INVESTMENT COMPANY INSTITUTE

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February 18, 2016

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

Re: The Revised Uniform Unclaimed Property Act

Dear Ms. Robinson:

Thank you for promptly distributing the discussion draft of the Revised Uniform Unclaimed Property Act ("RUUPA" or the "Act") that will be considered by the Drafting Committee during the upcoming meeting in Dallas. I look forward to seeing you and the members of the Drafting Committee at that meeting and continuing to provide input on the draft. In anticipation of that meeting, this letter contains the comments and recommendations of the Investment Company Institute[1] on the current draft. If appropriate during the meeting, I will be happy to speak to any of these recommendation or respond to any questions the Committee has regarding them. I believe that, for the most part, these recommendations are more technical, rather than substantive, in nature.

[1] The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of $17.6 trillion and serve more than 90 million U.S. shareholders. Due to the nature of the Institute's membership, our comments relate solely to the Act's impact on mutual fund shareholders.

As with our previous comments to the Committee, the comments in this letter are offered on behalf of our members and the 90 million mutual fund shareholders we represent. Our goal in working with the Committee on this very important initiative has been, and continues to be, to ensure, as much as possible, that RUUPA does not adversely impact the interests of mutual fund shareholders. Indeed, we want to ensure that, when Americans choose to save for retirement, education, or a rainy day by investing in mutual funds, their money will be there for them when they need it. With respect to the issues of greatest concern to mutual fund shareholders, we have found the Committee, throughout its hearings and deliberations on RUUPA, to be very fair, open-minded, and intent on acting in the best interests of the rightful owners of property. The Committee has also demonstrated its interest in ensuring that the revised Act will stand the test of time, for example, by including provisions expressly addressing the growing trend of mutual funds and their shareholders communicating exclusively by electronic means. While the Committee has not always concurred with revisions recommended by the Institute, we believe the current draft represents an appropriate balancing of the competing interests the Committee has considered throughout this process and we believe it will protect the interests of the owners of mutual fund accounts. We commend the Committee for its work.

I. SECTION 102(3), DEFINITION OF "BUSINESS ASSOCIATION"

As proposed, Section 102(3) would define "business association" to include an "investment company." This appears to be a vestige of both the 1981 and 1995 Acts.[2] We recommend that this reference either be deleted or revised to read an "investment company other than an investment company registered under the Investment Company Act of 1940."[3] This recommendation is to eliminate confusion regarding the treatment of mutual funds (*i.e.,* registered investment companies) vis-à-vis business associations under RUUPA. A search of RUUPA indicates that the term "business association" is used only in the following provisions:

(1) Section 103(4)(B), definition of "domicile;"
(2) Section 103(21), definition of "person;"

[2] Section 1(5) of the 1981 Act defines "business association" to include investment companies. Section 1(3) of the 1995 Act defines the term to include mutual funds and investment companies.

[3] Hedge funds are an example of investment companies that are not required to be registered under the Investment Company Act of 1940. The concerns we discuss are limited to the Act's impact on registered investment companies. We express no views regarding the Act's treatment of hedge funds and other unregistered investment companies.

(3) Section 201(5), Presumption of Abandonment for debts of "a business association;"
(4) Section 201(9), Presumption of Abandonment for property distributable by a "business association" in the course of a dissolution; and
(5) Section 208(3)(C), Indication of Interest in Property involving a check relating to an "interest in a 'business association.'"

None of these provisions would seem to apply to a mutual fund (*i.e.,* registered investment company):

(1) As a federally-chartered entity, the "domicile" for a mutual fund will be governed by Section 103(4)(C) of the Act rather than by Section 103(4)(B).
(2) The definition of "person" will pick up mutual funds through its inclusion of "other legal entity," as all mutual funds are organized under state corporate or business trust laws.
(3) Resolution of the debts of a mutual fund will be governed by the Investment Company Act of 1940 and not by state law or Section 201(5).
(4) Resolution of a mutual fund's assets in the event of the fund's dissolution will be governed by the Investment Company Act of 1940 and overseen by the U.S. Securities and Exchange Commission, not Section 201(9).
(5) An owner of mutual fund shares will demonstrate an interest in those shares by presenting a check relating to the account or the underlying security in the account pursuant to Section 208(3)(A) or (B) rather than pursuant to Section 208(3)(C).

We are concerned that including registered investment companies within the definition of "business association" will result in unnecessary confusion in understanding how the above provisions apply to mutual funds that qualify as business associations pursuant to Section 102(3). We believe that excluding registered investment companies from this definition will not impact the treatment of mutual funds under the Act or in any way diminish the responsibilities of mutual funds – and the states' authority over them – under the Act.

II. SECTION 201(3)(b), PRESUMING SECURITIES ABANDONED[4]

[4] Section 102(25) of the current draft contains two alternatives for the definition of "security." The Institute can support either alternative. However, if the Committee elects Alternative A, we recommend that it delete subdivision (25)(A)(iii) and revise subdivision (25)(A)(ii) as follows: "(ii) a share or similar ownership ~~equity~~ interest in a security issued by an entity registered as an investment company under the Investment Company Act of 1940 ~~federal investment company laws~~;". The revision to (ii) is in recognition of the fact that investors do not purchase an "equity" interest in registered investment companies. Instead, their ownership represents their undivided pro-rata share of the investment company's portfolio of securities. Our recommended revision would also replace the generic "federal investment company laws" with the specific Federal law that governs investment companies. The deletion of (iii), relating to unit investment

RUUPA Section 201(3) will govern when a "security" is presumed abandoned. As proposed, Section 201(3) will bifurcate the dormancy period and trigger for owners of securities depending upon whether the owner receives First-Class United States mail from the holder. If so, the trigger is returned mail and the dormancy period is 3 years; if not, the trigger is an indication of interest and the dormancy period is 5 years. The Institute recommends that the dormancy period be the same for all securities and that this period be five years. We believe the longer period is in the best interest of owners for reasons previously communicated to the Committee. These reasons include the fact that a shorter period can be demonstrated to harm owners of securities.

III. SECTION 201, "UNDELIVERABLE MAIL"

The Reporter's Note to Section 201 of the Act indicates a need for a comment "regarding when mail is returned marked as 'undeliverable.'" The Institute recommends that, as used in Section 201, 'undeliverable' be interpreted to mean the sending of mail that would trigger the owner of the securities being a "lost securityholder" as defined in SEC Rule 17Ad-17 under the Securities Exchange Act of 1934. The SEC's rule defines "lost securityholder" as a securityholder:

> . . . to whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file or customer security account records of the broker or dealer has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent, broker, or dealer may deem the securityholder to be a lost securityholder as of the day the resent item is returned as undeliverable.

In our view, this is an appropriate standard for defining when mail is considered undeliverable for RUUPA because it will provide consistency between the SEC's long-standing standard governing returned mail and the standard used by the states under RUUPA. In further support of this, we note that Item 11 of SEC Form TA-2, which is an annual report the SEC requires all transfer agents to file, requires the transfer agent to report the number of database searches conducted to find lost securityholders, the number of lost securityholder accounts submitted for database searches, and the number of addresses obtained from the database searches. Using a long-accepted will avoid the confusion that might result from a different or inconsistent RUUPA standard.

IV. PROPERTY HELD IN AN UGMA OR UTMA ACCOUNT [SECTION 202]

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trusts ("UITs") registered under "clause (ii)" is to reflect the fact that UITs *are* registered investment companies, which renders (iii) duplicative and unnecessary.

While Section 202 of RUUPA is intended to govern the presumption of abandonment for property held in a tax deferred "or custodial account," it is silent as to property held in a custodial account under a state's Uniform Gift to Minors Act ("UGMA") or Uniform Transfer to Minors Act ("UTMA"). As a result, notwithstanding the custodial nature of these accounts, under RUUPA, the nature of property in them will control how the account escheats. So, for example, if the UGMA or UTMA account consists of securities, the account will presumably escheat pursuant to Section 201(3). To avoid this result and respect the state laws governing UGMA and UTMA accounts, we recommend that Section 202 be revised to accommodate such custodial accounts. We further recommend that, consistent with the nature and purpose of these accounts, they have a 30-year dormancy period.

Our recommendation could be accomplished in one of two ways. The first would be to revise Section 202(b) in relevant part as follows:

> **Section 202. WHEN A TAX DEFERRED OR CUSTODIAL ACCOUNT IS PRESUMED ABANDONED.**
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> * * *
>
> (b) Property, other than property described in subsection (a) and property held in a plan described in Section 529A of the Internal Revenue Code, held in an account or plan that qualifies for tax deferral under the income tax laws of the United States <u>and property held in an account established in accordance with a state's Uniform Gift to Minors Act or Uniform Transfer to Minors Act</u> is presumed abandoned if it is unclaimed by the owner three years from the later of:

The second way would be to have a stand-alone provision that tracks Section 202(b) added to the Act to govern such accounts:

> (c) <u>Property held in an account established in accordance with a state's Uniform Gift to Minors Act or a state's Uniform Transfer to Minors Act is presumed abandoned if it is unclaimed by the owner three years from the later of:</u>
>
> (1) <u>the date a second item send to the custodian of the account by First-Class United States mail is returned as undeliverable by the United States Postal Service, unless a later mailing by First-Class United States mail to the custodian was not returned as undeliverable; or</u>
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> (2) <u>30 years have elapsed after the account was opened.</u>

V. SECTION 207, WHEN RELATED PROPERTY INTEREST PRESUMED ABANDONED

Section 207 would provide that, at the time property is presumed abandoned under the Act, any related property of the owner would also be presumed abandoned. A "Reporter's Note" to this section states that "Style asked if this Section is needed." The Institute strongly recommends that this section be deleted. Of concern to us is the impact of this provision on mutual fund shareholders. In particular, if a mutual fund sends the owner of a mutual fund account a check in the amount of $50[5] or more (*e.g.,* a dividend check) and the owner, for whatever reason, elects not to cash the check, *the owner puts the entirety of their mutual fund account at risk of being presumed abandoned.*[6] This seem most unfair and adverse to the interest of owners of these accounts. Such accounts should be presumed abandoned in accordance with Section 201(3), not on the basis of a single uncashed check. Accordingly, we strongly recommend that it be deleted. If the Committee elects to retain it, we recommend that it expressly exclude any security subject to Section 201(3) of RUUPA.

VI. SECTION 208, INDICATION OF OWNER INTEREST IN PROPERTY

Section 208 would define what constitutes an "indication of interest" in property. This is significant for provisions such as Section 201(3)(B) that presume property is abandoned unless the owner has expressed an indication of interest in it. In the current version of RUUPA, language regarding treating automated deposits or withdraws (including reinvested dividends) in an account as an indication of the owner's interest in the account is bracketed. We strongly recommend that these brackets be removed. Our reasons for this recommendation were discussed in detail in our November 2015 letter to the Drafting Committee,[7] which noted that treating such automated activity as an indication of interest in the account "**is in the owner's best interest and we know the harm that will result to investors from not including automated account features as an indication of interest**." [Emphasis in original.] The letter also noted that, so long as such features are in place, the owner of a mutual fund account will receive account statements every quarter detailing such activity. The same is not true when the account escheats to a state because ***"the states will not be sending out quarterly statements***

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[5] Pursuant to Section 402(a)(5), holders are not required to report property with a value of less than $50.

[6] We noted that pursuant to SEC Rule 17Ad-17(c), which the Dodd-Frank Act required the SEC to adopt, all "paying agents," which includes transfer agents, brokers, and dealers, are required by law to notify any person who was sent a check by the paying agent and who has failed to cash that check within six months a written notice of the fact that the check has not yet been cashed. Should such notice be returned to the paying agent as undeliverable, the presumptions in Section 201(3) of RUUPA would apply to the account. However, if the notice is received and the owner elects not to cash the check after notice, that is the owner's prerogative and such election should not result in the entirety of the owner's account being presumed abandoned.

[7] *See* Letter from the undersigned to Messrs. Rex Blackburn, Michael Houghton, and Charles A. Trost, dated November 3, 2015 at pp. 5-9.

or other Federally-required communications on these accounts." [Emphasis in original.] For these and the additional reasons previously communicated to the Committee, we strongly recommend that automated activity on a mutual fund account be deemed to be an indication of the owner's interest in the account and we strongly recommend that the brackets be removed from Section 208(a)(5).

VII. SECTION 501, NOTICE TO APPARENT OWNER BY HOLDER

This section of the Act will govern the notice that holders must send to owners of property that is presumed abandoned. Importantly, the medium used to deliver the notice will differ depending upon whether the owner receives communications from the holder by email, electronic means, or by First-Class United States mail. The Institute appreciates the Committee considering the variety of means through which owners and holders may communicate regarding the owner's account and we appreciate the Act expressly addressing this variety. As proposed in this section, if the owner receives communications from the holder by email or electronically and fails to indicate an interest in the owner's account for a specified period of time, the holder must send the owner the required notice by First-Class United States mail. We strongly support this approach to delivery of the required notices because we believe that it not only recognizes how some holders and owners communicate today, but it is flexible enough to evolve with changing communication technologies that may be developed in the future. Also, we support holders having to default to sending notices by First-Class United States mail because we believe this is in the best interest of owners. Accordingly, we strongly support this section.

We recommend, however, that the Committee clarify in connection with this section that any First-Class mail sent to the owner under Section 501 that is not returned to the holder as undeliverable shall prevent such property from being presumed abandoned. This could be accomplished either by a Reporter's Note or by adding an additional sentence to clarify this issue.[8]

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The Institute appreciates the opportunity to provide the Committee these additional comments and appreciates the Committee's consideration of them. If you have any questions concerning these comments, or if I can be of further assistance, please do not hesitate to contact me. I look forward to the upcoming meeting in Dallas.

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[8] For example, a sentence along the lines of the following could be added to the end of Subsections 501(c) and (d): <u>If any First-Class United States mail sent to the owner pursuant to this section is not returned to the owner as undeliverable, the property shall not be presumed to be abandoned.</u>

Sincerely,

/s/
Tamara K. Salmon
Associate General Counsel