



July 8, 2016

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Sent via email: charlie.trost@wallerlaw.com

Re: Uniform Unclaimed Property Act Revision | Definition of Security

Dear Mr. Trost:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ greatly appreciates your efforts as the reporter, as well as the efforts of the Uniform Law Commission Drafting Committee to Revise the Uniform Property Act generally, in administering a fair and transparent process over the course of the last three years; a process in which all interested parties received a fair hearing. This process bears the hallmarks of the best civil societies offer citizens, and SIFMA members are deeply grateful for it.

While there are still a number of continuing concerns SIFMA has with the most recent May 26, 2016 version of the Uniform Unclaimed Property Act (the Act),² we are not addressing these concerns in this letter to avoid duplication, as we are aware that other stakeholders are submitting these issues to you.³ However, an issue of fundamental importance to SIFMA from a statutory construction perspective is the consistent treatment of assets held within a customer account at a

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Available at http://www.uniformlaws.org/shared/docs/Unclaimed%20Property/2016AM_RevisedUnclaimedProperty_Draft.pdf.

³ Continuing issues include, but are not limited to, concerns regarding Section 209 not clearly stating in its text that a security is not presumed abandoned as a result of a dividend payment being presumed abandoned, nor does it clearly state that the underlying bond will not be presumed abandoned just because an interest payment with respect to the bond is presumed abandoned.

broker dealer as it relates to dormancy trigger and period, among other material provisions of the Act. Section 102(27) of the Act contains the following definition of “security:”

“Security” means a security or security entitlement as defined in [cite to appropriate sections of Article 8 of the Uniform Commercial Code].

SIFMA understands this definition is intended to cover the property held within the accounts of broker dealers. However, the definition as currently constructed is at odds with the current practice of Holders and States regarding the expected holistic treatment of broker dealer accounts (i.e., the treatment of the entire account as a unit, and thereby not treating the individual assets in the account as individual units for dormancy trigger and period analysis). Separately, SIFMA understood that a definition of security that treats an account at a broker dealer holistically was agreed upon and approved by all relevant stakeholders, including the National Association of Unclaimed Property Administrators and the Drafting Committee.⁴

There is a long-standing consensus among states and broker dealers that customer accounts held at broker dealers are considered holistically and not analyzed asset by asset within the account, as the existing definition would be read to imply. Said another way, an asset within a brokerage account that does not fall under the Uniform Commercial Code definition of security would fall under a catch-all provision and thereby have a materially different dormancy trigger and period, among other material statutory impacts. This outcome would require byzantine analysis of accounts and individual assets based on varying states law, and result in the partial escheatment of certain accounts based on the individual assets held within. Asset by asset analysis, and attendant complexity and confusion, is not in the best interest of the consumer, and is materially unworkable for the state and the holder.

Based on the foregoing, SIFMA recommends that the definition of “security” be amended to read as follows:

“Security” means a security or security entitlement as defined in [cite to appropriate sections of Article 8 of the Uniform Commercial Code], **and includes any account held at a broker dealer.**

⁴ See Unclaimed Property Professionals Organization (UPPO) Submission to Reporter Charles A. Trost, July 1, 2016, page 14, available at

http://c.ymcdn.com/sites/www.uppo.org/resource/resmgr/ULC_Info/UPPO_ULC_Submission_FINAL.pdf

UPPO believes that the definition of “security” in the Act must include a specific reference to an owner’s interest in a brokerage account held by a broker-dealer. This was discussed at length before the Drafting Committee at the February 26 - 28 Drafting Committee meeting. The Drafting Committee voted unanimously to include such a reference in the definition of “security.” NAUPA did not object to this decision (at least at the public forum), nor did any other stakeholder -- this was a decision on which there was total consensus. Nonetheless, somehow, without any further discussion or vote by the Drafting Committee (at least in a public forum), that reference was not included in the current draft of the Act. [Emphasis in original]

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The definition of security underpins the fundamental operation of the Act for broker dealers, and we respectfully request that you consider amendment consistent with our recommendation.

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SIFMA appreciates the opportunity to comment on the Uniform Unclaimed Property Act revision. If you have any questions or require further information, please contact me at wleahey@sifma.org or 212.313.1157.

Respectfully submitted,



William J Leahey
Vice President
Operations & Technology
SIFMA

cc: Commissioner Blackburn and Commissioner Houghton, Uniform Law Commission
Katie Robinson, Staff Liaison, Uniform Law Commission