

**DEPARTMENT OF FINANCE
DIVISION OF UNCLAIMED PROPERTY**

Statutory Authority: 12 Delaware Code, Section 1198 (12 **Del.C.** §1198)

FINAL

ORDER

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

NATURE OF PROCEEDINGS:

Delaware Department of Finance ("Department"), Division of Unclaimed Property, Escheator of the State of Delaware (the "State Escheator"), initiated proceedings to adopt regulations regarding the establishment of the running of the full Period of Dormancy for certain securities related property. The Department's proceedings to adopt its regulations were initiated pursuant to 29 **Delaware Code**, Section 10115, with authority prescribed by 12 **Delaware Code**, Section 1208.

The Department published its notice of proposed regulation pursuant to 29 **Delaware Code**, Section 10115 in the January 2012 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulation to be produced by January 31, 2012 at which time the Department would receive information, factual evidence and public comment to the proposed regulation.

SUMMARY OF PROPOSAL

The proposal creates practices and procedures for establishing whether the full period of dormancy has run against certain securities related property as described in 12 **Del.C.** §1198.

STATUTORY AUTHORITY

- 12 **Delaware Code**, §1154, State Escheator to make regulations.
- 12 **Delaware Code**, §1198(9), Definition of Period of Dormancy.
- 12 **Delaware Code**, §1199, Report by holders of abandoned property
- 12 **Delaware Code**, §1208, Rules and regulations.

SUMMARY OF COMMENTS RECEIVED AND RESPONSE AND EXPLANATION OF CHANGE

Morris, Nichols, Arsht & Tunnell LLP (MNAT), Council on State Taxation ("COST"), and Computershare offered the following observations. The State Escheator has considered each of the comments and responds as follows.

MNAT correctly observes that more than forty states and other jurisdictions have established "Holder Due Diligence" requirements by legislative adoption, in whole or in part, of either the 1981 version or the 1995 version of the Uniform Unclaimed Property Act (the "Act"), and that at least one state that has adopted neither version of the Act has nevertheless adopted "Holder Due Diligence" requirements by statute. Both MNAT and COST express concern that the Department may leave itself vulnerable to potential litigation challenging the validity of the regulation because the due diligence requirement it contains was not adopted by legislative action, and that the General assembly is the appropriate vehicle for adoption of a due diligence requirement.

Response: The State of Delaware has not adopted either version of the Act. It has, however, granted specific authority to the State Escheator in 12 Del.C. §§1154 and 1208 to "make such rules and regulations as the Escheator may deem necessary to administer and enforce this subchapter." The regulation as proposed falls squarely within the definition of "Regulation" in 29 Del.C. §10102(7). Given the broad authority granted the State Escheator by the General Assembly to promulgate regulations that, among other things, act as a guide for the decision of cases before the Department and the Courts, it does not appear that the regulation exceeds the State Escheator's authority to promulgate regulations even though the vast majority of states have adopted the same requirement through legislation.

Computershare expresses its belief that a specific due diligence requirement is an important component of any state's unclaimed property program, but it also expresses concern that the regulation may cause confusion among owners of securities related property. It also expresses concern that, while the regulation is clear about the consequences of non-return of mail, the statute to which the regulation applies is silent.

Response: Recent amendments to 12 Del.C. §1198(9) have changed the status of the State of Delaware from a "lost owner" state to a "no activity" state. Rather than causing confusion among owners, the regulation eliminates confusion among owners about the type of contact that constitutes "activity." It also eliminates the uncertainty inherent in the silence of the statute to which the regulation applies regarding the consequences of non-return of mail.

MNAT comments that the regulation should be modified to make clear that holders may recover costs of compliance allowed by the regulation without violating 12 Del.C. §1201.

Response: Appropriate language has been added.

FINDINGS OF FACT:

The Department, acting through the State Escheator, finds that the proposed regulation set forth in the January 2012 *Register of Regulations* should be adopted, subject to the modification described above which is not substantive.

THEREFORE IT IS ORDERED, that the proposed changes to the Regulation on Practice and Procedure for Establishing Running of the Full Period of Dormancy for Certain Securities and Related Property, with the modification indicated herein, is adopted and shall be final effective March 31, 2012.

Mark Udinski, State Escheator
Department of Finance

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) (Final)