of active contact with the holder. The State Escheator agreed, and referenced “IRS expectations” as the basis for recognizing the non-return of 1099 forms and the execution of W-8 BEN forms within the dormancy period as valid indications of owner interest. This concept applies to all securities accounts. However, the wording of the regulation seems to imply that this form of owner interest is only sufficient for ACH and DRP accounts. As the IRS expectations regarding the provision of these forms are identical whether the account is held in ACH or DRP or not, the regulation should similarly apply to all securities accounts, whether or not the owner has arranged for ACH or dividend reinvest. There is no reason to reject the non-return of a 1099 form as an indication of interest for the owner of a security who receives a dividend check, while accepting it as an indication of interest for the owner of the same security who happened to arrange for ACH. Therefore, we respectfully request that you replace the phrase “for ACH or Dividend Reinvestment accounts” with “for securities” in the parenthetical of section 2.5.2.

¹ Founded in 1911, the STA represents more than 100 transfer agents who are responsible for the record keeping for more than 15,000 issuers of securities, representing the investments of over 100,000,000 registered shareholders. The SSA was founded in 1946 with a mission of facilitating its members’ compliance with complex state and federal regulatory matters relating to securities. The SSA counts hundreds of public companies as its members and is proud to support its members’ service to their shareholders while achieving regulatory compliance. Combined, the STA and SSA’s members are directly or indirectly responsible for the record keeping and maintenance of the securities investments of one third of the population of the United States. For many of these shareholders, these investments in securities represent their life savings.

2.2.2.3 – Potential double liability, foreign property

In S.B. 13, the legislature made it clear that property should only be subject to the jurisdiction of Delaware if the jurisdiction with primary authority does not have an unclaimed property law. See, §1141. However, the regulations do not afford deference to the laws of other countries, purporting to extend Delaware's reach to any property where the *"last known address of the owner is not located in any state of the United States . . . and the Holder is incorporated or formed under the laws of the State of Delaware."* This section should be adjusted in order to recognize that the jurisdiction with primary authority to escheat may be another state or a foreign country. Pursuant to federal law, holders may be required to report unclaimed property to other countries if the address of the owner is in a country with an unclaimed property statute. Compliance with the regulations as written would therefore result in impermissible double liability for holders organized in Delaware holding property of an owner with an address in a foreign country when said country's law provides for escheat. As double liability is a clear due process violation, we urge you to amend 2.2.2.3 to pay respect to the escheat laws of foreign nations.

2.2.6 – Indemnification

Both the statute and regulations provide important indemnifications for holders who comply with the statute in good faith. In light of the Department's clear intention to extend its reach to foreign property, we request that the Department specifically confirm that this indemnification similarly extends to claims filed outside of the United States. Such confirmation will provide holders with the surety needed to comply with the Department's instructions in a very fluid environment.

On behalf of the STA and SSA, we sincerely appreciate the opportunity to advance a discussion with the Department that will facilitate compliance for holders while protecting shareholders' property interests. Thank you in advance for your consideration. Please feel free to contact me to arrange further dialogue with the STA and SSA on these topics.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Borden".

Jennifer C. Borden