

DEPARTMENT OF FINANCE
OFFICE OF UNCLAIMED PROPERTY, STATE ESCHEATOR
Statutory Authority: 12 Delaware Code, Section 1132 (12 **Del.C.** §1132)
12 **DE Admin. Code** 100, 101, 102 & 103

PROPOSED

PUBLIC NOTICE

100 Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager
101 Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property
102 Regulation on Practices and Procedures for Records Examinations by the State Escheator
103 Abandoned or Unclaimed Property Examination Guidelines

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 12 **Del.C.** §1132, the Delaware Department of Finance's Office of Unclaimed Property, State Escheator, proposes to revise and replace its regulations related to its Abandoned or Unclaimed Property Law.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

David M. Gregor
State Escheator
Department of Finance
820 N. French St.
Wilmington, DE 19801

Notice may also be directed via electronic mail to david.gregor@state.de.us. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Department of Finance no later than **4:30 p.m. EST, Wednesday, May 3, 2017**.

The action concerning determination of whether to adopt the proposed regulations will be based upon the results of Department analysis and the consideration of the written comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Delaware Department of Finance's Office of Unclaimed Property, State Escheator ("DOF"), proposes to repeal all existing regulations related to State of Delaware's Abandoned or Unclaimed Property program. The DOF, in consultation with the Secretary of State, proposes to promulgate new, revised regulations (contained in a separate, concurrent proposal) to replace the regulations with new regulations presented in a more orderly and comprehensive manner.

These Regulations propose to repeal the following existing provisions in the Delaware Administrative Code:

12 **DE Admin. Code** 100, *Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager*
12 **DE Admin. Code** 101, *Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property*
12 **DE Admin. Code** 102, *Regulation on Practices and Procedures for Records Examinations by the State Escheator*
12 **DE Admin. Code** 103, *Abandoned or Unclaimed Property Examination Guidelines*

These Regulations propose to repeal the following existing Regulations:

Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Program, 9 **DE Reg.** 771 (11/01/05).
Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program, 10 **DE Reg.** 699 (10/01/06) (Final).
Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager, 15 **DE Reg.** 1323 (03/01/12) (Final).

Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property, 15 **DE Reg.** 1330 (03/01/12).

Regulation on Practices and Procedures for Records Examinations by the State Escheator, 16 **DE Reg.** 530 (11/01/12) (Final).

Abandoned or Unclaimed Property Audit Examination Guidelines, 16 **DE Reg.** 630 (12/01/12) (Final).

Statutory Authority

Delaware Code, Title 12 §1132

Background

On January 29, 2015, the Governor of Delaware signed into law Senate Bill 11 of the 148th General Assembly, which directed the Delaware Secretary of Finance to complete the development of a detailed manual containing procedural guidelines for the conduct of Delaware unclaimed property examinations.

On February 2, 2017, the Governor of Delaware signed into law Senate Bill 13 of the 149th General Assembly, which revised and updated the Delaware Abandoned and Unclaimed Property Law. Section 1176(b) directed the Secretary of Finance, in consultation with the Secretary of State, to promulgate regulations to create consistency in any examination or voluntary disclosure.

The Delaware Secretary of Finance seeks to repeal its existing regulations related to the Delaware Abandoned and Unclaimed Property Law, to replace them with detailed regulations, in order to comply with the above direction.

~~400 Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager~~

~~4.0 Construction of Rules of Practice and Procedure~~

- ~~1.1 Unless otherwise provided, these Rules of Practice govern appeals to the Secretary of Finance of any determination by the Audit Manager brought under 12 Del.C. §1156.~~
- ~~1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.~~

~~2.0 Appearance and Practice Before the Independent Reviewer~~

- ~~2.1 In any appeal, a person shall be represented by an attorney at law admitted to practice before the Supreme Court of the State of Delaware. Attorneys who are not so admitted must apply for admission *pro hac vice* through Rule 2.2 below.~~
- ~~2.2 Pursuant to Rule 72(a) of the Delaware Supreme Court Rules, attorneys who are not members of the Delaware Bar may be admitted *pro hac vice* in an appeal in the discretion of the independent reviewer upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Pursuant to Delaware Supreme Court Rule 72(c), Delaware Counsel for any party shall appear in the matter for which admission *pro hac vice* is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the matter and shall attend all proceedings before the independent reviewer, unless excused by the independent reviewer.~~
- ~~2.3 Designation of address for service; notice of appearance; withdrawal.~~
 - ~~2.3.1 When an attorney first makes any filing or otherwise appears in a representative capacity before an independent reviewer in an appeal, he or she shall file with the independent reviewer, and keep current, a written notice of appearance stating the name of the appeal; the attorney's name, bar identification number, business address, telephone number, and electronic mail address; and the name and address of the person or persons represented.~~
 - ~~2.3.2 Withdrawal by any attorney shall be permitted upon written notice to the independent reviewer.~~

~~3.0 Appointment of an Independent Reviewer~~

~~If a holder timely files a written notice of appeal with the Secretary of Finance of a determination of the Audit Manager, the Secretary of Finance shall as soon as practicable, but in no event later than 90 days after receipt, designate a qualified person to act as the independent reviewer in a particular appeal. Alternatively, the Secretary of Finance may generally designate an independent reviewer indefinitely until the authority is transferred. In either case, the Secretary of Finance shall provide written notice to the holder within 5 days regarding the appointed or generally designated independent reviewer, including address and contact information to facilitate filing under Rule 8.0.~~

~~4.0 Disqualification and Recusal of an Independent Reviewer~~

~~If at any time an independent reviewer believes himself or herself to be disqualified from considering an appeal, the independent reviewer shall issue a notice stating that he or she is withdrawing from the appeal and setting forth the reasons therefor.~~

5.0 Ex Parte Communications

- 5.1 No party to an appeal, or counsel to or representative of a party to an appeal, shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of that appeal to the independent reviewer.
- 5.2 No independent reviewer with respect to an appeal shall make or knowingly cause to be made to a party to that appeal, or counsel to a party to that appeal, an *ex parte* communication relevant to the merits of that appeal.

6.0 Motions

- 6.1 Generally. Unless made during a hearing or conference, including those conducted by telephone or other similar means, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon and a proposed order. All written motions shall be served in accordance with Rule 7.0, be filed in accordance with Rule 8.0, meet the requirements of Rule 9.0, and be signed in accordance with Rule 10.0. The independent reviewer may order that an oral motion be submitted in writing. No oral argument shall be heard on any motion unless the independent reviewer otherwise directs.
- 6.2 Opposing and reply briefs. Briefs in opposition to a motion shall be served and filed within 20 days after service of the motion. Reply briefs shall be served and filed within 10 days after service of the brief in opposition.
- 6.3 Length limitation. A brief in support of or opposition to a motion shall not exceed 30 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum, unless the independent reviewer modifies this limitation. Requests for leave to file briefs in excess of 30 pages are disfavored.

7.0 Service of Papers by Parties

- 7.1 Service initiating an appeal. At the outset of an appeal, the notice of appeal and any accompanying papers shall be served on the Secretary of Finance, with a copy to the Audit Manager, by certified mail, return receipt requested.
- 7.2 Service of all other filings.
 - 7.2.1 When required. In every appeal, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in accordance with the provisions of this section until such time as a notice of appearance has been served by counsel for the party or other person represented pursuant to Rule 2.0, after which time service shall be made pursuant to paragraph 7.2.2 of this section upon counsel for the party or other person represented, unless service upon the party or other person represented is ordered by the independent reviewer.
 - 7.2.2 How made. Service shall be made by delivering a copy of the filing. "Delivering" means:
 - 7.2.2.1 Personal service by handing a copy to the person required to be served; or leaving a copy at the person's office with a clerk or other person in charge thereof, or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed, or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;
 - 7.2.2.2 Mailing the papers through the U.S. Postal Service by first class, registered, or certified mail or Express Mail delivery addressed to the person;
 - 7.2.2.3 Sending the papers through a commercial courier service or express delivery service; or
 - 7.2.2.4 Transmitting the papers by facsimile machine or electronic mail transmission where the following conditions are met:
 - 7.2.2.4.1 The persons serving each other by facsimile transmission or electronic mail transmission have agreed to do so in a writing, and
 - 7.2.2.4.2 Receipt of each document served is confirmed electronically by a system-generated confirmation or by a manually signed receipt.
 - 7.2.3 When service is complete. Personal service, service by U.S. Postal Express Mail or service by commercial courier or express delivery service is complete upon delivery. Service by mail is complete upon mailing. Service by facsimile or electronic mail transmission is complete upon confirmation of transmission, whether system-generated or manual.

8.0 Filing of Papers with the Independent Reviewer: Procedures

- 8.1 When to file. All papers required to be served by a party upon any person shall be filed with the independent reviewer at the time of service. Papers required to be filed with the independent reviewer must be received within the time limit, if any, for such filings.

- 8.2 Where to file. Filing of papers shall be made by filing the original papers or duplicates of the original papers with the independent reviewer.
- 8.3 To whom to direct the filing. All motions, objections, applications or other filings made during an appeal shall be directed to and decided by the independent reviewer.
- 8.4 Certificate of service. Papers filed with the independent reviewer shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number, or electronic mail address to which service was made, if not made in person.

9.0 Filing of Papers: Form

- 9.1 Specifications. Papers filed in connection with any administrative appeal shall:
 - 9.1.1 Be on one grade of unglazed white paper measuring 8-1/2 x 11 inches, except that, to the extent that the reduction of larger documents would render them illegible, such documents may be filed on larger paper;
 - 9.1.2 Be typewritten or printed in either ten or twelve point typeface or otherwise reproduced by a process that produces permanent and plainly legible copies;
 - 9.1.3 Include at the head of the paper, or on a title page, the title of the appeal, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the appeal;
 - 9.1.4 Be paginated with all margins at least one inch wide;
 - 9.1.5 Be double spaced, with single spaced footnotes and single spaced indented quotations; and
 - 9.1.6 Be stapled, clipped or otherwise fastened in the upper left corner.
- 9.2 Signature required. All papers must be dated and signed as provided in Rule 10.0.
- 9.3 Suitability for record keeping. Documents which, in the opinion of the independent reviewer, are not suitable for computer scanning or microfilming may be rejected. The party submitting the document shall have 10 days within which to provide a suitable copy.

10.0 Filing of Papers: Signature Requirement and Effect.

- 10.1 General requirements. Every filing of a party represented by counsel shall be signed by Delaware Counsel of record in his or her name and shall state that counsel's bar identification number, business address, electronic mail address, and telephone number. Any form of electronic signature is sufficient for compliance with this Rule.
- 10.2 Effect of signature.
 - 10.2.1 The signature of counsel or a party shall constitute a certification that:
 - 10.2.1.1 the person signing the filing has read the filing;
 - 10.2.1.2 to the best of his or her knowledge, information and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
 - 10.2.1.3 the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.
 - 10.2.2 If a filing is not signed, the independent reviewer shall strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

11.0 Computation of Time

- 11.1 Computation. In computing any period of time prescribed in or allowed by these Rules of Practice or by order of the independent reviewer, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. Unless otherwise specified, intermediate Saturdays, Sundays and State legal holidays shall be excluded from the computation when the period of time prescribed or allowed is 10 days or less, not including any additional time allowed for service by mail in paragraph 11.2 of this section. If on the day a filing is to be made, weather or other conditions have caused the designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, Sunday nor State legal holiday.
- 11.2 Additional time for service by mail. If service is made by mail, three days shall be added to the prescribed period for response.

12.0 Notice of Appeal: Form and Content

- 12.1 Each notice of appeal shall be in writing and signed by the holder's Delaware Counsel. The notice of appeal shall specify in reasonable detail the matters in which the holder asserts that the Audit Manager erred in the determination of the protest of the holder, and any statutory provision, rule or regulation the Audit Manager is alleged to be violating or to have violated.
- 12.2 If the appeal consists of several claims, each claim shall be stated separately.
- 12.3 Upon the holder's receipt of notice from the Secretary of Finance of the appointment or general designation of an independent reviewer, the holder shall within 20 days designate all evidence it deems necessary to include in the record on appeal. The Audit Manager shall then have an additional 10 days within which to designate all evidence he or she deems necessary to include in the record on appeal.
- 12.4 It shall not be necessary to include copies of any evidence as a part of the record if (and to the extent that) all parties having an interest in the outcome of the appeal shall execute within 10 days after the holder's receipt of notice from the Secretary of Finance of the appointment or general designation of an independent reviewer, in which case the stipulation shall be included as part of the record; provided that the independent reviewer or any Chancellor or Vice Chancellor of the Court of Chancery (as the case may be) may order copies of all or part of the omitted evidence to be filed as a part of the record at any time during the pendency of the appeal.

13.0 Notice of Appeal: Amendment and Withdrawal

- 13.1 At any time prior to thirty days after the date on which the determination by the Audit Manager of the holder's protest is mailed holder receives notice from the Secretary of Finance of the appointment or general designation of an independent reviewer, the holder may amend the notice of appeal, after which period the notice of appeal may not be amended.
- 13.2 The holder may withdraw the notice of appeal without prejudice at any time prior to the end of the thirty days after the date on which the holder receives notice from the Secretary of Finance of the appointment or general designation of an independent reviewer, but the holder may only re-file before the end of the thirty days after the date on which the holder receives notice from the Secretary of Finance of the appointment or general designation of an independent reviewer. Otherwise the withdrawal shall be with prejudice.

14.0 Scheduling a Hearing.

- 14.1 Independent reviewer order requiring hearing. The independent reviewer should promptly schedule an oral hearing on the appeal to be held, absent agreement of the parties, within 90 days after the date the holder received notice from the Secretary of Finance of the appointment or general designation of an independent reviewer.
- 14.2 Notice of hearing. Upon scheduling a hearing, the independent reviewer shall issue a notice stating the date, time and place of the hearing, and shall serve such notice on the parties.

15.0 Pre-Hearing Submissions

- 15.1 Submissions generally. At least 5 days prior to the oral hearing date, or at such other time ordered by the independent reviewer, the holder and the Audit Manager shall each submit to the independent reviewer and each other a brief containing argument and referencing supporting documentation from the record before the Audit Manager or an explanation as to why such supporting documentation is not available. Length limitations, if any, may be determined by the independent reviewer.
- 15.2 Timing of production. The independent reviewer may modify the time limits for production of evidence set by these rules.

16.0 Oral Hearings

- 16.1 Oral Hearings. The oral hearing on the appeal shall be held upon order of the independent reviewer.
 - 16.1.1 All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.
 - 16.1.2 All hearings shall open to the public unless otherwise ordered by the independent reviewer.
 - 16.1.3 All hearings shall be recorded by sound, sound and visual, or stenographic means. The cost of recording shall initially be borne by the Audit Manager, subject to later assessment as costs against a party or between the parties in the independent reviewer's discretion, and subject to confirmation by the Secretary of Finance. Any party may at its own expense arrange for a transcription to be made from the recording of any oral hearing recorded by non-stenographic means.
- 16.2 Continuance. Any motion for a continuance of the hearing date shall be filed as far in advance of the hearing date as practicable. Motions must be for good cause and state with specificity the reason for the continuance

request. Any motion for a continuance filed within 10 days of a scheduled hearing is disfavored and will be denied in the absence of extraordinary circumstances.

16.3 Hearing procedure. In the hearing, each party is entitled to present its case or defense by oral argument.

17.0 Evidence

17.1 Admissibility. The independent reviewer may consider all relevant evidence *de novo* on the record.

17.1.1 The independent reviewer may make reference to and be guided by the Delaware Uniform Rules of Evidence. Notwithstanding those rules, the independent reviewer may consider any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs, and give probative effect to that evidence.

17.1.2 Evidence may not be excluded solely on the ground that it is hearsay, but the weight to be given to any such evidence is subject to the independent reviewer's discretion.

17.2 Objections. Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon.

18.0 Proposed Findings of Fact and Conclusions of Law, and Post-hearing Briefs.

18.1 At the discretion of the independent reviewer, the parties may be ordered to file proposed findings of fact and conclusions of law, or post-hearing briefs, or both. The independent reviewer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

18.2 Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

18.3 In any case in which the independent reviewer has ordered the filing of proposed findings of fact and conclusions of law, or post-hearing briefs, the independent reviewer shall, after consultation with the parties, prescribe the period within which proposed findings of fact and conclusions of law and/or post-hearing briefs are to be filed. The period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 30 days after the conclusion of the hearing unless the independent reviewer permits a different period and sets forth in an order the reasons why a longer period is necessary.

18.4 Unless the independent reviewer orders otherwise, no post-hearing submission shall exceed 50 pages, exclusive of cover sheets, tables of contents and tables of authorities, and exclusive of the evidence in the record to which the post-hearing submission refers.

19.0 Decision After a Hearing.

19.1 In any appeal in which a hearing is held, the independent reviewer shall issue a written decision. The decision shall be submitted to the Secretary of Finance within 90 days after the last day of the hearing or the filing of any post-hearing submission, whichever is later. The decision shall include: (i) a brief summary of the evidence; (ii) findings of fact based on the evidence; (iii) conclusions of law; and (iv) an assessment of costs, including the independent reviewer's fee, against a party or between the parties in the independent reviewer's discretion.

19.2 The Secretary of Finance may adopt or reject the independent reviewer's decision in whole or in part. If the Secretary of Finance modifies or rejects, in whole or in part, the decision of the independent reviewer, the Secretary of Finance shall issue a determination in writing setting forth the basis of any rejection or modification of the independent reviewer's decision.

20.0 Failure to Appear at Hearing

A party's failure to appear at a hearing that has been duly noticed shall not be cause to continue the hearing. If the independent reviewer so orders, the hearing shall proceed in the party's absence, which shall be noted in the record.

21.0 Disruptive Conduct

If a party, or counsel to a party, engages in conduct in violation of an order of the independent reviewer, or other disruptive conduct during an oral hearing, the independent reviewer may impose non-monetary sanctions therefor, including the issuance of an order: (i) excluding the party and/or his or her counsel from any further participation in the hearing; (ii) striking briefs from the record; (iii) providing that certain facts shall be taken to be established for purposes of the appeal; or (iv) providing for such other relief as is just and equitable under the circumstances.

22.0 Appeals

- 22.1 Any holder aggrieved by a final determination of the Secretary of Finance may file an appeal to the Court of Chancery. A copy of the notice of appeal shall be promptly filed with the Secretary of Finance.
- 22.2 Upon the filing of an appeal to the Court of Chancery, the administrative record shall be filed by the Secretary of Finance or a designee of the Secretary of Finance with the Court in accordance with Court of Chancery Rule 72.
- 22.3 Any party that files an appeal to the Court of Chancery shall be responsible for filing with the Court in a timely manner the transcript of that portion of the appeal in which error allegedly occurred. Each party on appeal shall bear his, her or its own costs of transcription.

~~15 DE Reg. 1323 (03/01/12)~~

~~401 Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property~~

~~1.0 Construction of Rules of Practice and Procedure~~

- 1.1 Unless otherwise provided, these Rules of Practice and Procedure govern the determination or whether the full period of dormancy has run against certain securities and related property as described in ~~12 Del.C. §1198~~.
- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

~~2.0 Definitions~~

- 2.1 All capitalized terms in this regulation shall have the same meaning ascribed to them in ~~12 Del.C. §1198~~ as it may be amended from time to time.
- 2.2 "Securities and Related Property" shall mean Property that consists of (a) intangible ownership interests in corporations, whether or not represented by a stock certificate, bonds and other securities; (b) dividends, cash, stock and other distributions made (or attempted to be made) by issuers of securities in respect of the securities issued; (c) certificates of membership in a corporation or association; (d) funds deposited by a Holder with fiscal agents or fiduciaries for payment to Owners of dividends, coupon interest and liquidation value of stocks and bonds; and (e) funds to redeem stocks and bonds.

~~3.0 Attempt to Contact Owners of Securities and Related Property~~

~~No more than 120 days, and no less than 60 days, before reporting to the State Escheator any Securities and Related Property with a value of \$250.00 or more that is otherwise deemed to be Abandoned Property, the Holder of the Securities and Related Property shall attempt to contact the apparent Owner of the Property by letter sent via first class mail, postage prepaid, in substantially the following form:~~

~~{Date}~~

~~Missing Owner Name-~~

~~Missing Owner Last Known Address-~~

~~[City], [State] [Zip Code]~~

~~Re:—Abandoned or Unclaimed Property~~

~~Dear [Missing Owner Name]:~~

~~Our records show that we, [Holder], are holding unclaimed property that may belong to you. We have not had direct contact with you since [mm/dd/yyyy]. The check or identifying number for the [\$Amount] we are holding is No. [xxxxxx], and the item is dated [mm/dd/yyyy].~~

~~Under Delaware law, we may be required to deliver this property to the State Escheator, on or before [mm/dd/yyyy] if the property is not claimed. Please complete the information below and return this letter to [Holder] no later than [mm/dd/yyyy], so that we may meet our unclaimed property reporting obligations. Do not forget to sign and date your response.~~

~~I am entitled to the above referenced property. Please issue a new check and mail to the following address:~~

_____ I am not entitled to the above referenced funds or these funds have already been paid to me.

_____ I am aware of these funds and choose not to claim them at the present time.

_____ Please change the address on my account to:

Owner signature _____ Date signed _____

If any letter is returned to the Holder undelivered, or if any letter appears to have been delivered but the apparent Owner of the Property fails to respond to the letter before the Holder's report of Abandoned Property is due, the Securities and Related Property shall be deemed Abandoned Property against which a full Period of Dormancy has run.

4.0 Attempt to Contact Owner Excused

The Holder is excused from attempting to contact the apparent Owner if the Holder has no record of an address for the apparent Owner, or if the Holder has already given notice to the apparent Owner in a form substantially similar to that required by this regulation under existing federal or state law, rules, or regulations within 90 days of the time specified for notice in this regulation.

5.0 Cost of Compliance; Charge Against Property

A Holder that provides notice under this regulation may charge the cost of postage and other reasonable administrative costs, not to exceed five dollars per mailing, against the Securities and Related Property that would otherwise be paid or delivered to the State pursuant to 12 ~~Del.C.~~ §1201.

15-DE-Reg. 1330 (03/01/12)

402 Regulation on Practices and Procedures for Records Examinations by the State Escheator

4.0 Construction of Rules of Practice and Procedure

- 1.1 Unless otherwise provided, these Rules of Practice govern examinations of records of any person or business association or organization to determine whether the person has complied with any provision of 12 ~~Del.C.~~ Ch. 11.
- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

2.0 Length of Examination Periods.

- 2.1 There is no provision of Delaware law that now limits the historical period for which the State Escheator may examine records under 12 ~~Del.C.~~ §1155 to determine whether the person under examination has complied with any provision of 12 ~~Del.C.~~ Ch. 11.
- 2.2 As a matter of policy, in previous examinations the State Escheator has not examined records created before January 1, 1981 to determine whether the person under examination has complied with any provision of 12 ~~Del.C.~~ Ch. 11.
- 2.3 As a part of a larger revenue stabilization initiative, the State Escheator has determined that in order to encourage compliance with 12 ~~Del.C.~~ Ch. 11, the following starting periods for examinations will be observed:
 - 2.3.1 For all persons who are now the subject of a records examination under 12 ~~Del.C.~~ §1155, or who become the subject of an examination before the effective date of this regulation, no records created before January 1, 1986 will be included in the determination of compliance with the provisions of 12 ~~Del.C.~~ Ch. 11, provided that the examination is completed by June 30, 2015.

- 2.3.2 For all persons who become the subject of examinations on or after the effective date of this regulation, and for all other persons whose examinations are not completed by the close of business on June 30, 2015, the State Escheator will continue his existing policy of examining records created on or after January 1, 1981 to determine whether the person under examination has complied with any provision of 12 ~~Del.C.~~ Ch. 11.
- 2.3.3 For purposes of this regulation only, an examination is deemed to be complete for any category of property as of the date on which the Audit Manager mails the statement of findings and request for payment as described in 12 ~~Del.C.~~ §1156(a) for that category of property.

~~16 DE Reg. 530 (11/01/12)~~

~~103 Abandoned or Unclaimed Property Examination Guidelines~~

~~1.0 Authority To Conduct Abandoned Property Records Examinations~~

~~The State Escheator is authorized under 12 Del.C. §1155 to examine the records of any person or business association or organization to determine whether the person has complied with any provision of 12 Del.C. Ch. 11 (the "Delaware Unclaimed Property Law").~~

~~16 DE Reg. 630 (12/01/12)~~

~~2.0 Examination Of Holders' Records~~

- 2.1 ~~The State Escheator will be assisted in the examination by an auditor in employed by the Division of Unclaimed Property or to a third party auditing firm that the State has retained for such purposes. At the request of a Holder the State's third party auditor will enter into a confidentiality agreement with the Holder in a form approved by the State Escheator before any of the Holder's confidential records are produced.~~
- 2.2 ~~An official letter from the Abandoned Property Audit Manager (the "Audit Manager") will be issued to Holders selected for examination. The letter will outline the State's intention to examine the books and records of the Holder (including subsidiaries and related entities) and identify the assigned auditor or third party auditing firm. Third party auditors are not authorized to engage in any examination without prior written consent from the State Escheator. The issuance of the letter terminates the Holder's ability to enter into a Voluntary Self Disclosure Agreement ("VDA").~~
- 2.3 ~~Once an examination is assigned, an opening conference will be scheduled with the auditor and representatives of the Holder. During the opening conference, the auditor will:~~
 - 2.3.1 ~~Advise the Holder of the reporting requirements of the Delaware Unclaimed Property Law;~~
 - 2.3.2 ~~Identify the time period to be covered by the examination;~~
 - 2.3.3 ~~Schedule a time period for field work to be commenced; and~~
 - 2.3.4 ~~Request records and materials necessary to initiate the examination.~~
- 2.4 ~~The State expects the Holder's cooperation and anticipates that with the Holder's cooperation the time to complete a typical examination should not exceed twelve (12) months. If an examination lasts longer than 12 months, the Audit Manager will meet with the Holder to facilitate completion of the examination. Interest and penalty may be assessed pursuant to Section 1159 of the Delaware Unclaimed Property Law on all abandoned property due for all reporting years under examination.~~
- 2.5 ~~The auditor may conduct the examination on site or remotely if records are available electronically or can be shipped. During the examination, the auditor will review all necessary books and records, interview key personnel and review relevant policies and procedures related to abandoned property. During the examination, the auditor may make subsequent requests to the Holder for additional books and records as required to complete the examination. The auditor will make copies of records deemed necessary or desirable in order to create a suitable record for the Internal Review Procedure described in 12 Del.C. §1156.~~
- 2.6 ~~The Holder will be kept informed of the progress of the examination and may contact the State Escheator directly to address issues arising from or related to the examination. At the end of the examination, the auditor will present the preliminary findings to the Holder at an exit conference. These findings are not final. The auditor will allow the Holder reasonable time to complete required research and gather more records to address matters raised in the preliminary findings.~~

~~16 DE Reg. 630 (12/01/12)~~

~~3.0 Third-party Advocates~~

~~Holders may retain third party advocates ("Advocates") to assist them in the examination process. The retention of an Advocate is no basis to delay the commencement of the State's examination, and the State will not delay the examination so that the Advocate may conduct a review or examination of the Holder's books and records in advance of the State's examination. The State will cooperate with the Holder and its Advocate and keep both of them apprised of the records requests, interviews and the progress of the examination in general. The State will not examine or otherwise be limited to a review of work papers, compilations or record summaries prepared by the Holder or the Advocate but shall have access to such of the Holder's original books and records necessary to ascertain the Holder's compliance with the Delaware Unclaimed Property Law. The State shall direct its requests and communications to the Holder and, if requested by the Holder, will also direct copies to the Advocate.~~

~~16 DE Reg. 630 (12/01/12)~~

4.0 Statement of Findings and Request for Payment

~~At the close of the examination, the Holder will receive a statement of findings and request for payment from the Audit Manager if the Audit Manager determines that the holder has underreported abandoned or unclaimed property under the Delaware Unclaimed Property Act. This letter will outline the findings of the examination and make a formal demand for the underreported property.~~

~~16 DE Reg. 630 (12/01/12)~~

20 DE Reg. 764 (04/01/17) (Prop.)