October 29, 2014

To: Uniform Law Commission, Revise the Uniform Unclaimed Property Act Drafting Committee

From: National Association of Unclaimed Property Administrators (NAUPA)

Re: NAUPA's Recommendations for Presuming the Abandonment of Securities and for the Administration of Unclaimed Securities; NAUPA Positions on Recommendations Regarding Securities as Made by Other Stakeholders

Date: October 29, 2014

INTRODUCTION

This position paper addresses the abandonment of securities, and how this particular type of property should be addressed in a revised Uniform Unclaimed Property Act. Unclaimed securities present special aspects and concerns, chief among them that the value of the property fluctuates and reporting potentially presents a risk of loss to the owner. At the same time, securities issuers have large numbers of shareholders who have become lost, are unaware of the existence of their holdings, or have died. Each year, the states receive significant volumes of unclaimed securities and each year, states process large volumes of claims for this property.

Part of the challenge presented to NAUPA with respect to the issue of unclaimed securities is the fact that there is tremendous variation in how states currently presume their abandonment. In recognition of this inconsistent treatment of unclaimed securities and the desire to develop best

approaches and practices that all states would favorably consider, NAUPA elected to defer making recommendations to the Drafting Committee until after stakeholders from the securities industry had offered their own proposals. NAUPA was hopeful that the recommendations from the issuers, transfer agents and trade groups that deal with unclaimed securities might be adopted by NAUPA, or might otherwise provide a basis for NAUPA formulating its own positions.

In reviewing the recommendations of other parties on the subject of unclaimed securities, NAUPA ultimately determined that it has very different views than the private sector. While there is some consensus on matters of secondary importance, on the issue of "when should a security be deemed unclaimed," NAUPA strongly believes in the absence of an express indication that the owner is aware of the existence of his or her security holdings, efforts should be undertaken to contact the owner and, absent such contact being successful, the securities should be deemed abandoned.

Ideally, securities would only be unclaimed property and thus subject to reporting and delivery to the states in the exceptional case. Accordingly, NAUPA believes that the focus of securities issuers and transfer agents should be on *maintaining* contact with security holders and preventing abandonment.[1] Issuers and transfer agents frequently assert that an investment in securities is by nature "passive." While it is unclear whether the ownership of securities investments is any "more passive" than other types of investments,[2] there is a greater tendency for property to become abandoned where the owner is not actively involved in managing the assets.

[1] The role of due diligence as performed by holders in preventing the presumption of abandonment and re-establishing customer or shareholder contact is frequently underestimated. Omitting a property type with certain characteristics (e.g., a security holder that has exhibited no activity, but who is not confirmed lost) has the effect of removing the property from the due diligence process and, in most cases, relieving the holder of any affirmative duty to attempt to make contact with the owner.

[2] Different investors have different investment strategies and, with respect to a given securities holding, it is not generally possible for the holder or the state to divine whether the owner's designs were to "buy and hold," to turn a quick profit, or to have no strategy at all. Retirement and certain other tax advantaged assets are properly considered as "passive" investments, and thus have been afforded different treatment under the Uniform Unclaimed Property Acts.

As a result, NAUPA believes that issuers and transfer agents should be obliged to take greater affirmative steps to maintain contact with security holders.

Below, NAUPA provides its recommendations for presuming the abandonment of unclaimed securities, and requirements for attempting to reestablish contact with the owners of such property. Following NAUPA's recommendations is NAUPA's analysis and position on the securities-related recommendations made by other stakeholders.

I. NAUPA RECOMMENDATIONS FOR CONFIRMATION OF SECURITY HOLDER CONTACT, AND DETERMINING WHEN SECURITIES ARE DEEMED UNCLAIMED.

The vast majority of security holders consistently buy and sell shares, cash dividend checks, make account balance inquiries, vote proxies, or otherwise undertake actions that reflect an awareness of their assets.[3] With the advent of on-line account access and increased utilization of Interactive Voice Response (IVR), security holders have more expansive methods to monitor their holdings in a manner that can be readily documented, and thus the presumption of abandonment can be more systematically rebutted. The states encourage broadening the definition of an owner's indication of interest in the property from those included in the 1995 Uniform Unclaimed Property Act to recognize as contact any and all *documented* owner-generated actions which reflect an awareness of the existence of the asset.[4] NAUPA originally recommended expansion of definitions of owner contact of Section 2(d) of the 1995 Uniform Act in its February 4, 2014 and May 9, 2014 submissions to the ULC. The text of the expanded definitions, with some minor modification, are included in Appendix A-1 of this position paper.

[3] Presumably, the securities industry can provide the Uniform Law Commission with statistics regarding the number and percentage of security holders who exhibit no account activity during a 36 month or 60 month period (the current abandonment parameters utilized by the states).

[4] See NAUPA submissions to the ULC, including Recommendation 16 (February 4, 2014) and proposed revisions to 1995 Uniform Act §2(d) (May 9, 2014).

With respect to the small percentage of security holders who do not undertake some type of activity during the period of presumptive abandonment, the states believe that issuers should take affirmative steps to alert owners about the status of their asset and obtain confirmation of the security holder's awareness of ownership.[5] Such acknowledgement should be required regardless of the type of security held (equity, debt, non-dividend paying, dividend reinvestment, etc.) or whether previous mailings to the security holders were undeliverable.

NAUPA's recommendation for defining when securities should be deemed unclaimed is straightforward. In the absence of a security holder taking some action with respect to that asset during a three year period, the asset is presumptively abandoned. An issuer or its transfer agent would then undertake efforts to establish contact with the security holder to rebut the presumption of abandonment through due diligence and owner outreach.

In view of the current and future securities recordkeeping and communications environment which has increasingly moved away from the physical mailing of investor materials to shareholders,[6] NAUPA proposes a revision to Section 2(a)(3) of the 1995 Uniform Act incorporating an inactivity standard[7] for the presumption of abandonment. At the time the 1995 Uniform Unclaimed Property Act was drafted, physical mail was the primary manner in which holders communicated with financial investors. It was commonplace for stock certificates to be securely mailed to shareholders and for the status of an undeliverable stock certificate to be tracked and coded within a transfer agent's system. With the dematerialization of securities, the mailing of

[5] The alternative to not seeking affirmation from the security holder is to make the assumption that the owner has knowledge of the existence of the asset. NAUPA does not feel that this inference can be reasonably made where there has in fact been no contact with the owner.

[6] "[T]he big market shift began 15 years ago with the pervasive availability of free email. Today mobile devices provide texting and social media, shifting the acceleration away from physical letters. Fewer people write letters, send bills or even pay bills via physical mail." Adam Hartung, "Why the Postal Service is Going out of Business." Available at http://www.forbes.com/sites/adamhartung/2011/12/06/why-the-postal-service-is-going-out-of-business/ last accessed September, 17, 2014.

[7] See Appendix A-1.

physical stock certificates is practically nonexistent. As much as record keeping and communications have evolved over the last nineteen years, the manner in which shareholders transact on their accounts has changed dramatically with the increased use of the internet and other advancements in technology.[8]

Transfer agents and other record keepers have adopted environmental initiatives, such as eTree USA,[9] to move their investors to online platforms as opposed to mailing notifications. This initiative is a cost savings to the holder and transfer agent with an obvious environmental benefit in reducing waste. Increasingly, issuers and their transfer agents interact with shareholders through internet and secure web access and this trend is moving in only one direction: away from utilization of physical delivery of communications.[10]

Maintaining undeliverable mail as the trigger for dormancy is not merely an outdated notion, but also using this "contact" standard would lead to incorrectly concluding that some owners were "not lost." For mailings that do occur, materials sent via first-class rate postage often will not be returned by the post office, even if the account holder is not residing at the address of record.[11] Also, many shareholder communications are documents that are not mailed at first-class postage. Proxy vote cards and annual reports are examples of mailings that are typically delivered

[8] Edward Wyatt, *Most of U.S. is Wired but Millions aren't Plugged In,* N.Y. Times (Aug. 18, 2013), http://www.nytimes.com/2013/08/19/technology/a-push-to-connect-millions-who-live-offline-to-the-internet.html?pagewanted=all&_r=1&. Stating that 98% of Americans have access to high speed internet and 85% of American adults use the internet. This number is only going to increase as we move forward and it is important that the Uniform Act account for this evolution.

[9] Computershare, a transfer agent, promotes its eTree initiative. Its proposed benefits to shareholders include "efficient communication, environmental contribution and less mail", available at https://www.etree.com/aboutetree.aspx?bhjs=1&fla=0&bn=firefox&bv=29.0&bo=winnt, last accessed September 17, 2014.

[10] A recent survey by Plansponsor indicated that among participants in defined contribution plans, 42 percent of participants had opted for "e-Delivery" of statements; tax documents, 44 percent; trade confirmations, 63 percent, and reports/prospectuses, 75 percent. Plansponsor, Recordkeeping Survey (2014).

[11] There is also the phenomenon of the current occupant accepting and then discarding mailings addressed to a security holder who no longer resides at the address of record. States, from performing audits of security issuers and transfer agents, have documented instances where mailings to a shareholder have not been returned as undeliverable, notwithstanding the fact that the owner does not reside at the address of record. This includes instances where the owner died a number of years ago, and yet mailings made to the deceased owner are not returned as undeliverable.

by transfer agents or other third parties at a bulk mail rate, and the post office will generally not notify the sender where mail sent bulk rate is undeliverable.

The specific text of NAUPA's recommended revision to Section 2(a)(3) to provide for an inactivity standard in presuming the abandonment of securities in included in Appendix A-1 of this position paper.

II. NAUPA RECOMMENDATION CONCERNING THE ABANDONMENT PERIOD FOR UNCLAIMED SECURITIES.

Although the 1995 Uniform Act provided for a five year abandonment period for unclaimed securities,[12] a majority of states (30 of the 50 states and the District of Columbia) currently utilize a three year abandonment period. Of the thirty states with a three year abandonment period, eight had adopted the 1995 Uniform Unclaimed Property Act and substituted the Act's five year abandonment period with a three year parameter.

What prompted the states to adopt a shorter abandonment period for securities than that recommended by the Uniform Law Commission? The experience of these states has been that a shorter abandonment period facilitated the successful unification of a higher percentage of owners who were entitled to their property. At the same time, these states did not encounter a "backlash" over securities being presumed abandoned under a three year parameter, from either claimants or the securities industry.

The specific text of NAUPA's recommended revision to Section 2(a)(3) to provide for a three year abandonment period for securities is included in Appendix A-1 of this position paper.

A. Payments made via the Automated Clearing House (ACH). ACH represents a growing movement away from dividend check issuance in favor of a more cost-effective means of issuing dividend payments to shareholders. Issuers and their transfer agents issue payment for dividends

[12] 1995 Uniform Unclaimed Property Act §2(a)(3),(4).

into security holder bank accounts via ACH and continue to do so as long as the transaction does not kick back from the bank account as a failed transfer. Many record keepers update the date of last owner contact whenever an ACH payment is made, as they would the negotiating of a check. Often when accounts that are enrolled in ACH have an undeliverable mail coding on the agent's system, yet due to contact being automatically updated on the account at the time of the ACH, accounts are not escheated. This requires an assumption that the security holder is in fact receiving payment, and transfer agents maintain that the fact the ACH payment is not rejected represents proof per se that the funds reached the owner. However, what if the bank account is dormant, and the financial institution at which the account is maintained is not in compliance with unclaimed property laws? Or what if the financial institution at which the account is maintained is (incorrectly) treating the ACH credits as owner activity? NAUPA does not believe that presuming that a financial institution is correctly monitoring and reporting dormant accounts provides a legitimate basis for concluding that an unrejected ACH payment should be viewed as "owner contact."

The proposed Commissioners' Comment set forth in Appendix A-2 includes a discussion of securities where dividends are deposited via the Automated Clearing House (ACH). In order to accommodate ever-changing methods of automatic payments, NAUPA has proposed a broad definition to encompass ACH, direct deposit or any other automated payment method.

B. Dividend reinvestments. The proposed comment in Appendix A-2 regarding property in a securities related account whereby the shareholder receives dividends in the form of shares reinvested and credited to the share balance of account addresses the fact that most shareholders have dividends reinvested. Even where elections to reinvest are not made, many holders default shareholders into dividend reinvestment plans by stipulating that only shareholders with more than a certain number of shares will receive dividends and all others are reinvested.

C. Non-dividend paying securities. Many companies do not pay annual or quarterly dividends. In these instances, there is limited outbound mail to the shareholder other than proxy voting. It should be noted that oftentimes, proxy voting is only performed electronically unless a paper ballot and supporting materials are requested. Further, most proxy mailings are not performed by the transfer agent (the record keeper who generally has the contractual responsibility to report) but rather a subcontracted third party. In instances that mail is returned to the holder or third party provider, it is rare that the returned mail is communicated to the transfer agent and correctly coded as undeliverable. Additionally, since there are no dividends being paid on the accounts, an IRS Form 1099 would not be issued on the accounts.

The proposed comment in Appendix A-2 regarding shareholders that invest in non-dividend paying companies addresses the special characteristics of these securities.

D. Mergers, acquisitions, and recapitalizations. Record holders typically utilize the date of the acquisition as the trigger for abandonment without regard to the investor's account history prior to the merger or acquisition. For example, even though a shareholder may not have cashed a check nor had any indication of interest over their account for three years, escheatment would not occur until three to five years had transpired from the date of the acquisition. In the meantime, it is commonplace for issuers and agents to utilize search firms which charge a substantial percentage of the value of the property in order to reunite an owner with their assets. There is no logical reason to "reset" the date of owner activity simply because the holder undergoes a merger, acquisition, or recapitalization.

The proposed comment in Appendix A-2 regarding the presumption of abandonment for property resulting from a merger or acquisition brings clarity to the appropriate application of dormancy triggers.

E. Restricted stock. The securities industry has sought clarification concerning the treatment of restricted stock, for which the owner of record does not exercise dominion until specified conditions are satisfied. NAUPA agrees that addressing the abandonment of restricted stock would be useful; however, it is questionable whether it is necessary to specifically discuss restricted stock within the unclaimed securities provision.

The proposed comment in Appendix A-2 concerning restricted stock provides the securities industry with clarity regarding the circumstances under which restricted stock should be escheated. This addition specifies that restricted stock assets should be escheated only if it has been three years since vesting requirements have been met and there has been no indication of interest with respect to the securities.

F. Securities held by financial intermediaries. There is frequent confusion concerning the scope of Section 2(a)(3) of the 1995 Uniform Act. Specifically, it is unclear whether the section is limited to securities which have been purchased or otherwise obtained directly by the owner, or whether it also encompasses securities held on behalf of an owner by a broker-dealer or other financial intermediary. Some state unclaimed property programs take the position that where a broker-dealer loses contact with an owner, it is the owner's account that becomes abandoned, rather than the securities maintained within the owner's account. Under this scenario, the property in question (the brokerage account) would be subject to Section 2(a)(15) (miscellaneous intangibles) and not Section 2(a)(3) (unclaimed securities). However, this view is not universally shared.

The proposed comment in Appendix A-2 clarifies that securities held by financial intermediaries are subject to the miscellaneous intangibles provision. The Uniform Law Commission may find it preferable to instead revise the unclaimed securities provision (or accompanying comment) to clarify that unclaimed securities held by a financial intermediary *are* subject to this provision.

III. EXPANSION OF OWNER NOTIFICATION REQUIREMENTS FOR PRESUMPTIVELY UNCLAIMED SECURITIES OF HIGH VALUE.

NAUPA additionally proposes further modifying Section 9 to include a requirement that a certified mailing be sent to the last known address of shareholders with securities valued over $1,000. The text of this provision is set forth in Appendix A-3 to this position paper. Where a certified mailing has been sent to the last known address of the shareholder and the shareholder does not respond to the due diligence mailing, the holder and the state can be more reasonably assured that the investor is not residing at the address of record. Both New York and New Jersey[13] have adopted certified mail requirements as part of their due diligence process. NAUPA's proposal adopts the certified mailing requirement for securities *only* rather than all property types. The NAUPA recommended revision also limits due diligence via certified mail to presumptively abandoned securities with an aggregate value of $1,000 or more (contrasted with the $50 threshold utilized by New Jersey). A holder at its option may first attempt to reestablish contact with owners of such securities through a means other than certified mail. If the holder is successful in contacting the owner, the presumption of abandonment would be rebutted. The certified mailing requirement is intended to be utilized where all other methods to make contact with the owner fail.

[13] *See* N.J.S.A. 46:30B-50 and N.Y. Abandoned Property Law § 1422 (McKinney 2003).

APPENDIX A-1

PROPOSED REVISIONS TO SECTION 2. PRESUMPTIONS OF ABANDONMENT[14]

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

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(3) stock or other equity interest in a business association or financial organization, including a security entitlement under [Article 8 of the Uniform Commercial Code], ~~five~~ three years after the owner's last indication of interest in the property. ~~earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;~~

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(d) An indication of an owner's interest in property shall mean any contact, communication or transaction related to the property from the owner, or involving some affirmative action by the owner with respect to the property, which is documented in a contemporaneous record prepared by or on behalf of the holder or in the possession of the holder. An indication of an owner's interest in property includes:

(i) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business

[14] The proposal to expand the definition of an owner's indication of interest in property requires the renumbering of several subsections due to other offered additions and proposed deletions. Existing subsection (c) has been superseded through expansion of the contact standards of subsection (d). On May 9, 2014, NAUPA proposed the addition of subsection (f) which explained what activity would not be accepted as an owner indication of interest and provides further industry clarity. Based on the deletion of other subsections, proposed subsection (f) would become subsection (e).

association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(ii) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(iii) a verbal contact, communication or transaction, in which the holder takes reasonable action to verify the identity of the owner;

~~(iii)~~ (iv) the making of a deposit to or withdrawal from a bank account (other than an automated deposit or withdrawal); ~~and~~

(v) an account balance or similar owner-initiated account inquiry, including an account inquiry made electronically where the owner has contemporaneously authenticated his or her identity; and

(vi) a contact, communication or transaction, which is evidenced by other criteria as provided by the [Administrator].

~~(v)~~ (vii) the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e~~f~~) Actions that do not constitute an owner's indication of interest are those which are not shareholder directed activity including automated payments, transfers and dividend reinvestments, postings to accounts, computer system conversions, securities resulting from mergers or acquisitions where an owner has not executed a letter of transmittal or exchanged shares in order to

receive the corporate action entitlement, the non-return of mail, and other actions that are not owner initiated or do not require a direct owner response.

APPENDIX A-2

PROPOSED COMMISSIONERS' COMMENT TO SECTION 2
PRESUMPTION OF ABANDONMENT

Section 2 shortens the general dormancy period from five to three years. Specific to security interests, the abandonment presumption recognizes a substantive change from undeliverable mailings, notifications or communications to the owner's last indication of interest in the property. Subsection (e) was added to illustrate what actions do not constitute an owner's indication of interest. These actions include the distribution of dividends via automated deposit through an Automated Clearing House (ACH) or other electronic means; dividend reinvestment into shares and credited to an owner's stock holdings or mergers, acquisitions or other mandatory exchanges of securities where a shareholder has not executed a letter of transmittal or exchanged shares in order to receive the corporate action entitlement. For non-dividend paying holders or where a holder does not regularly pay dividends, the presumption arises three years from the date of the owner's last indication of interest. With respect to securities held by financial intermediaries such as a broker-dealer, the miscellaneous intangibles provision, Section 2(a)(15), governs.

Vesting securities, such as a restricted stock issued as employee compensation, do not satisfy the presumption of abandonment unless the shareholder has not indicated an interest in the property within three years of vesting as determined by plan definition. Note that where dividends or other distributions on restricted shares are not subject to the vesting limitations and are paid to the owner, such dividends or other distributions are reportable notwithstanding the vesting period not being met for the underlying restricted securities. For securities held through an employer sponsored plan, it is recommended that holders compare the escheatment list to active employee listings to identify if any owners who have not indicated an interest in the property are current employees.

APPENDIX A-3

PROPOSED REVISION TO SECTION 9.
NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY

(a) A holder of property that has been presumed abandoned or may become abandoned shall send written notice to the apparent owner not less than 60 days before filing the report.

(1) The face of the notice shall contain a heading at the top that reads as follows: "THE STATE OF _____ REQUIRES US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US," or substantially similar language. The notice shall specify the date that the property will be turned over to the State, and explain the necessity of filing a claim for the return of the property following receipt by the State; identify the nature and amount of the property that is the subject of the notice; and provide instructions that the apparent owner must follow to prevent the property from being reported and remitted to the State.

(2) The holder need not send a notice where the records of the holder indicate the address of the apparent owner is incorrect, or if the total value of property due the apparent owner is less than $50.

(3) There shall be no limit as to the number of notices that a holder may send to an apparent owner.

(4) With respect to stock or other equity interest with a total value in excess of $1,000, a holder shall send written notice to the apparent owner by certified mail, return receipt requested not less than sixty days before filing the report, provided that no notice pursuant to this subsection shall be required where a previous mailing was returned as undeliverable.

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APPENDIX B-1

NAUPA Summary Commentary on Unclaimed Securities Legislation As Proposed by the Investment Company Institute (ICI) The Securities Transfer Association (STA) and the Unclaimed Property Professionals Organization (UPPO)

Following a review of the proposed legislative changes by the ICI, STA and UPPO, NAUPA has determined that some of the proposed amendments would have a detrimental impact on the consumer protection goals of state unclaimed property programs. NAUPA has prepared a detailed analysis of each trade group's legislative recommendations concerning unclaimed securities, which can be found at appendices B-2 to B-4. ***Set forth below is a commentary summarizing NAUPA's most significant areas of concern regarding the ICI, STA and UPPO submissions to the ULC.***

1. ICI proposal to lengthen state dormancy periods from seven to as many as thirty years.

There is a direct correlation between the level of success that unclaimed property programs have in reuniting property owners with unclaimed assets and the amount of time that transpired since the date of last contact. The longer the dormancy period, the more difficult it becomes to track down the rightful owners of property. Simply put, over time "the trail becomes colder." Thirty states and the District of Columbia apply a three year dormancy period for underlying securities. When applied in conjunction with a rigorous due diligence and pre-escheat outreach process, a three year abandonment period will ensure that property is transferred to the custody of the state in a timely manner for those owners who are unaware of their assets and that the states can undertake search efforts for owners who are truly lost sooner. A three year abandonment period is not unreasonably brief, when coupled with a due diligence process that ensures owners are in fact aware of their holdings so as to avoid erroneous escheatment.

2. STA and UPPO alleging conflicts between state escheatment laws and SEC Rule 17Ad-17. SEC Rule 17Ad-17 does not conflict with state unclaimed property laws as the rule affects transfer agents and record keepers as opposed to issuers, who are the holders and ultimately responsible for the escheatment of unclaimed property. Further, it is important to note that the intent of the SEC rule and state escheat laws are the same. The reason that the SEC instituted this rule was to protect the interests of investors, ensure that holders are actively attempting to locate lost investors and that investors are not unnecessarily charged fees by third party search firms to be reunited with their property before the investor can reassert control of his or her property without the payment of unnecessary fees.

Significantly, the SEC has stated that the requirements of Rule 17Ad-17 paragraph (c)(1) "shall have no effect on state escheatment laws."[15] To the extent that a state's unclaimed property law would require the reporting and delivery of unclaimed securities prior to a transfer agent having conducted some or all SEC- mandated searches does not constitute a "conflict." There is no preemption of state unclaimed property laws by the SEC rules, as expressly stated by the SEC itself.

3. ICI, STA and UPPO proposals to retain requirement that investor account mailings be returned as undeliverable before the presumption of abandonment is triggered. The physical mailing of investor documents and paperwork has significantly decreased in the past ten years, with a corresponding increase in internet and phone based correspondence and transactions. Within the next five years it is likely that standard first class mailings of this nature, unless specifically requested by the investor, will become entirely obsolete. As a result, adherence to an obsolete undeliverable mail standard prevents a lost security holder from receiving the benefit of the protection of unclaimed property laws. Under the ICI, STA and UPPO approach, in many

[15] *See* http://www.sec.gov/rules/final/ 2013/34-68668.pdf.

instances no property will be triggered for due diligence or escheatment because correspondence is never sent by a method where the receipt of which could be legitimately confirmed or accurately determined to be "undeliverable."

4. ICI proposal that holders may offer investors waivers at the time of the original investment that extinguish the application of unclaimed property laws. At the time of investment, account holders do not contemplate that they or their heirs could someday be separated from their assets. The states do believe that a prospectus and other shareholder literature that discusses how property can become unclaimed and recommends steps that an investor can take to prevent assets from being transferred to the state is helpful. However, it is unclear how a holder might, in an even-handed manner, go about suggesting to investors that they waive protections afforded by the unclaimed property law. Regardless of how the waivers are presented, the ICI proposal would result in the forfeiture of a significant consumer protection right. As a result, the property would remain on the books and records of the holder in perpetuity with no ongoing obligation on the part of the holder to find the owner or his or her heirs. Consequently, owners are unlikely to be reunited with their property. This proposal fundamentally contradicts the intent and spirit of the public policy underlying unclaimed property law as a consumer protection. It should be noted that such circumvention would also permit holders, such as mutual funds, to continue to indefinitely generate fee revenue from "administering" the asset, while having no ongoing duty to locate a missing owner.

APPENDIX B-2

NAUPA Commentary on Unclaimed Property Legislation Proposed by The Securities Transfer Association ("STA") As Submitted to the Uniform Law Commission February 14, 2014

STA Recommendation (1)

- ✓ Specified Holding Period for Securities property (intangible interests in business associations). The primary purpose of the Unclaimed Property statutes is to protect the owner's interest and to attempt to re-unite those owners with their property. Current state rules that allow for states to liquidate securities either immediately or based on a discretionary rule, are not in the best interest of the property owner.

    - ➢ Updated legislation should contain a provision that any securities property (or other asset that may be converted to cash) should be held by the states for a minimum period to reduce any potential value change that ultimately affects the owner.

    - ➢ Suggested minimum holding period should be 24 months.

NAUPA Comment (1)

NAUPA is conceptually in agreement that states should hold securities for a minimum period, but proposes the period be not less than 12 months before liquidating or at the discretion of the administrator.

STA Recommendation (2)

- ✓ Restricted Securities: The term restricted securities refers to stock of a company that is not fully transferable or able to be sold until certain conditions have been met. Upon satisfaction of those conditions, the stock may be transferred or sold by the person holding the shares. Restricted stock is often used as a form of employee compensation, in which case it typically becomes transferrable ("vests") upon the satisfaction of certain conditions, such as continued employment for a period of time and sometimes the achievement of particular earnings per share goals or other financial targets. Restricted stock also includes securities not registered under the Securities Act of 1933 or held by affiliates (as set forth in Rule 144), which also cannot be transferred or sold until certain requirements are met. The STA has seen considerable confusion among certain states with how these restricted securities should be handled. In addition, some states require positive contact with the investor, who would have no reason for contacting the issuer in these matters until the shares becomes unrestricted. This puts the investors' assets in position to be escheated to the states.

    - Updated legislation should clearly specify treatment of Restricted Securities, including securities with contractual restrictions as well as under Rule 144.

    - Securities which have not met specified holding periods or are contingent on other conditions being met should not be considered unclaimed property.

    - If securities cannot be made available to or cannot be sold or transferred by the owner they should not be made available to the states.

NAUPA Comment (2)

Based on the STA's description of the shares as contingent or conditional, restricted shares do not meet the definition of property and therefore cannot be unclaimed. See the definition of "Property" under Section 1(13) – Definitions. "'Property' means…a fixed and certain interest in intangible property…" With restricted shares, there is no fixed and certain interest in the property; therefore, the presumption is not met.

NAUPA has also submitted a proposed Commissioners' Comment (within Appendix A-2) that addresses vesting and restricted shares. For reference, the proposed Commissioners' Comment provides:

> *Vesting securities, such as a restricted stock issued as employee compensation, do not satisfy the presumption of abandonment unless the shareholder has not indicated an interest in the property within three years of vesting as determined by plan definition. Note that where dividends or other distributions on restricted shares are not subject to the vesting limitations and are paid to the owner, such dividends or other distributions are reportable notwithstanding the vesting period not being met for the underlying restricted securities.*

Accordingly, NAUPA is substantially in agreement with the STA concerning the treatment of restricted securities.

STA Recommendation (3)

- ✓ Conflicts with SEC Regulation. Certain state statutes, that impose a shortened dormancy period before assets are escheated, may conflict with Federal requirements. SEC Rule 17Ad-17 requires transfer agents to perform two database searches to locate shareholders before an account can be considered abandoned. The mandatory database searches must be conducted between three and twelve months from the time the holder is deemed "lost" (i.e., the later of (1) the date upon which a correspondence is returned as undeliverable, or, (2) if a returned correspondence is re-sent within one month from the date it was returned and is again returned as undeliverable, the date on which the re-sent item is returned as undeliverable).The second required database search must be performed between six and twelve months after the first search.

    - ➢ Conflicts between state statutes and SEC Regulations should be cleared (particularly now that SEC Rule 17-Ad-17 has been extended to include broker dealers).

    - ➢ States should recognize obligations of record keepers to meet SEC requirements and not require escheatment until such obligations are met.

NAUPA Comment (3)

No change is necessary to the unclaimed property laws with respect to SEC Rule 17Ad-17. SEC Rule 17Ad-17 does not conflict with state unclaimed property laws as the rule affects transfer agents and record keepers as opposed to issuers, who are the holders and ultimately responsible for the escheatment of unclaimed property. Further, it is important to note that the intent of the SEC rule and state escheat laws are the same. The reason that the SEC instituted this rule was to protect the interests of investors, ensure that holders are actively attempting to locate lost investors and that investors are not unnecessarily charged fees by third party search firms to be reunited with their property before the investor can redeem its property without any fees. Significantly, the SEC has previously stated that the requirements of paragraph (c)(1) of Rule 17Ad-17 "shall have no effect on state escheatment laws." See http://www.sec.gov/rules/final/ 2013/34-68668.pdf.

To the extent that a state's unclaimed property law would require the reporting and delivery of unclaimed securities prior to a transfer agent having conducted some or all SEC mandated searches does not constitute a "conflict." There is no preemption of state unclaimed property laws by these SEC rules, as expressly stated by the SEC itself.

Accordingly, NAUPA does not concur with the STA that state unclaimed property laws "conflict" with SEC Rule 17Ad-17.

STA Recommendation (4)

- ✓ Shareholder Activity (Contact) Rules: More and more states are using lack of shareholder contact to define abandonment of an account.
    - ➢ Contact rules should be clearly defined and not left open to interpretation.
    - ➢ New legislation must recognize the current technology and operating environment and the methods of contact that it allows for (e.g. validated IVR/WEB contact, other electronic communications, ACH credits or wires for payments similar to checks, etc.).

NAUPA Comment (4)

NAUPA is in agreement with the STA's recommendation as states are adopting shareholder indication of interest standards rather than an undeliverable mail standard. Based on the states' progressive movement to an indication of interest standard, NAUPA has proposed a similar standard to the Uniform Law Commission. NAUPA also agrees with the STA in that new legislation must recognize current technology that illustrates an owner's indication of interest in the property.

Within Appendix A-1 of this memorandum, NAUPA has provided revised indication of interest language to account for changing methods of owner generated contact.

Accordingly, NAUPA concurs with the STA that standards of owner "contact" should be updated to incorporate electronic and other technologies.

STA Recommendation (5)

- ✓ Passive investments
  - ➢ Treatment of non-dividend paying securities should be clearly defined.
    - ➢ Certain investment types are designed to be held long term without the need for the owner to perform any positive acts to manage the investment
    - ➢ Activity only states are putting this form of investment at risk.
    - ➢ Legislation should clearly identify the need for "location of the owner to be unknown" before these assets can be deemed dormant.

NAUPA Comment (5)

It is unclear why ownership of non-dividend paying securities is any more passive than other types of investments. As retirement and other tax advantaged assets are properly considered passive investments, these investments have been afforded different treatment under the Uniform Unclaimed Property Acts.

Where an owner is not actively involved in managing the asset, it follows that there is a greater tendency for the property to become abandoned. As a result, issuers should take affirmative steps to prevent securities from being presumed abandoned. In addition, the states are not putting these so called passive investments at risk. Rather, all that is being asked is that the owner's awareness of the account is demonstrated by one indication of interest or acknowledgement every three years.

Furthermore, there is limited outbound mail to shareholders for non-dividend paying companies other than proxy voting, which can be performed electronically unless a paper ballot is requested. Also, proxy mailings are typically subcontracted to a third party and in instances where the mail is returned to the holder or subcontractor, the information is not communicated to the transfer agent to code the account as undeliverable.

Accordingly, NAUPA does not concur with the STA that the return of mail is an appropriate basis for presuming the abandonment of securities.

STA Recommendation (6)

- Treatment of dividend re-investment and other plan securities should be clearly defined. With dividend reinvestment and certain other plan accounts, the shareholder has signed a document that allows his dividends to be automatically reinvested by the issuer or transfer agent, without the shareholder being required to take any other action. To be more specific, the shareholder has no need, and is not expected to, contact the issuer or agent. When states define lack of contact as abandonment, the investor's assets may be escheated and sold without their knowledge or consent. This is clearly unfair to the investor. While a number of states clearly define the requirements for assets held within re-investment plans, there is still inconsistency in treatment in many states.

    - New legislation should recognize this type of investment and clearly protect the owner. Owners of such passive investments are not knowledgeable about escheat laws and would not know that they need to take affirmative steps to contact the issuer to avoid having their shares escheated and potentially sold.

    - These types of investments should require that the location of the owner be unknown before they can be deemed to be dormant.

NAUPA Comment (6)

Similar to ownership of non-dividend paying securities as discussed above, it is unclear how dividend reinvestment is any more passive than other types of investments. It is NAUPA's understanding that dividend re-investment is often a default for shareholders, especially those owners who hold insufficient shares to receive a dividend as money.

There are sufficient safeguards to protect assets from being escheated unnecessarily under NAUPA's proposal. First, an owner must not indicate any interest in property for three years. Even if an owner is truly a passive investor with no contact with the holder, the holder will take the required steps, including due diligence and owner outreach, to rebut the presumption if the owner can be contacted.

NAUPA has the same view of dividend reinvestment as non-dividend paying securities and for the same reason. It is the job of security issuers and transfer agents to advise shareholders of the existence of unclaimed property laws and the need to maintain contact. Secondly, the STA has provided no support for its position that "these types of investments should require that the location of the owner be unknown before they can be deemed to be dormant".

Accordingly, NAUPA does not concur with the STA that the return of mail is an appropriate basis for presuming the abandonment of securities enrolled in dividend reinvestment.

STA Recommendation (7)

- ✓ Employee Share Plans
    - ➢ Employee shares held through an employer sponsored plan should not be able to be deemed abandoned while the participant in the plan remains employed with the securities issuer.

NAUPA Comment (7)

It is NAUPA's understanding that many holders review potential escheatment lists to identify active employees prior to beginning the due diligence and escheatment process. If an issuer can identify its own employee, the property cannot be presumed abandoned.

NAUPA has also submitted a proposed Commissioners' Comment within (Appendix A-2) that addresses employee ownership of shares. For reference, the proposed comment provides:

> *For securities held through an employer sponsored plan, it is recommended that holders compare the escheatment list to active employee listings to identify if any owners who have not indicated an interest in the property are current employees.*

Accordingly, NAUPA is conceptually in agreement with the STA concerning the treatment of securities held in an employee stock plan.

STA Recommendation (8)

- ✓ Foreign ownership of securities should be addressed.
    - ➢ Legislation should contain clear language on the treatment of securities held by non-US residents (Currently a very broad interpretation of a legal decision is used by many states to apply escheat laws to non-US investors).
    - ➢ If escheat laws apply to non-US residents, the treatment of such foreign accounts should be no different than treatment of US resident accounts. (E.g. non returned mailing of IRS Tax Form 1099 is acceptable for domestic accounts as proof that the account is not abandoned, but a non-returned IRS Tax Form 1042 is not acceptable for foreign accounts. This is inconsistent and unfair to foreign investors).

NAUPA Comment (8)

Foreign transactions are expressly addressed under Section 26 – Foreign Transactions of the 1995 Uniform Unclaimed Property Act and Section 4(5) – Rules for Taking Custody.

NAUPA's recommended proposal is not based on an undeliverable mail standard; therefore, the undeliverable mailing proposal above would be irrelevant. If an undeliverable mail standard is considered, the comment above that a non-returned IRS Tax Form 1042 should be evidence of contact is inaccurate as foreign mail is returned at even lower rates than mail within the United States.

Accordingly, NAUPA does not concur with the STA's recommendations concerning the treatment of securities registered to foreign owners.

STA Recommendation (9)

- ✓ Audit powers

  - Legislative audit language should be specific to unclaimed property within the state performing the audit and clearly define what information needs to be retained and made available in relation to any audit. Audits should only be able to be performed for the time period records are required to be retained. Currently states take the position that the state's audit rights are not limited by record retention time periods under escheat laws. This puts transfer agents and other recordkeepers in an unfair position as they may no longer have the records necessary to evidence compliance with state escheat laws.

  - Record retention requirements should also be uniform across all states.

  - External audit firms performing audits on behalf of states should be required to adhere to generally acceptable auditing standards.

NAUPA Comment (9)

NAUPA is in agreement with the STA that there should be uniform record retention requirements.

While there are no GAAP standards for unclaimed property audits, NAUPA agrees with the STA that the audits and auditors should comply with reasonable standards and be professional. NAUPA is unaware of the existence of any widespread or systematic abuse by auditors. Also, there has been no litigation against contract auditors regarding their conduct.

APPENDIX B-3

NAUPA Commentary on Unclaimed Property Legislation Proposed by The Investment Company Institute ("ICI") As Submitted to the Uniform Law Commission April 21, 2014 (Supplemented July 14, 2014)

ICI Recommendation (1)

NEW SECTION:
SECTION #. RULES OF CONSTRUCTION; PURPOSE.

(a) This [Act] shall be conservatively construed and applied to promote its underlying purposes and policies to:

(1) Protect owners of property from their property being prematurely presumed abandoned and delivered to the State;

(2) Protect unknown owners of property by locating them and restoring their property to them; and

(3) Ensure that, until such time as property can be restored to an unknown owner, the value of such property and the owner's interest in such property is protected to the maximum extent possible.

(b) Consistent with the provisions of (a), the administrator or any person acting on behalf of the administrator shall:

(1) Avoid taking any action under this [Act] regarding an owner's property that would result in any diminution in the value of such property or result in the owner incurring any penalties, tax or otherwise, that can reasonably be avoided; and

(2) Ensure, to the maximum extent possible, that when the property is restored to the owner, the value of such property has not been negatively impacted by the provisions of this [Act] or any action taken by the administrator under this [Act].

Comments: The revisions to this Section correspond to the Investment Company Institute's ("ICI's) Recommendation 1, which recommends that the Act include a "Purpose" section expressly providing that the Act shall be construed to best serve the interests of an owner who is truly lost. Such a provision is important to avoid states implementing the Act in a way that promotes the states' economic interest at the expense of a lost owner.

NAUPA Comment (1)

Unclaimed property legislation must walk a thin line between not presuming the abandonment of property that is not lost, and ensuring that all property that is indeed lost where the owner cannot be located is transferred to the state. The best way to find the proper middle ground is through identifying the correct criteria for determining when property is presumed abandoned. The concept of "potentially but not necessarily abandoned" is an important one. Property should not actually be deemed abandoned until after a holder has been unsuccessful in attempts to contact an owner about his or her property. Reducing the scope of property presumed abandoned means that no efforts will be made to attempt to contact owners whose property may (or may not) be abandoned. NAUPA submits that holder efforts to narrow the definition of property presumed

abandoned to situations where an owner is "indisputably lost" (e.g., a confirmed incorrect address or death) are designed to minimize the effort and expense of holders in maintaining contact with owners.

Specific to the ICI drafted preamble, NAUPA notes that:

1. *Only duties of the state are discussed. The duties of holders to act in accordance with these same principals should be acknowledged. Indeed, holders are the first line of defense in preventing owners from becoming lost in the first instance, and property is only transferred to the state where the holder is unsuccessful in contacting an owner. This duty on the part of holders should not go unmentioned.*

2. *While NAUPA acknowledges the duty to "first do no harm," there is a point in time where it is no longer cost effective for the state to maintain assets in their original form (e.g., securities). The courts have consistently determined that there is no unconstitutional taking when a state undertakes such a conversion. While it is indeed important not to "harm" owners through the unclaimed property process, there should be a point in time where the state need not continue to maintain custody of an asset, collect and post dividends, etc. NAUPA realizes that the liquidation of mutual fund accounts would reduce management fees realized by mutual fund service companies, but this is not a reason to maintain an asset in its original form indefinitely.*

3. *The preamble submitted by the ICI is extremely narrow in terms of the Uniform Unclaimed Property Act. There are other important issues that should be noted in a preamble (if there is to be a preamble; see 4 below). It would be important to note in any preamble that there is a dual purpose for state unclaimed property laws: reuniting missing owners with their property, **and** allowing for the windfall from any property ultimately not claimed to inure to the public good. NAUPA understands that holders do not wish to acknowledge this second purpose, but it is very much a part of the foundation of unclaimed property legislation in the United States. If the focus is merely on property that can potentially be returned, then there is a risk of losing sight of the public policy disfavoring private escheat.*

4. *Is there need for a preamble or purpose section? NAUPA believes that the Prefatory Note to the Act and Commissioners' Comments for each section adequately serve the same purpose.*

Given the role of the Commissioners' Prefatory Note in Uniform Acts, NAUPA questions the necessity of a preamble to the Uniform Unclaimed Property Act. Additionally, until the specific scope and direction of a new Uniform Unclaimed Property Act is determined, the crafting of a preamble would be premature.

Accordingly, NAUPA does not concur with the ICI that a preamble is required, nor does NAUPA feel that the wording of the ICI's preamble is sufficiently comprehensive.

ICI Recommendation (2)

SECTION 1. DEFINITIONS.

In this [Act]:

*****

(6) "Holder" means the ~~a~~ person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this [Act]. The person that shall be deemed the holder of property held by a financial services firm for the benefit of an owner shall be the person that, with respect to the property, is either:

(i) required by Section 6042 of the Internal Revenue Code and the rules thereunder to make a return according to the forms or regulation prescribed by the U.S. Secretary of the Treasury; or

(ii) has agreed to be legally responsible, pursuant to an agreement or otherwise, for making a return according to the forms or regulation prescribed by the U.S. Secretary of the Treasury on behalf of the person required by Section 6042 of the Internal Revenue Code to make such return.

*****

(11) "Owner" means a person who has a legal or equitable interest in property subject to this [Act] or the person's legal representative. The term includes:

(i) a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property; and

(ii) any beneficiary of an account held at a financial services firm upon such firm being provided official documentation that the previous owner of the account is deceased.

*****

NEW SUBSECTION IN SECTION 1:

(##) "Financial services firm" means a person that is registered:

(i) with the U.S. Securities and Exchange Commission as a broker-dealer or transfer agent under the Securities Exchange Act of 1934;

(ii) with the U.S. Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940; or

(iii) as a broker-dealer or investment adviser under a State act or law governing the regulation and regulation of broker-dealers and investment advisers.

Comments: The revisions to this section are intended to implement the following recommendation of the ICI:

(1) **"Holder"** – The revisions to the definition of "holder" and the addition of a new subsection in Section 1 are intended to implement ICI Recommendation 3, relating to resolving the uncertainty that arises regarding which entity is the "holder" with respect to intermediated mutual fund accounts (*e.g.*, when an owner purchases shares of Mutual Fund X though Broker-Dealer A and both X and A have information on their books and records regarding the owner). New subdivision (i) clarifies that the person that shall be treated as the "holder" under the Act shall be the person required by Federal tax law to provide a tax form to the owner of the account. However, because it is standard business practice for this responsibility to be delegated on occasion, new subdivision (ii) has been added to accommodate such situations. To avoid our amendments to "holder" having any

unintended consequences beyond Federally or State registered broker-dealers, investment advisers, or investment companies (*i.e.*, mutual funds), we have limited the scope of these amendments to property held at a "financial services firm" and added a definition of "financial services firm" to Section 1.

(2) **"Owner"** – The definition of "owner" has been revised to implement ICI Recommendation 10, relating to the treatment of beneficiaries under the Act. As revised, the definition will clarify that, when a holder has been provided official documentation of the death of an owner, the beneficiary of such property shall be deemed the property's new owner. This provision is particularly important for mutual fund accounts and other accounts held at financial institutions wherein the owners are requested to designate account beneficiaries.

NAUPA Comment (2)

*"**Holder"**: The proposed definition of holder incorporates relatively complex tax definitions and creates unnecessary complexity in the determination of the holder. Specifically the proposed definition conflicts with the 1995 Uniform Unclaimed Property Act and its treatment of agents, such as transfer agents and dividend disbursing agents. Under the ICI proposed definition, a transfer agent may be considered a holder as they are the party responsible for disbursing dividends and providing the required tax forms. In addition, clearing firms may be considered a holder although they have no interaction with an investor whose direct relationship is with a broker.*

NAUPA has previously proposed language, which recognizes that a holder may contract his duty to report to another but does not relieve the holder of its unclaimed property obligation. NAUPA believes that this language is consistent with the definition of holder under Section 1 but also recognizes that a transfer agent or any other party may be delegated the unclaimed property reporting responsibilities.

***"Owner"**: Regarding beneficiaries as owners, why should the definition be limited in its application to financial services firms? There is no supporting rationale to explain such a limitation.*

The "owner" proposal further limits the State's ability to protect consumers by requesting that "official documentation" (an undefined term) be provided to a holder. The ICI proposal is inconsistent with the Supreme Court decision, Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541 (1948). "When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties. The state is acting as a conservator, not as a party to a contract." Id. at 562. Section 2(b) of the 1981 Uniform Unclaimed Property Act ("Property is payable or distributable for the purpose of this Act notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.") and Section 2(e) of the 1995 Uniform Unclaimed Property Act ("Property is payable or distributable for purposes of this [Act] notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.") have adopted this principal.

Accordingly, NAUPA does not concur with the ICI's proposed revisions to the definition of "holder" and "owner".

ICI Recommendation (3)

SECTION 2. PRESUMPTION OF ABANDONMENT.

(a) Except as otherwise provided in subsection (e) of this section, property ~~Property~~ is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) traveler's check, 15 years after issuance;

(2) money order, seven years after issuance;

(3) stock or other equity interest in a business association or financial organization, including a security entitlement under [Article 8 of the Uniform Commercial Code], five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner.

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(14) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, seven ~~three~~ years after the latest ~~earliest~~ of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, ~~or~~ the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty, or the date the owner reaches the age of seventy years and six months; ~~and~~

(15) shares of an investment company that is registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940, seven years after the owner of the shares qualifies as a "lost securityholder" as such term is defined under Section 17A of the Securities Exchange Act of 1934. The failure of an owner of shares of an investment company that is registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 to cash a check for interest or dividends on such shares or to cash a check representing redemption proceeds of such shares shall not result in such shares being deemed abandoned unless the owner of the shares qualifies as a "lost securityholder" as required by this subsection.

(16) property held in a qualified tuition program or education savings account that is exempt from taxation pursuant to Sections 529 or 520 of the Internal Revenue Code, the later of (i) the date by which distributions are required by law to be taken out of the account or (ii) thirty (30) years from the date the account was opened or transferred to the current beneficiary, whichever is later; and

(17) property held for the benefit of a minor under a state's Uniform Gift to Minors Act or the Uniform Transfer to Minors Act, the later of (i) the date by which distributions must be taken out of the account pursuant to the applicable state Uniform Gift to Minors Act or Uniform Transfer to Minors Act or (ii) thirty (30) years from the date the account was established; and

(18)~~(15)~~ all other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever occurs first.

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(d) An indication of an owner's interest in property includes:

(i) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(ii) owner-directed activity in or any owner-directed contact concerning the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account. As used in this section, with respect to intangible property, owner-directed activity and owner-directed contact shall include any written, electronic, telephonic, personal, or other contact, including but not limited to: written correspondence; facsimile transmission; telephone contact; a completed transaction via Automated Clearing House or similar electronic funds processing method; change to information regarding the account in which the property is held; the purchase or sale of any shares or other property held in the owner's account including any purchases or sales effected through automated means; deposit of any interest, dividends, or uncashed checks relating to the property; the voting of a proxy involving the property; or any inquiry concerning the property by an owner or the owner's authorized representative provided such contact can be documented and evidences an owner's awareness of the property;

(iii) the mailing to the owner of the property a Federal tax form that is required to be sent to the owner by the Internal Revenue Code so long as such form is not returned to the sender as undeliverable;

(iv) ~~(iii)~~ the making of a deposit to or withdrawal from a bank account; and

(v) ~~(iv)~~ the payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or termination if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) The provisions of this section shall not apply to any property:

(i) held in an employee benefit plan that is subject to the federal Employee Retirement Income Security Act (ERISA);

(ii) owned by a person who receives mail via an Army Post Office (APO) or Fleet Post Office (FPO) address; or

(iii) owned by a person who has provided the holder a written waiver, executed by the owner, that (i) informs the holder of the owner's interest in foregoing the protections of this [Act] or another state's similar law, (ii) indicates the owner's interest in waiving the presumption of abandonment in this [Act], and (iii) instructs the holder not to report, pay, or deliver any property of the owner held by the holder to a state under this [Act] or a similar state law. An owner may revoke and nullify any such writing provided under this section by providing the holder a subsequent writing deeming the prior waiver revoked or deeming it null and void. A holder relying on an owner's written waiver pursuant to this section shall be required to maintain a record of such written wavier so long as it remains in full force and effect. The administrator may condition the validity of a waiver on the holder providing to an owner executing such waiver certain disclosures that are specified by rule or order.

(f) A holder may presume property to be abandoned and may voluntarily escheat property to the administrator under this [Act] prior to the expiration of the time set forth in this section provided that the holder has reasonably determined that the last known address of the owner is no

longer valid and the owner has not indicated any interest in the property for a period of at least twenty-four months.

Comments: The amendments recommended to Section 2 would accomplish the following:

(1) The amendments to Subsection (a) would provide an exception from the presumption of abandonment to all property listed in Subsection (e). We have revised subsection (e) to include in the list of excluded property:

- ERISA accounts, the escheatment of which are preempted by Federal law (ICI Recommendation 5);

- Property of an owner with an APO or FPO address, which represent property of active military personnel. Aside from being responsible public policy, we note that the escheatment of Veterans' property may be preempted by Federal law (*see* 38 USC 8520, relating to the vesting of property in the U.S. Government of veterans' property). (ICI Recommendation 17); and

- Property covered by a waiver executed by an owner who deliberately elects to forego the protections of the Act. To address any concerns about such waivers being executed by an owner without proper disclosure regarding its consequences, our proposed language expressly authorizes Administrators to "condition the validity of a waiver on the holder providing to an owner executing such wavier certain disclosures that are specified by rule or order." (ICI Recommendation 2)

NAUPA Comment 3

The ICI has proposed numerous changes to Section 2. presumption of abandonment. Below, NAUPA comments on each ICI recommendation and revision separately.

ICI Recommendation (3)a

(2) The amendments to Subdivision (a)(14) would implement ICI Recommendation 5 relating to the treatment of tax-advantaged retirement accounts. As noted in our previous submission, because retirement accounts may sit untouched by an owner until the owner approaches retirement, we strongly recommend that the dormancy period for such accounts be delayed until the owner reaches the age of 70½. This is particularly important in light of the fact that premature escheatment of these accounts can result in adverse and significant tax penalties being imposed on the owner. Additionally, we recommend that the dormancy period for such accounts be seven years rather than the current three year period, which we believe is far too aggressive. In making this recommendation we note that a longer dormancy period would be in the owner's best interest as it would enable the owner's property to continue to appreciate and grow through reinvested dividends and interest.

NAUPA Comment (3)a

NAUPA has previously proposed that "the date the owner reaches the age of seventy years and six months" is sufficient to address ROTH IRAs which have no required minimum distribution date.

If an owner fails to take a mandatory distribution at age 70.5 years, the owner becomes subject to a tax penalty equal to 50 percent of what the distribution would have been, if taken. Leaving the asset with the holder for 7 years after the date of mandatory distribution would significantly increase the potential tax penalty. Additionally, because many elders are in need of retirement income, it is important that owners learn of forgotten assets sooner, rather than later, in their retirement. NAUPA questions whether an owner should be considered "more lost" at seven years versus three years if the mail has been returned for three years and database searches do not result in an updated address? Or what about those instanced where a database search discloses that the owner is deceased? In fact, after three years and the completion of SEC-mandated lost owner database searches, the accounts may (and routinely are) given to heir finders who will charge the owner a considerable portion of the property, whereas if turned over to the state at that time there would be no fee to the owner.

Accordingly, NAUPA does not concur with the ICI's proposed treatment of tax-advantaged retirement accounts.

ICI Recommendation (3)b

(2) The amendments to Subdivision (a)(15) are intended to accomplish three purposes:

- First, they would implement the portion of ICI Recommendation 7 relating to conforming the Act's presumption of abandonment with the owner of a mutual fund account being deemed a "lost securityholder" under Federal law. As discussed in our previous submission to the Drafting Committee, unlike all other holders, Federal law imposes upon holders that are mutual fund transfer agents a legal duty to identify any "lost securityholder" and search for such persons. Such searches must comply with specified search protocols and must be conducted within a specified period of time. As such, we believe it would be more efficient for mutual funds that are subject to this national standard regarding lost securityholders to rely on such standard for purposes of the Act rather than being subject to this standard *in addition to* the existing disparate state standards, which have been designed for a variety of owners and property types that are not subject to a Federal requirement.

- Second, they would implement the portion of ICI Recommendation 8 relating to establishing a longer dormancy period for mutual fund accounts. In particular, we have recommended that mutual fund accounts not be presumed abandoned for a period of seven years. As investment products that are sold as long-term investments, we believe the longer dormancy period is more appropriate for the protection of owners. ICI data indicates that, of the 90 million mutual fund shareholders: 93% invest in mutual funds to save for retirement; 48% are saving for emergencies; and 27% are saving for education – each of which are long-term investment objectives. *See 2013 Investment Company Fact Book,* 53rd Edition (ICI) at p. 91.

- Third, they would implement the portion of ICI Recommendation 7 relating to the consequences to the owner's property from the owner's failure to cash a check (representing dividends, interest, or sales activity) made payable to the owner. Currently, some states (*e.g.*, Florida) deem an owner's entire mutual fund account to be dormant based solely on the failure of a owner to cash a check from the mutual fund that was sent to the owner. Inasmuch as it is not uncommon for owners to neglect to cash checks in negligible amounts, it seems wholly inappropriate for a state to deem the owner's failure to cash such check as evidence of the owner's abandonment of the entire account. To avoid this occurring and protect the property interests of owners, we strongly recommend that the Act distinguish an owner's "abandonment" of a check from its abandonment of a mutual fund account.

NAUPA Comment (3)b

PROPOSED SUBSECTION (a)(15) While is important to note that state abandonment periods are not controlled by the Securities and Exchange Commission (SEC) requirements defining lost security holders, the SEC instituted this rule with many of the same aims as those state unclaimed property statutes. Namely, the rule was created in an effort to protect investors by ensuring that holders actively attempt to locate lost shareholders and that they are not charged fees in order to

be reunited with their property before other attempts at locating them have been made. Also, the SEC has previously stated that the requirements of paragraph (c)(1) of Rule 17Ad-17 "shall have no effect on state escheatment laws." See http://www.sec.gov/rules/final/2013/34-68668.pdf. Lastly, the 1995 Uniform Unclaimed Property Act identifies the issuer as the holder of unclaimed property. Transfer agents are agents who may contract for the escheatment responsibilities of the issuer but are not the holder. As the SEC Rule applies to transfer agents in their role of managing accounts, it does not apply to issuers as holders of unclaimed property.

NAUPA has proposed revised securities presumption of abandonment language for NAUPA's consideration under Section 2(a)(3). In addition, NAUPA proposes revised language regarding what constitutes an "owner's indication of interest" under Section 2(d) of the 1995 Uniform Unclaimed Property Act (NAUPA proposal Section 2(d) can be found in Appendix A-1).

Accordingly, NAUPA does not concur with the ICI that state unclaimed property laws "conflict" with SEC Rule 17Ad-17, a longer dormancy period for mutual funds is necessary or the bifurcation of presumed abandonment for related property.

ICI Recommendation (3)c

(3) The amendments to Subdivision (a)(16) would implement ICI Recommendation 4, relating to the dormancy period for tax-advantaged education savings accounts. The ICI recommends, based on the nature and purpose of such accounts and the severe tax consequences and penalties that would result from their premature escheatment, that the dormancy period for such accounts be the later of the date by which distributions must be taken out of them (*e.g.*, age 30 for a Coverdell account) or thirty years from the date the account was opened or transferred to the current beneficiary. We note that the current Act is silent on the treatment of these accounts as they did not exist at the time the last Act was drafted.

NAUPA Comment (3)c

If qualified educational savings account specifications are to be made, the abandonment period should be based on required distribution and/or no indication of interest by the owner. The addition of 30 years from the date the account was transferred to a current beneficiary is arbitrary and unnecessarily delays escheatment. The success rate of the state in reuniting owners with property after 30 years is extremely low. Further, the current beneficiary of a Coverdell Education Savings Account will likely reach the required distribution date well before 30 years from the date the account was transferred to said beneficiary.

NAUPA abandonment standards for 529 accounts were proposed following consideration of recommendations from the College Savings Plan Network (CSPN), an association similar to NAUPA, which oversees the administration of college savings plan programs. NAUPA ultimately elected not to adopt the CSPN standard for abandonment, which was similar to that of the ICI, because the 30 year abandonment standard could not be justified (it should be noted that the CSPN standard was not a consensus view, but rather a compromise which emerged after several years of discussion and indecision). NAUPA instead proposed an abandonment parameter that more reasonably reflected a point in time where most individuals would have substantially completed higher education. Again, NAUPA understands that the reporting and delivery of unclaimed college savings plan accounts will ultimately result in the liquidation of these accounts and a negative impact on ICI-member revenues, but NAUPA believes that the shorter abandonment period is more likely to result in the location of missing plan beneficiaries.

Accordingly, NAUPA does not concur with the ICI's proposed treatment of tax-advantaged retirement education savings accounts.

ICI Recommendation (3)d

(4) The amendments to Subdivision (a)(17) would implement ICI Recommendation 6, relating to the dormancy period for UGMA and UTMA accounts. The ICI recommends that, based on the nature and purpose of such accounts, which are governed by each individual state's law, that the dormancy period for such accounts be the later of: (i) the date by which the beneficiary turns age 30, if known or, if unknown, 30 years from the date the account was opened.

NAUPA Comment (3)d

NAUPA does not concur that there should be any differential treatment for UGMA and UTMA accounts under a revised uniform act.

ICI Recommendation (3)e

(5) The amendments to Subdivision (d)(ii) and (iii) would expand the means by which owners may indicate an interest in property to avoid property being deemed abandoned. The means have been expanded to include those means by which mutual fund investors typically interact with their mutual fund companies. In addition, it would include the mailing of a Federal tax form by the holder to the owner if such form is not returned to the holder as undeliverable. We note that even Delaware recognizes this as a form of contact for mutual fund accounts. These amendments would implement ICI Recommendation 7.

NAUPA Comment (3)e

SUBSECTION (d) Deposits of interest and dividends into bank accounts do not correlate to shareowner generated activity or evidence that an investor is aware of the account. Automated Clearing House and wire transfers only evidence owner generated activity at the time the account is opened or elections are made to setup this function. As long as there are regular deposits made through ACH ensuring that there are sufficient funds in an account to cover fees, the account may remain open, but unclaimed. The ICI proposal assumes that the bank maintaining the account into which funds are deposited is actively and correctly monitoring the account for activity, and reporting accounts that are in fact abandoned. However, this is merely an assumption, and short of contacting the bank there is no way to in fact confirm compliance.

NAUPA has separately proposed revised securities presumption of abandonment language for NAUPA's consideration under Section 2(a)(3). In addition, NAUPA proposes revised language regarding what constitutes an "owner's indication of interest" under Section 2(d) of the 1995 Uniform Unclaimed Property Act.

Regarding the mailing of IRS tax forms, these forms are often sent or obtained electronically. The failure of mail to be returned and coded by a recordkeeper as undeliverable, does not necessarily mean that the investor is residing at the address of record or aware of their asset. Furthermore, within the next five years, it is likely that correspondence for all financial institutions, including tax forms, will be accessed by the investor by email or web contact, making this standard of undeliverable mail obsolete.

Based on the NAUPA proposal and consistent with the trend to paperless transactions, the downloading of the federal tax form or other owner generated activity will illustrate the owner's indication of interest in the property.

ICI Recommendation (3)f

(6) As discussed above under (1), Subsection (e) has been revised to add three new exclusions to the provisions of Section 2.

NAUPA Comment (3)f

PROPOSED SUBSECTION (e)(i) The Department of Labor has opined on the applicability of the Employee Retirement Income Security Act (ERISA) to state unclaimed property laws. With respect to case law, see the Uniform Law Commissioners' Comment to Section 2 of the 1995 Uniform Act. "Because the unclaimed property laws are matters of traditional state powers, are laws of general application, and have only a tenuous, remote and peripheral impact on ERISA plans, it has been held that they are not pre-empted by federal law. Aetna Life Ins. Co. v. Borges, 869 F.2d 142 (2nd Cir. 1989); Attorney General v. Blue Cross and Blue Shield of Michigan, 168 Mich. App. 372, 424 N.W.2d 54 (Ct. App. 1988), appeal denied, No. 83788 (March 31, 1989)." Giving ICI the benefit of the doubt, this area is unresolved. NAUPA believes that this issue will ultimately be further reviewed by the courts (or ideally, Congress) and that until an ultimate determination is reached unclaimed property held by a plan subject to ERISA should not be exempted from coverage under the Uniform Unclaimed Property Act.

PROPOSED SUBSECTION (e)(ii) Active military members and their families are precisely those citizens that unclaimed property laws are designed to protect. This comment suggests that state unclaimed property laws are not serving the best interests of those who serve in the military. Military members deserve to have their assets protected just as any other owner would as consumer protection is the primary goal of the statute.

What does the ICI propose with respect to accounts with military addresses where there is no activity? What if there has been 50, 75 or 100 years of no activity? Will the members of ICI undertake special efforts to make contact with these owners (for instance, through the Department of Defense) or will the accounts simply remain undisturbed in perpetuity? This approach does serve the purposes of a mutual fund which generates revenue from assets under management. It is unclear how it serves lost current (and in many cases former) servicemen who are unaware of property due them.

Note that the ICI's suggestion about federal law and its application to veterans, this is limited to a right of subrogation on the part of the federal government to the assets of servicemen receiving long term care and veterans who die intestate in VA facilities. The fact that property held in the name of a current or former serviceman is transferred to the custody of a state does not alter the federal government's lien, if any.

PROPOSED SUBSECTION (e)(iii) At the time of investment, account holders do not contemplate that they or their heirs could someday be separated from their assets. Regardless of how the waivers are presented, this proposal results in the forfeiture of a significant consumer protection right. As a result, the property would remain on the books and records of the holder in perpetuity and the investor or their heirs are unlikely to be reunited with their property. For example, an account established in 2015 where the owner signed the escheat waiver would mean that in 2115

the holder could continue to maintain the account if the owner was never found. What would the responsibilities be for the holder to seek out heirs of the original owner during this 100 year period? While a holder such as a mutual fund would earn revenue for the assets under management, this does not seem a legitimate basis for allowing such waivers. Would the waiver be suspended if in the course of attempting to locate the owner the holder learned that the owner was reported as deceased on the Social Security Administration Death Master File? How would the waiver be communicated (NAUPA's concern is that state unclaimed property programs would be discussed in pejorative terms so as to improperly promote the waiver)? Would it be buried deep in a prospectus, with the owner's signature on the account application be enough to trigger the waiver, unless the owner elected to "opt-in" for the protections of the unclaimed property law?

This proposal fundamentally contradicts the intent and spirit of the body of unclaimed property law as a consumer protection and represents a sweeping attempt at circumventing escheatment. In 2011 alone, the 50 states and the District of Columbia returned $1.9 billion in unclaimed property to rightful owners, many of whom were unaware that the property existed.

Accordingly, NAUPA does not concur with the ICI's proposed exclusions of certain property types.

ICI Recommendation (3)g

(7) Consistent with ICI Recommendation 16, a new Subdivision (f) has been added to Section 2 to permit holders to voluntarily escheat property to the appropriate state prior to the expiration of the dormancy period provided that (i) the holder has reasonably determined that the last known address of the owner is no longer valid and (ii) the owner has not indicated an interest in the property for at least two years. A provision of this nature would be particularly beneficial to mutual funds that have difficulty locating beneficiaries to dormant mutual fund accounts.

NAUPA Comment (3)g

PROPOSED SUBSECTION (f) It is inconsistent that for most property types, the ICI recommends lengthening the period of abandonment as a means of protecting investor accounts from escheatment but here, suggests that the property should be remitted earlier at the holder's discretion. What purpose does the ICI pursue in this case other than to remove the administrative costs and burdens for property for which it does not generate a fee or revenue?

Accordingly, NAUPA does not concur with the ICI's proposed allowance for early escheat of property at the sole discretion of the holder.

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ICI Recommendation (4)

SECTION 4. RULES FOR TAKING CUSTODY.

Except as otherwise provided in this [Act] or by other statute of this State, property that is presumed abandoned, whether located in this or another State, is subject to the custody of this State if:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;

(3) the records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) the last known address of the person entitled to the property is in this State; ~~or~~

(ii) the holder is not registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, and is domiciled in this State or is a governmental or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the State of the last known address of the apparent owner or other person entitled to the property; or

(iii) the holder is registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, the Investment Company Act of 1940, or the Investment Advisers Act of 1940 and, according to such registration, has its principal place of business in this State.

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Comments: Section 4 of the Act has been revised to implement ICI Recommendation 18, relating to the default state of escheatment for mutual fund accounts. In particular, the Institute recommends that, unlike other types of property, the default state of escheatment for mutual fund shares be the state in which the mutual fund company has its principal place of business. We note that a shareholder/owner looking for a mutual fund account that has escheated to a state would be most inclined to contact either the state where the shareholder resides *or* the state where the mutual fund maintains its principal place of business. Indeed, it is likely that most shareholders would have no clue regarding where the mutual fund is organized or domiciled. [Most mutual funds are organized under Massachusetts or Maryland law as business trusts.] As such, an owner may likely be unable to locate and reclaim their property. Having the mutual fund's principal place of business as the default state would better enable investors to locate and reclaim their accounts. We note that the fund's registration with the Securities and Exchange Commission, as well as the fund's prospectuses, disclosure documents, and websites would have information regarding the mutual fund's principal place of business readily available. The same may not be true regarding the mutual fund's state of organization. This revision is intended to better enable mutual fund investors to locate and reclaim their accounts. As drafted, it would only impact property held in mutual fund accounts (*i.e.*, Subdivision (3)(ii) would be revised to exclude mutual funds from the current default state provision and Subdivision (3)(iii) would deem a mutual fund's principal place of business as the default state).

NAUPA Comment (4)

How does an owner know the principal state of business for an entity any better than the entity's state of incorporation? Furthermore, the principal place of business can change from time to time, through relocation or merger, which was a point illustrated by the Supreme Court in Delaware v. New York. The ICI proposal is in fact entirely inconsistent with federal common law. "The mere introduction of any factual controversy over the location of a debtor's principal executive offices needlessly complicates an inquiry made irreducibly simple by Texas' adoption of a test based on the State of incorporation."507 U.S. 490, 506 (1993). Principal place of business and domicile create inconsistencies and fact specific inquiries which the Supreme Court specifically sought to avoid.

Based on some confusion with the definition of "domicile" in the 1995 Uniform Act, NAUPA has previously suggested a revision that encompasses state of formation for entities other than corporations.

NAUPA Proposal from May 9, 2014: (revised definition) "Domicile" means the State of incorporation of a corporation; the State of formation of a limited partnership, limited liability company, trust, or other entity created by State statute; the State of home office of a federally-chartered entity; and except as otherwise provided the State of principal place of business for a sole proprietorship or other unincorporated entity. Where the state of domicile of a holder changes subsequent to the date on which property became payable or distributable, the holder's state of domicile for unclaimed property purposes shall be the State where the holder is domiciled at such time as the property is deemed abandoned.

Accordingly, NAUPA does not concur with the ICI approach to redefining the Supreme Court's approach to defining a holder's state of domicile.

ICI Recommendation (5)

SECTION 7. REPORT OF ABANDONED PROPERTY.

(a) A holder of property presumed abandoned shall make a report to the administrator concerning the property. Such report shall be provided to the administrator through a process that is reasonably designed to protect the confidentiality of information contained on such report.

(b) The report, which is not required to be notarized, must be verified by a written or electronic signature of an authorized representative of the holder and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

(3) an aggregated amount of items valued under $50 each;

(4) in the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last know address of the annuitant or insured and of the beneficiary;

(5) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;

(6) the date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(7) other information that the administrator by rule prescribes as necessary for the administration of this [Act].

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(e) Except as otherwise provided in this subsection, the ~~The~~ holder of property presumed abandoned shall send written notice by first class U.S. mail to the apparent owner no more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this [Act] if:

(1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by a statute of limitations; and

(3) the value of the property is $50 or more.

Such notice shall not include any sensitive or non-public personal information concerning the owner, the owner's property, or the value of the owner's property. In the event the owner has previously consented to electronic delivery of information from the holder, the notice required by this section may be sent via electronic delivery in lieu of first class U.S. mail so long as the holder reasonably believes that the owner's electronic mail address is valid. In the event the holder sends the required notice to the owner electronically and receives information indicating that the owner's electronic address is no longer valid, the holder shall send the required notice by first class US. mail to the owner's last known physical address. A holder is not required to send any notice required under this section to any address that the holder has reason to believe is not a valid address for the owner.

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(h) The administrator shall protect from public disclosure any non-public personal information relating to the owner of property or the property that the administrator obtains under this [Act]. As used in this section, the term "non-public personal information" shall not include the name of the owner of such property.

Comments: The amendments to Section 7 implement the following ICI recommendations:

1. Subsections (a) and (h) have been revised to implement ICI Recommendation 15 relating to ensuring that state Administrators (and their representatives) maintain the confidentiality of any non-public personal information concerning the owner of abandoned property reported to the Administrator. As discussed in ICI's recommendation, under Federal law, mutual funds are required to maintain the confidentiality of all shareholders' non-public personal information. ICI's recommendation is intended to ensure that when the holder reports property to the Administrator, the Administrator similarly protects the confidentiality of such information. The proposed revisions would clarify that the term "non-public personal information" does not include the name of the owner of property.

2. Subsection (b) has been revised to implement the portion of ICI Recommendation 13 relating to: (i) eliminating the requirement that reports provided to an Administrator by a holder be notarized (since notarization appears to serve no public purpose); and (ii) permitting the use of electronic signatures in lieu of hardcopy written signatures.

3. Subsection (e) has been revised to implement the portion of ICI Recommendation 13 relating to enabling holders to send required notices to owners via first class U.S. mail or electronically. The current Act is silent on how the written notice is sent and, consequently, has resulted in some states requiring the notices to be sent via overnight delivery or certified/registered mail. Also, the current Act does not recognize electronic delivery of notices for those owners who have agreed to receive account information electronically. As proposed by ICI, in the event the required notice is sent to an owner electronically and the holder receives a "bounce back" on the email, the holder would be required to send the notice via first class U.S. mail.

NAUPA Comment (5)

NAUPA is in agreement that a report need not be notarized and also allowing for the use of electronic signatures. NAUPA believes that flexibility to account for emerging technologies must be recognized. This includes electronic signatures used as verification for report submissions by holders.

NAUPA Proposal from May 9, 2014(new subsection 7(b)(7)): "A verification or attestation of the holder as to the completeness and accuracy of the report. The administrator, in his or her discretion, may (i) accept an electronic signature or other alternative evidence of verification or attestation or (ii) waive the requirement of verification or attestation"

The addition of first class U.S. mail language is acceptable. However, removing key account identifying information for the owner negatively impacts due diligence responses as owners may be wary of providing responses to letters that appear illegitimate.

Similarly, NAUPA has previously proposed electronic due diligence for those owners who have consented to such notice.

NAUPA Proposal from May 9, 2014 (new subsection 10(b)): "A holder who pays or delivers property to the administrator in good faith and who, prior to reporting, if the holder's records contain an address for the apparent owner, which the holder's records do not disclose to be inaccurate, has made reasonable efforts to notify the owner by mail or, if the owner has consented to electronic notice, electronically, in substantial compliance with Section 18 of this Act, is relieved of all liability to the extent of the value of the property so paid or delivered for any liability arising thereafter with respect to the property."

Accordingly, although in agreement with the ICI on many of its due diligence recommendations, NAUPA is concerned that the ICI's recommendations concerning the exclusion of certain information from due diligence communications will not ensure that owners will receive adequate notification of the existence of property that has been presumed abandoned.

ICI Recommendation (6)

SECTION 8. PAYMENT OR DELIVERY OF ABANDONED PROPERTY.

(a) Except as otherwise provided in this section, ~~for property held in a safe deposit box or other safekeeping depository,~~ upon filing the report required by Section 7, the holder of the property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is not an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. The payment or delivery of unclaimed property to the administrator pursuant to this section shall occur through a process that is reasonably designed to protect the confidentiality of information concerning the property and its owner.

(b) The provisions of subsection (a) shall not apply to:

(1) Property held in a safe deposit box or other safe keeping depository, which ~~Tangible property held in a safe deposit box or other safekeeping depository~~ may not be delivered to the administrator until [120] days after filing the report required by Section 7; and

(2) Shares of a investment company that is registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940. Upon request of the administrator, such shares shall be transferred on the holder's books and records from the name of the owner to the name of the State as trustee for the owner and maintained in such form.

~~(b)~~(c) If the property reported to the administrator is a security or security entitlement under [Article 8 of the Uniform Commercial Code], the administrator is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose as permitted by this section of the security or the security entitlement in accordance with [Article 8 of the Uniform Commercial Code].

(d) If the holder of the property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to [Section 8-405 of the Uniform Commercial Code], but an indemnity bond is not required.

(e) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10.

Comments: The provisions of Section 8 have been revised as follows:

1. Subsection (a) has been revised to implement ICI Recommendations 13 and 15 relating to protecting the confidentiality of the owners' non-public personal information whenever abandoned property is delivered to the Administrator. In addition, together with the amendments to Subsection (b)(2), discussed below, these revisions would ensure that mutual fund accounts are not liquidated but, instead, maintained for the benefit of the shareholder to ensure that the shareholder is not adversely impacted by a State's abandoned property law.

2. Subsection (b) has been revised to add a new provision (*i.e.,* Subdivision (b)(2)) that will apply to the "delivery" to the Administrator of abandoned mutual fund accounts. As revised, such delivery will occur by transferring the owner's account on the holder's books and records into the name of the Administrator. Such delivery will both mitigate the adverse consequences to the owner

of liquidating the account and enable the holder to preserve the account, along with any growth, interest, or dividends, for the owner. These revisions implement ICI Recommendation 9.

NAUPA Comment (6)

State unclaimed property laws contemplate states acting as a custodian of unclaimed property, not a trustee. This is a very different legal relationship, which would significantly change the existing context of the law. NAUPA does not believe that state attorneys general would accept the creation of a trust relationship between the state and missing owners. Note that outside of a retirement account context, mutual funds do not have the status of trustees with their shareholders and even in a retirement account context the trustee is a third party. Also, why is it incumbent on the part of the state to request that the shares be reregistered? This adds an unnecessary step and delay.

Mutual fund shares should not be treated differently than shares of a corporation. NAUPA, as previously noted, proposes that states should hold securities and mutual fund shares for not less than 12 months before liquidating or at the discretion of the administrator.

Accordingly, NAUPA does not concur the ICI on its recommendations concerning the transfer and delivery of share positions, and the duties assumed by the state upon receipt of these shares.

ICI Recommendation (7)

SECTION 19. PERIODS OF LIMITATION.

(a) The expiration, before or after the effective date of this [Act], of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this [Act].

(b) An action or proceeding may not be maintained by the administrator to enforce this [Act] in regard to the reporting, delivery, or payment of property beyond the period for which the holder must maintain records as specified in Section 19 or more than 7 or 10 years depending upon the applicable recordkeeping period for the property pursuant to Section 19 after the holder ~~specifically identified the property in a report filed with the administrator or~~ gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

Comments: The revisions to Section 19 are intended to implement ICI Recommendation 14, relating to a seven year statute of limitations for mutual fund accounts. (*See* also comments to Section 21, below.) Seven years is the amount of time that, pursuant to the Federal securities laws, mutual funds must maintain their account records and it seems appropriate to correlate the Act's statute of limitations applicable to mutual fund accounts with the recordkeeping requirements of the Federal securities law. Consistent with the basis for our recommendation, this seven-year period would only apply to mutual fund accounts.

NAUPA Comment (7)

NAUPA has proposed a revision to Sections 19 and 20 regarding the administrator's ability to maintain an action or proceeding.

NAUPA Proposal from May 9, 2014: (new subsection 20(e)) An action or proceeding may not be maintained by the administrator to enforce this [Act] in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

Accordingly, while NAUPA concurs with the ICI that it is appropriate to limit the period of time in which a state may bring an enforcement action against a holder, NAUPA does not concur with the ICI as to the specifics of such period of limitation.

ICI Recommendation (8)

SECTION 20. REQUESTS FOR REPORTS AND EXAMINATION OF RECORDS.

(a) The administrator may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reported under this [Act], describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, at reasonably times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this [Act]. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this [Act]. Subject to the limitations in subsection (g) of this section, the ~~The~~ administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (b) to both the association or organization and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may by:

(1) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this [Act];

(2) used in joint examination conducted with or pursuant to an agreement with another State, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) produced pursuant to subpoena or court order; or

(4) disclosed to the abandoned property office of another State for that State's use in circumstances equivalent to those described in this subdivision, if the other State is bound to keep the documents and papers confidential.

(e) If an examination of the records of person results in the disclosure of property reportable under this [Act], the administrator may assess the cost of the examination against the holder at the rate of [$200] a day for each examination, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to this subsection (c) may be assessed only against the business association or financial organization.

(f) If, after the effective date of this [Act], a holder does not maintain the records required by Section 21 and the records of the holder available for the periods subject to this [Act] are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable methods of estimation, should have been but was not reported.

(g) The administrator may contract with a person to conduct, on behalf of the administrator, any examination authorized by this section subject to each of the following conditions:

(1) Payment for such examination shall not be by commission or based directly or indirectly on the amount or value of property recovered for the State or identified as a result of the examination;

(2) There is an expeditious procedure established by the administrator by rule or order that is independent of the auditor retained by the administrator and that a holder can use to resolve disputes involving property or records that are the subject of the examination;

(3) The authority of any person retained by the administrator to conduct audits is subject to all limitations and restrictions imposed by this [Act] on the administrator including, but not limited to, the records subject to the auditor's review and the confidentiality of any records obtained or reviewed by the auditor; and

(4) No auditor shall be authorized to audit a holder or the holder's records for the same period of time that has previously been audited or is currently being audited by the administrator or another person authorized by the administrator to conduct audits under this [Act].

Comments: The revisions to Section 20 would implement ICI Recommendation 11 relating to Administrators' use of audit firms. While the ICI does not oppose states utilizing third-party audit firms to conduct audits, we believe that the use of such firms should be predicated on each of the following conditions:

(1) A prohibition on third-party auditors being compensated, directly or indirectly, on the amount or value of property recovered for the State or identified as a result of the examination. This condition is to address the very real and significant conflicts of interest that arise in connection with today's contingent fee payments. While states argue that, due to the limited resources, they must rely on third-party auditors, we strongly believe that all such audits should be conducted on a hourly, flat, or similar fee basis without regard to the results of such audits. In addition to addressing our concerns with the conflicts of interest that arise in connection with contingent-fee arrangements, this approach would undoubtedly save the states' a significant amount of revenue. (*Note:* while states have argued that these contingent-fee auditors do not costs the states any appropriation, the states are paying such third-party audit firms significant fees through revenues that would otherwise flow to the states.)

(2) There should be an expeditious procedure established by the Administrator (by rule or order) that is independent of the auditor and that a holder can use to resolve disputes involving property or records that are the subject of an ongoing audit. This condition is to address concerns with auditors usurping a holder's due process through the use of aggressive audit techniques.

(3) The auditor's authority is limited to the authority of the Administrator. We understand from our members that it is not uncommon for auditors to request documentation and information from a holder when the Administrator lacks lawful authority to make such requests. This provision would address such situations.

(4) There can be no duplicative audits conducted by third-party auditors. We understand from our members that it is not uncommon for more than one third-party auditor to attempt

to audit the same holder for the same period of time. This provision would address and prohibit such multiple, duplicative audits.

NAUPA Comment (8)

NAUPA has submitted an extensive position paper to the Uniform Law Commission which details the state's authority and need to utilize third party auditing firms.

As with other holder groups, the ICI has provided no factual basis for alleging that the use of contract auditors is not in the public interest; rather than providing case histories or explaining actual harm, it merely alleges that contract auditors are conflicted. With respect to the fees paid to contract auditors, it should be reemphasized that contract auditors are only compensated for property that should have been reported, but was not; contract auditor collections are thus accretive.

Regarding the examination of records, NAUPA has proposed revised language for the Uniform Unclaimed Property Act under Section 20.

NAUPA Proposal from May 9, 2014: (new subsections proposed for Section 20)

> *(e) An action or proceeding may not be maintained by the administrator to enforce this [Act] in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.*
>
> *(f) Any action or proceeding maintained by the administrator under this section may include property that first became reportable during the relevant time period as well as any property reflected on the holder's books and records as being held for or owed to an owner at any point during the relevant time period.*
>
> *(g) A holder required to file a report under Section 7 shall maintain for a period of 10 years after the holder files the report, all underlying source documents, work papers, records, and other information utilized in determining (i) whether property was unclaimed and (ii) the amount of property reportable. A business association or financial organization that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the State and date of issue, for three years after the holder files the report.*

ICI Recommendation (9)

SECTION 21. RETENTION OF RECORDS.

(a) Expect as otherwise provided in subsections (b) and (c), a holder required to file a report under Section 7 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues, or provides to others for sale in this State, traveler's checks, money order, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the State and date of issue, for three years after the holder files the report.

(c) A holder of shares of an investment company that is registered pursuant to the Investment Company Act of 1940 or a holder that is a financial services firm shall maintain for a period of seven (7) years after filing a report under Section 7 all underlying documents, records, owner account information, and other information utilized to determine (i) whether property held by the holder in the owner's name has been presumed abandoned and (ii) the amount of such property presumed abandoned.

Comments: Consistent with our recommendation to Section 19, above, NAUPA's amendments to Section 21 would conform the Act's recordkeeping requirements with the Act's statute of limitations. In addition, however, a new Subsection (c) would be added to Section 21 to provide a seven-year recordkeeping period for mutual fund account records. This period is consistent with the recordkeeping requirements imposed under the Federal securities laws. As revised, a holder of mutual fund shares would be required to maintain for seven years all records necessary to a determination that the owner's property is presumed abandoned and the amount of such property presumed abandoned. These revisions would implement ICI Recommendation 11.

NAUPA Comment (9)

NAUPA has proposed revised language for the Uniform Unclaimed Property Act regarding the records to be maintained under Section 20 for consistency of administration.

NAUPA Proposal from May 9, 2014: (new subsections proposed for Section 21 – Retention of records)

(a) Except as otherwise provided in subsection (b) or (c), a holder required to file a report under section 7 shall maintain for a period of 10 years after filing the report, all underlying source documents, work papers, records, and other information utilized in determining (i) whether property was unclaimed and (ii) the amount of property reportable.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while

they remain outstanding, indicating the State and date of issue, for three years after the holder files the report.

(c) The administrator may provide by rule for a shorter record retention period.

APPENDIX B-4

NAUPA Commentary on Unclaimed Property Legislation Proposed by The Unclaimed Property Professionals Organization ("UPPO") As Submitted to the Uniform Law Commission June 18, 2014

UPPO Recommendation (1)

Non-Transferable Securities: Section I(C) - page 2 of UPPO Recommendations to ULC

Proposed Language:

> "Stock" does not include:
> (a) securities which are unpriced and which cannot be delivered to the state via The Depository Trust & Clearing Corporation or a similar custodian;
> (b) securities which are unpriced and for which there is no agent to effect transfer; or
> (c) restricted stock.
>
> "Restricted stock" refers to stock of a company that is not transferrable until certain conditions have been met; the owner's rights are not yet vested. Restricted stock is not subject to escheat unless and until the conditions for applying the restrictions have been satisfied and such stock is available to be transferred. Documentation of restrictions must be maintained by the issuer.
>
> "The Depository Trust & Clearing Corporation" is a United States based central custodian of securities, providing post-trade, clearing and settlement services to the financial markets.

NAUPA Comment (1)

NAUPA agrees that the transfer of valueless, nontransferable stock to state unclaimed property programs can be challenging. However, "nontransferable" does not necessarily mean "valueless."NAUPA believes that only securities that are nontransferable due to issuer insolvency should be exempted. NAUPA also questions the practicality of a holder periodically re-evaluating whether the shares could be transferred and report them as necessary.

Based on UPPO's description of the restricted shares as contingent or conditional, restricted shares do not meet the definition of property and therefore cannot be unclaimed. See the definition of "Property" under Section 1(13) – Definitions. "'Property' means…a fixed and certain interest in intangible property…" With restricted shares, there is no fixed and certain interest in the property; therefore, the presumption is not met. As such, this additional legislation would appear superfluous.

NAUPA has also submitted a proposed Commissioners' Comment within Appendix A-2 that addresses vesting and restricted shares. For convenience, it is also restated below:

> *Vesting securities, such as property held in a restricted stock account as employee compensation, do not satisfy the presumption of abandonment unless the shareholder has not indicated an interest in the property within three years of vesting as determined by plan definition. Note that where dividends or other distributions on restricted shares are not subject to the vesting limitations and are paid to the owner, such dividends or other distributions are reportable notwithstanding the vesting period not being met for the underlying restricted securities. For securities held through an employer sponsored plan, it is recommended that holders compare the escheatment list to active employee listings to identify if any owners who have not indicated an interest in the property are current employees.*

Accordingly, NAUPA is substantively in agreement with UPPO's proposal on restricted stock but does not concur with the UPPO's proposal on "unpriced" securities.

UPPO Recommendation (2)

Securities: Section III(1)(G) – pages 29 to 30 of UPPO Recommendations to ULC

(1) Overview

Securities, whether dividend paying, non-dividend paying or reinvested through a dividend reinvestment option or plan (DR) and mutual funds (collectively referred to as investments), present unclaimed property compliance challenges for holders.

The 1995 Act provides that:

> stock or other equity interest … [is presumed abandoned] five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the owner, or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner. §2(a)(3).

Many investments are acquired by owners for long term investment strategy purposes. As such, no activity is transacted nor is expected to be transacted on the account. Therefore, the mere passage of time and lack of activity are generally not sufficient indicators that the owner is lost or has forgotten about or abandoned the property.

(2) Federal Law

The Securities and Exchange Commission (SEC) pursuant to SEC Rule 17Ad-17 requires issuers/transfer agents and broker dealers to make two attempts to locate security holders coded

as lost. A security holder is lost, generally speaking, if correspondence sent to the mailing address is returned as undeliverable.

To simplify the compliance process and for consistency, we recommend that the new act takes into consideration SEC Rule 17Ad-17.

(3) Recommended Changes

Section 2. PRESUMPTION OF ABANDONMENT

UPPO Recommendation:

The Revised Act should provide the conditions under which the presumption of abandonment will be triggered for securities. This revision will provide needed clarity, reduce compliance challenges, and protect the rights of owners.

Required Action:

- Revise Section 2: PRESUMPTION OF ABANDONMENT to address the triggers for the presumption of abandonment for securities.

- Revise Section 2: PRESUMPTION OF ABANDONMENT subsection (a)(3).

Proposed Language:

> (a)(3) A security is presumed abandoned after 2 pieces of correspondence sent to the owner are returned as undeliverable as noted on the owner's account. ~~stock or other equity interest in a business association of financial organization, including a security entitlement under [Article 8 of the Uniform Commercial Code], five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or (ii) of the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;~~
>
> This section of the Revised Act is effective immediately and also applies to amounts that, on the effective date, are in the possession, custody or control of the holder.

NAUPA Comment (2)

No change is necessary to unclaimed property laws with respect to SEC Rule 17Ad-17. SEC Rule 17Ad-17 does not conflict with state unclaimed property laws as the rule affects transfer agents and record keepers as opposed to issuers, who are the holders and ultimately responsible for the escheatment of unclaimed property. Further, it is important to note that the intent of the SEC rule and state escheat laws are the same. The reason that the SEC instituted this rule was to protect the

interests of investors, ensure that holders are actively attempting to locate lost investors and that investors are not unnecessarily charged fees by third party search firms to be reunited with their property before the investor can redeem its property without any fees. Significantly, the SEC has previously stated that the requirements of paragraph (c)(1) of Rule 17Ad-17 "shall have no effect on state escheatment laws." See http://www.sec.gov/rules/final/ 2013/34-68668.pdf.

To the extent that a state's unclaimed property law would require the reporting and delivery of unclaimed securities prior to a transfer agent having conducted some or all SEC mandated searches does not constitute a "conflict." There is no preemption of state unclaimed property laws by the SEC rules, as expressly stated by the SEC itself.

Regarding an undeliverable mail standard, the physical mailing of investor documents and paperwork has significantly decreased in the past ten years, with a corresponding increase in internet and phone based correspondence and transactions. Within the next five years it is likely that standard first class mailings of this sort, unless specifically requested by the investor, will become entirely obsolete. As a result, adherence to an obsolete undeliverable mail standard prevents a lost security holder from receiving the benefit of the protection of unclaimed property laws. Under this approach (which has also been asserted by the STA and the ICI), in many instances no property will be triggered for due diligence or escheatment because correspondence is never sent by a method where the receipt of which could be legitimately confirmed or accurately determined to be "undeliverable."

Accordingly, NAUPA does not concur with UPPO's proposed undeliverable correspondence standard. Within pages one to ten of this memorandum, NAUPA has provided additional support for owner initiated activity as the dormancy trigger rather than an undeliverable correspondence standard.

UPPO Recommendation (3)

Post Escheat Sale of Securities Section V.C - pages 59 to 62 of UPPO Recommendations to ULC

1. *Background*

UPPO respectfully submits that the uniform provisions governing the public sale of abandoned property should be amended to (1) prohibit a state from selling securities that have escheated to the state prior to three years from the date on which the securities were delivered to the state, and (2) to protect shareholders from being impacted negatively by the escheatment, and subsequent sale, of their securities.

The practice of several states, based on the UUPA of 1995, is to sell escheated stocks, mutual funds, bonds and dividends soon after receipt. The state sells the property and deposits the money received into the state's general fund. Owners claiming the property after the sale are entitled only to the proceeds of the sale, which could be substantially lower than market value. For example, in California, the State Controller sells the securities at prevailing prices. A person who claims an interest in the property subsequent to the escheatment and sale may file a claim to the net proceeds from its sale. Under the 1995 UUPA, owners claiming securities from the state are entitled to market value as of the time the claim was filed, but only where the claim was made within three years of escheat.

The above-described practice has proven to be detrimental to owners and holders alike. Consider for example, a holder escheats 100 shares of stock worth $10 each in Year 1 ($1,000 of value). The State sells the stock in Year 4 at $15 per share. The State obtains $1,500, or a gain of $500 on the sale. Now suppose that the market rises significantly in Year 6 and the shares are worth $20 a share. The owner who now goes looking to redeem his shares expects to have $2,000 of value. He receives instead $1,500 minus the State's costs in selling the property. The escheatment process, therefore, cost this hypothetical owner over $500.

In recent years, owners damaged in this way have instituted litigation against the holder who remitted the property to the state as unclaimed property. They have brought claims for wrongful escheat, breach of fiduciary duty, and other causes of action. This litigation burdens holders who are attempting to comply with complex and often ambiguous laws with substantial risk, such that they may be reluctant to escheat in the absence of certainty. Often the dollars are much more significant than our hypothetical above.

UPPO's proposed amendment to Section 12 of the UUPA provides a reasonable solution to this problem. First, it prevents a state from selling securities for a period of 3 years after escheatment. This gives additional time for owners to locate, and be restored to, their securities prior to a sale of the securities. Second, if a state sells the property and the owner subsequently makes a claim to the property, the state must repurchase the securities and turn over the shares to the property owner or, if the securities cannot be repurchased, refund to the owner the cash market value of the securities on the date of the claim. This language provides an incentive to the state to make wise investment decisions when handling their portfolios and ensures that owners are not disadvantaged by the escheatment and subsequent sale of their property. Rather,

owners are put in the same position in which they would have been in had the property not been escheated to the state and was instead allowed to fluctuate with the stock market.

However, the proposal also recognizes that states may not wish to be tasked with the burden or risk inherent in maintaining trading securities portfolios. NAUPA has expressed concern over the burden to states of portfolio management. For that reason, the draft affords the states the option to hold the securities themselves in custody for the owner.

These amendments make sense in light of the primary underlying principle behind unclaimed property laws – that is, to protect unknown owners by preserving their assets, locating them, and restoring their property to them. Therefore, UPPO encourages ULC to adopt its proposed amendments to Section 12 of the UUPA.

Proposed Language:

(A) Section 12. Public Sales of Abandoned Property.

(a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the [county] in which the property is to be sold.

(b) ~~Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a claim under this [Act] before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments thereon up to the time the claim is made, less any deduction for expenses of sale.~~The administrator shall not sell or otherwise liquidate securities until at least three years have passed from receipt of the securities. Securities shall not be sold unless and until the administrator has provided the owner with notice of the administrator's possession of the stock. Said notice shall, at a minimum, include at least one publication designed to reach maximum distribution, whether such publication is electronic or in print media. Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator.

A person making a claim under this [Act] after the expiration of the three-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale plus dividends, interest and other increments thereon up to the time the claim is made, but ~~and~~ is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a
case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this [Act] takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

(B) Section 8. Payment or Delivery of Abandoned Property

****

(b) If the property reported to the administrator is a security or security entitlement under [Article 8 of the Uniform Commercial Code], the administrator is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with [Article 8 of the Uniform Commercial Code].

If the security issuer is not in the custom of issuing physical securities, the administrator will accept a book entry into the administrator's custody account which reflects that the administrator is now the custodian of the shares, notwithstanding that there is no physical security transferred to or endorsed by the administrator.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to [Section 8-405 of the Uniform Commercial Code], but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with Section 10.

NAUPA Comment (3)

NAUPA is conceptually in agreement that states should hold securities for a minimum period, but proposes the period be not less than 12 months before liquidating or at the discretion of the administrator.

NAUPA does not concur with UPPO's supporting rationales as well as the proposed revisions to Sections 12 and 8.

Proper due diligence before securities are remitted to the states remains an instrumental step in reuniting owners with their property. UPPO references owner initiated litigation against holders as a concern for the post escheat sale of securities. The majority of this litigation occurred because the holder did not conduct the appropriate due diligence. If the proper due diligence was conducted, both the 1981 and 1995 Uniform Unclaimed Property require that a state indemnify a holder as long as the holder escheated the property in good faith.

UPPO proposes under Section 12 that a notice provision be added that requires the states to post a notice in at least one publication before liquidation. NAUPA does not follow how this publication will reach its targeted audience. Rather, a review of holder records, targeted due diligence letters and state efforts utilizing their databases are more likely to identity the location of the owner and allow either the state or holder to return the property to the owner. Furthermore, UPPO's proposal requires that any dividends, interest or other increments be paid to an owner even after the securities have been liquidated. How then can the state return property to an owner that the state itself never received? Regarding UPPO's proposal under Section 8, states should have the option to accept a book entry rather than be required to do so.

Accordingly, NAUPA is conceptually in agreement with a holding provision for securities but does not concur with UPPO's other proposals supporting revisions to Section 8 and 12.

SUMMARY ABSTRACT OF ICI RECOMMENDATIONS AND CORRESPONDING NAUPA POSITION

Issue	ICI Position	NAUPA Position	Comment
		Positions of disagreement with ICI highlighted	
1. Purpose section.	A purpose section that avoids states implementing the Act in a way that promotes the states' economic interest at the expense of a lost owner.	The need for a purpose/preamble in lieu of a prefatory note-narrative is questionable and in any event is premature until a new act is finalized.	The scope/intent of several ICI preamble provisions is unclear to NAUPA, especially considering the one-sided nature of the purpose. The duty of holders should not go unmentioned.
2. Owner consent to waiving Act's protection.	Written waiver by owner who elects to forego the protections of the Act.	A waiver fundamentally contradicts the intent and spirit of the body of unclaimed property law as a consumer protection and represents a thinly veiled and sweeping attempt at circumventing escheatment.	
3. Definition of "holder".	Resolve uncertainty regarding which entity is the "holder" with respect to intermediated mutual fund accounts.	Retain as provided for in the 1995 Act.	The proposed definition incorporates complex tax definitions, creates unnecessary complexity and conflicts with the 1995 Act.
4. Treatment of 529 accounts.	Dormancy triggered at 30 years from the date the account was opened or transferred to the current beneficiary, whichever is later.	Add specific provisions for educational accounts but abandonment should reflect required distribution dates or a point in time when higher education is substantially completed.	NAUPA considered the College Savings Plan Network's proposals on this issue. NAUPA has previously provided draft language to the ULC on this issue.
5. Treatment of ERISA and retirement accounts.	Affirmatively provide that ERISA preempts state unclaimed property laws, lengthen dormancy for retirement accounts and use latest condition met rather than earliest for retirement accounts.	No ERISA exemption, consistent with the 1995 Uniform Act Commissioners' Comment. Retain earliest condition met for retirement accounts.	NAUPA has previously provided draft language to the ULC on retirement accounts, specifically to account for ROTH IRAs.

6. Treatment of UGMA/UTMA Accounts.	Specifically address property held for benefit of a minor under a state's Uniform Gift to Minors Act or Uniform Transfer to Minors Act.	NAUPA previously reviewed the issue and declined to treat UGMA/UTMA accounts differently than other accounts. Retain as provided in the 1995 Act.	
7. Treatment of mutual fund shares.	Specifically address mutual fund shares as a property type.	NAUPA does not concur that mutual funds shares require separate identification as a property type.	While mutual funds may be long term investments, this does not make them passive.
8. Dormancy period for mutual fund shares.	Lengthen dormancy to 7 years and incorporate Rule 17Ad-17.	Change dormancy from 5 years to 3 years for miscellaneous intangibles. Rule 17Ad-17 does not conflict with state unclaimed property laws. Goal of Rule 17Ad-17 is the same as NAUPA in protecting shareholders.	NAUPA wants to ensure contact with owners is maintained.
9. Prohibition on sale of mutual fund shares.	At request of administrator, shares will be transferred to the name of the State as trustee.	Minimum holding period of 12 months or at the discretion of the administrator. Unclaimed property laws contemplate the state acting as a custodian, not a trustee which is a very different legal relationship.	NAUPA does not understand the requirement that the shares be reregistered. This adds an unnecessary step and delay.
10. Treatment of beneficiaries.	Revise "owner" definition to include a beneficiary only if official documentation shows that the previous owner is deceased.	The proposal is inconsistent with Section 2(e) of the 1995 Act and Section 2(b) of the 1981 Act as well as *Conn. Mutual v. Moore*.	NAUPA does not agree with the revision or the proposal that the rule applies only to financial services firms.
11. Recordkeeping requirements.	Provides for a 7 year recordkeeping period for investment companies and financial services firms.	Retain 1995 Act timeframe and clarify record retention provisions.	NAUPA has issued a position paper and draft language to the ULC on this issue.
12. Limitations on third-party auditors.	Create several limitations and conditions on use of third-party auditors.	Retain as provided for in the 1995 Act.	No factual basis for alleging auditors are not in public interest. It should be reemphasized that

			contract auditors are only compensated for property that should have been reported but was not.
13. Notice/Filing formats.	Several changes to reporting format including removal of "sensitive information" and allows for electronic delivery of due diligence.	Revise and renumber due diligence from Section 7 to Section 9.	Removing key account identifying information for the owner negatively impacts due diligence responses as owners may be wary of providing responses to letters that appear illegitimate. NAUPA has previously provided the ULC with draft language.
14. Statute of limitations.	Reduce the statute of limitations.	Retain and renumber statute of limitations section to same as record retention provision.	NAUPA has previously provided the ULC with draft language.
15. Confidential treatment of information.	Treat non-public information as confidential.	Retain language from 1995 Act. Treat non-public information as confidential.	
16. Voluntary escheatment.	Escheat property prior to expiration of dormancy period.	Escheat property early with the consent of the administrator.	While proposing increases to most dormancy periods, this proposal allows a holder to remit early. What purpose does this serve?
17. Owners with an APO/FPO address.	Exempt military addresses from the Act.	No exception for APO/FPO addresses.	This comment suggests that state unclaimed property laws are not serving the best interests of those who serve in the military.
18. Default state of escheatment.	Default escheat should be principal place of business.	Clarify domicile for non-incorporated entities. Otherwise, retain 1995 Act as consistent with Supreme Court jurisprudence.	Supreme Court has specifically rejected principal place of business. See *Delaware v. New York*, 507 U.S. 490, 506.

SUMMARY ABSTRACT OF STA RECOMMENDATIONS AND CORRESPONDING NAUPA POSITION

Issue	STA Position	NAUPA Position	Comment
		Positions of disagreement with STA highlighted	
1. Holding period for securities.	Minimum holding period of 24 months.	Minimum holding period of 12 months or at the discretion of the administrator.	
2. Restricted securities.	Clarify legislation that restricted securities are not unclaimed property.	Unnecessary to add to legislation. If anything, a Commissioners' Comment would be sufficient.	Restricted shares do not meet the definition of property as there is not a fixed and certain interest.
3. Conflict with SEC regulation.	State statutes may conflict with SEC rule 17-Ad-17.	Rule 17Ad-17 does not conflict with state unclaimed property laws. Goal of Rule 17Ad-17 is the same as NAUPA in protecting shareholders.	NAUPA wants to ensure contact with owners is maintained.
4. Shareholder activity/contact.	Update contact rules and recognize current technology.	Update contact rules and recognize current technology.	NAUPA has differing proposals on what constitutes contact but agrees that modern technology must be acknowledged.
5. Passive investments/ "unknown" standard.	States basing abandonment on inactivity are putting certain investments, such as non-dividend payers, at risk.	RPO is an obsolete standard and activity/contact should be used. One affirmative contact every 3 years to show maintenance of the relationship.	NAUPA will provide the ULC with draft language for securities.
6. Dividend re-investment.	States basing abandonment on inactivity are putting certain investments, such as dividend reinvestment, at risk.	RPO is an obsolete standard and activity/contact should be used. One affirmative contact every 3 years to show maintenance of the relationship.	NAUPA will provide the ULC with draft language for securities.
7. Employee share plans.	Exempt from Act if employee is employed with issuer.	No automatic exemption. Take affirmative action to contact employee so that they are aware of the property.	
8. Foreign ownership of securities.	Clear language on securities held by non-US residents.	Retain as provided for in the 1995 Act.	

9. Audit powers & record retention.	Uniform record retention requirements and regulation of external audit firms.	Uniform record retention requirements and all auditors should comply with reasonable standards.	NAUPA is unaware of the existence of any widespread or systematic abuse by auditors.

SUMMARY ABSTRACT OF UPPO RECOMMENDATIONS AND CORRESPONDING NAUPA POSITION

Issue	UPPO Position	NAUPA Position	Comment
		Positions of disagreement with UPPO highlighted	
1. Definition of "holder".	Indicate that there can only be one "holder" of property and the holder is the obligor at law.	Generally, retain as provided for in the 1995 Act.	
2. Restricted stock.	Create exemption within stock definition.	Unnecessary to add to legislation. If anything, a Commissioners' Comment would be sufficient.	Restricted shares do not meet the definition of property as there is not a fixed and certain interest.
3. Unpriced and untransferable stock".	Create exemption within stock definition.	Generally, retain as provided in the 1995 Act but will consider exempting bankruptcies.	
4. Reasonable estimate.	Revise definition of record and add definitions for "sufficient records" and "reasonable estimation".	Retain as provided for in the 1995 Act.	
5. Foreign property.	Clear language on securities held by non-US residents.	Retain as provided for in the 1995 Act.	
6. Owners with an APO/FPO address.	Exempt military addresses from the Act.	No exception for APO/FPO addresses.	This comment suggests that state unclaimed property laws are not serving the best interests of those who serve in the military.
7. Contact.	Update contact rules and recognize current technology.	Update contact rules and recognize current technology.	NAUPA has differing proposals on what constitutes contact but agrees that modern technology must be acknowledged.
8. ERISA.	Affirmatively provide that ERISA preempts state unclaimed property laws.	No ERISA exemption, consistent with the 1995 Uniform Act Commissioners' Comment.	
9. Traditional & Roth IRAs.	Mandatory distribution age plus coded RPO. For Roth, 70.5 plus RPO.	Retain contact and earliest condition met for retirement accounts in the 1995 Act.	NAUPA has previously provided draft language to the ULC on retirement accounts, specifically to account for ROTH IRAs.
10. Coverdell ESA.	Mandatory distribution age plus 2	Add specific provisions for	NAUPA considered the College

	RPO.	educational accounts but abandonment should reflect required distribution dates or a point in time when higher education is substantially completed.	Savings Plan Network's proposals on this issue. NAUPA has previously provided draft language to the ULC.
11. 529 College Savings Plans.	Exempt or age 30 plus 2 RPO.	Add specific provisions for educational accounts but abandonment should reflect required distribution dates or a point in time when higher education is substantially completed.	NAUPA considered the College Savings Plan Network's proposals on this issue. NAUPA has previously provided draft language to the ULC.
12. HSAs.	Age 70.5 plus 2 RPO.	Retain as provided for in the 1995 Act but delay reporting for retiree HSAs.	
13. Securities.	Require 2 items of return mail.	Use inactivity as basis for abandonment.	NAUPA will provide the ULC with draft language for securities.
14. UGMA and UTMA.	Age of majority plus 2 RPO.	NAUPA previously reviewed the issue and declined to treat UGMA/UTMA accounts differently than other accounts. Retain as provided in the 1995 Act.	
15. Business to business property.	Create exemption.	Retain as provided in the 1995 Act.	NAUPA has issued a position paper on this issue to the ULC.
16. Stored value cards redeemable for merchandise.	Create exemption.	Retain as provided in 1995 Act.	NAUPA has previously provided draft language to the ULC on this issue.
17. Uninvoiced inventory/payables.	Create exemption.	Retain as provided in 1995 Act.	
18. Promotional programs.	Create exemption.	Retain as provided in 1995 Act.	
19. Unused subscriptions.	Create exemption.	Retain as provided in the 1995 Act.	
20. Mineral proceeds.	Payable or distributable.	Retain as provided in the 1995	

		Act.	
21. Aggregate reporting.	Holder may choose to report name and last known address for property valued under $50.00 and state cannot require names/addresses.	Retain as provided in the 1995 Act.	
22. Due diligence.	Various changes largely consistent with NAUPA.	Various changes largely consistent with UPPO.	NAUPA has previously provided draft language to the ULC on this issue.
23. Deliver property early.	Escheat property prior to expiration of dormancy period.	Escheat property early with the consent of the administrator.	While proposing increases to most dormancy periods, this proposal allows a holder to remit early. What purpose does this serve?
24. Estimation	Revise estimation provisions significantly.	Retain 1995 Act provision.	
25. Record retention	Provides for a 7 year recordkeeping period.	Retain 1995 Act timeframe and clarify record retention provisions.	
26. Administrative appeals	Specific and detailed administrative appeals process and right to mid-audit conference.	NAUPA has proposed an audit appeals process. Administrators are readily available to discuss audit questions.	NAUPA has previously provided draft language to the ULC on this issue.
27. Post escheat sale of securities	State must hold stock for 3 years and repurchase stock or pay out at market value.	Minimum holding period of 12 months or at the discretion of the administrator.	