



# UNCLAIMED PROPERTY



**IN BRIEF:  
UNCLAIMED PROPERTY COMPLIANCE  
OBLIGATIONS AND CHALLENGES FOR  
BROKER DEALERS**

JANUARY 2015

## I. INTRODUCTION

The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. These companies are engaged in communities across the country to raise capital for businesses, promote job creation and lead economic growth. SIFMA's members work together to promote industry and investor awareness of federal and state regulatory requirements that impact securities firm services and products, including state abandoned and unclaimed property (also called “escheat”) laws.

Why has SIFMA published this paper? To inform SIFMA members and others of the current unclaimed property regulatory landscape; to identify current issues that result from the evolution in business models and practices, the static nature of unclaimed property laws, and the risks that these issues pose; and to stimulate dialogue about the best means of addressing these issues and modernizing/improving the regulatory and compliance landscape.

## II. BASIC UNCLAIMED PROPERTY CONCEPTS

**Overview.** All 50 states and the District of Columbia have adopted unclaimed property laws that require the reporting and remittance (“escheatment”) of various types of intangible property (generally, any obligation to pay money to another person) after such property has remained unclaimed by the owner for a specified period of time (generally, three to five years after the property becomes due and payable to the owner).<sup>\*</sup> If a state’s unclaimed property laws apply to a certain type of property, then the “holder” of that property has certain obligations, including (i) to attempt to return the property to the rightful owner (this is called “due diligence”); and (ii) if the owner cannot be located, to report and remit the property to the state. For the latest year for which we have complete data, 2011, the 50 states and the District of Columbia took in **\$5,774,283,902** and paid out \$1,953,618,483 in unclaimed property.<sup>1</sup>

---



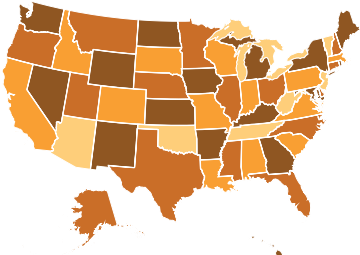
### IMPACT OF NON-COMPLIANCE

Risks of noncompliance with unclaimed property rules and law include potential assessments of liability for non-reporting or alleged late reporting of property. Such assessments require the escheatment of customer assets and related property to the states, which may bear directly on a holder’s customer relationships. Further, states may impose interest and penalties associated with compliance failures directly on the holder, and these penalties may be quite substantial.

---

<sup>\*</sup> This white paper has been prepared for general informational purposes only. The information contained herein is not legal advice and should not be construed as legal advice. Firms should consult with qualified legal counsel before acting on the information provided herein. SIFMA and its associates and members shall have no liability for any errors and omissions. This information may be incomplete and may be changed at any time without notice. This white paper is the property of SIFMA and may not be reproduced in whole or in part without written permission.

**IMPORTANT STAKEHOLDERS IN UNCLAIMED PROPERTY**

OWNER	HOLDER	STATE
		
<p>An “<b>owner</b>” is a person or legal entity that has a right to the benefit of physical or intangible property.</p>	<p>A “<b>holder</b>” is generally an entity that bears an obligation to and/or maintains custody of property on behalf of an owner.</p>	<p>Each state has an office that receives unclaimed property from holders and returns unclaimed property to rightful owners.</p>
<p><b>EXAMPLE</b> Generally, a <b>Natural Person</b> Owner is a human who is now or was once alive.</p>	<p><b>EXAMPLE</b> Owners often house physical and intangible property in <b>banks</b>, which are designed to store and protect the valuable property entrusted to them, in compliance with state and federal law.</p>	<ul style="list-style-type: none"> <li>• Each state has unique unclaimed property laws, rules and requirements.</li> <li>• States often use <a href="#">contract audit firms</a> to determine if holders are appropriately reporting and remitting property to the states.</li> <li>• The appropriate state to which owner property is reported by holders is driven by “priority rules,” described below.</li> </ul>
<p><b>EXAMPLE</b> A <b>Legal Entity</b> Owner can include limited partnerships, corporations, and other legal constructs allowed to own property.</p>	<p><b>EXAMPLE</b> <b>Broker Dealer’s</b>, often through specialized broker dealers called “<a href="#">clearing firms</a>,” protect and store the valuable physical and intangible property of owners, in compliance with state and federal law.</p>	

**When Is Property “Unclaimed”?** A holder must assess the dormancy of property by reference to state statutory dormancy standards and prescribed triggers that start the dormancy clock running. Depending upon the applicable rules and laws, dormancy may be predicated upon something that has happened with respect to the property (e.g., receipt of an undeliverable mail or “[RPO](#)” notice), or something that has not happened (e.g., no owner contact or [activity](#) with respect to the property item). If the dormancy period passes without reestablishing contact with the owner, then a presumption of abandonment arises; this presumption is, however, rebutted if the holder successfully contacts the owner prior to being required to report the “unclaimed” property to the claimant state.

**Holder.** State statutes have defined the term “holder” in various ways, and the U.S. Supreme Court has also addressed this definition. The state statutory definitions do not provide a great deal of guidance with respect to which party is the “holder” in “multiple holder” scenarios (i.e., where two parties arguably have a relationship with the property). For instance, the 1981 Uniform Unclaimed Property Act (the “1981 Act”), § 1(8) defines “holder” to mean “a person, wherever organized or domiciled, who is (i) in possession of property belonging to another, (ii) a trustee, or (iii) indebted to another on an obligation.” By contrast,

the 1995 Uniform Unclaimed Property Act (the “1995 Act”), § 1(6) defines “holder” to be the “person obligated to hold for the account of, or deliver or pay to, the owner” the unclaimed property. Delaware defines “holder” as “any person having possession, custody or control of the property of another person and includes ... every other legal entity incorporated or created under the laws of this State or doing business in this State.”<sup>2</sup> On the other hand, New York does not define the term “holder” for purposes of its unclaimed property laws.

In *Delaware v. New York*,<sup>3</sup> the U.S. Supreme Court stated that “[i]n framing a State’s power of escheat, we must first look to the law that creates property and binds persons to honor property rights...” and “we must determine the precise debtor-creditor relationship as defined by the law that creates the property at issue.”<sup>4</sup> The Comment to the 1995 Uniform Unclaimed Property Act further clarifies that “[A]s held by the Supreme Court in *Delaware v. New York*, the holder is the person indebted under the applicable state law.... The holder thus is ‘a person obligated,’ i.e., a person who could be sued successfully by the owner for refusing to make payment.” Nevertheless, while the Supreme Court precedent defining the “holder” constitutes federal common law that preempts conflicting state provisions, there exists significant confusion and potential disagreement as to how this analysis applies in multi-party transactions.

In addition to the above guidance regarding determination of the holder and owner of property, the Supreme Court, through several decisions, has established federal common law regarding the jurisdictional priority rules and derivative rights doctrine; this law controls the determination of the relevant property interest, as well as the state that may properly exercise jurisdiction over such property.

***Jurisdictional Priority Rules.*** In *Texas v. New Jersey*, the U.S. Supreme Court held that a holder of unclaimed or abandoned property is generally required to report and remit such property to the state of the owner’s last known address, as set forth on the books and records of the holder (this is referred to as the “[first-priority rule](#)”).<sup>5</sup> However, where the holder’s records do not reflect a last known address for the owner of the property or where the state of last known address does not “provide for” the escheat of the property, the right to claim the property belongs to the state of “domicile”<sup>6</sup> of the holder (this is referred to as the “[second-priority rule](#)”).<sup>7</sup> Most states have incorporated the first-priority rule and the second-priority rule in their unclaimed property statutes, and all states apply these rules as a matter of administrative policy.<sup>8</sup> As applied to customer accounts and related property, with respect to which securities firms must maintain complete and accurate records, the states that have jurisdiction over such property typically are the states of last known address of the owners of such property.<sup>9</sup>

---

## FOREIGN OWNERS

Where an owner has a foreign (non-U.S.) address, states interpret the jurisdictional priority rules to assign such property to the holder’s state of domicile (i.e., the second priority rule is applied). While the U.S. Supreme Court has not ruled on whether this jurisdictional claim is proper by reference to its prior unclaimed property rulings, the Due Process and Foreign Commerce Clauses, or principles of comity, the states are consistent in this interpretation.

---

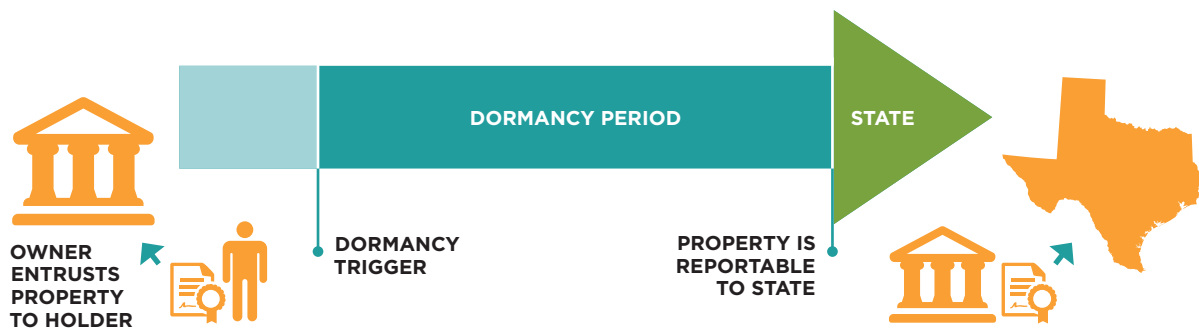
**The *Derivative Rights Doctrine*.** The owner’s right to receive the money (or property/services) is the “intangible property” that is subject to escheat. However, in determining the scope of state unclaimed property laws, and in particular the types of intangible property subject to such laws, it is first necessary to understand certain basic principles underlying these laws. First and foremost is the principle that the state derives its right to claim unclaimed property from the owner of the property. Therefore, the state succeeds to whatever rights that the owner had in the property,<sup>10</sup> or put another way, the state “steps into the shoes” of the owner in asserting a claim under its unclaimed property laws. A corollary to this rule is that, at least as a general rule, the state has no greater right to the property than the owner.<sup>7</sup> The U.S. Supreme Court recognized this principle when it stated in *Delaware v. New York* that “the holder’s legal obligations...defined the escheatable property at issue.” Applying the derivative rights doctrine to customer accounts and related property, it is clear that property which is not [payable or distributable](#) to the owner (i.e., is subject to restrictions or is not yet freely transferrable) is not subject to a presumption of abandonment or escheatment to any state.

**“Property which is not payable or distributable to the owner is not subject to a presumption of abandonment or escheatment to any state.”**

**Owner-facing obligations.** While these obligations necessarily depend upon the contractual terms of the introducing broker dealer and clearing firm’s service agreements, as a general matter broker dealers generally engage in the following: (1) maintenance of assets; (2) due diligence outreach if a presumption of abandonment is established; and (3) reporting to the state with jurisdiction (generally the state of owner’s residence, which enables that state to reunite property with owner or other interested party(ies)).

**State-facing obligations.** Generally, broker dealers that hold property are expected to (1) monitor customer accounts and related property for potential dormancy, pursuant to statutory dormancy standards (i.e., using statutory triggers to start dormancy period running); (2) conduct, at a minimum,<sup>11</sup> statutory due diligence campaigns prior to escheating the assets; and (3) timely report/remit abandoned property—in exchange for which the custodian states provide statutory indemnification from claims of the owner and other states.

ESCHEATMENT RE-CAP		
<b><u>Dormancy Trigger</u></b>	<p>A dormancy trigger is the action or lack of action that begins the dormancy period.</p> <p>The dormancy triggers for each property type (e.g., securities, life insurance, etc.) vary from state to state and property type to property type.</p>	<p>State dormancy triggers generally include one or both of the following:</p> <p>(1) RPO - receipt of an undeliverable mail; and/or                      (2) Activity - no owner contact or activity with respect to the property item.</p>
<b><u>Dormancy Period</u></b>	<p>The dormancy period is the amount of time that must elapse between a state's dormancy trigger and when the property is reportable to the state, generally 3 to 5 years depending on the state and property type.</p>	



### III. APPLICATION OF UNCLAIMED PROPERTY LAWS IN THE FINANCIAL SERVICES SECTOR: QUESTIONS AND CONCERNS

#### A. BROKER DEALER SERVICES AND CONTRACTUAL ARRANGEMENTS IMPACTING CUSTOMER ACCOUNTS AND RELATED PROPERTY

Broker dealers provide a range of services to their clients both directly and through outsourcing arrangements, including but not limited to the execution, clearance and settlement of securities transactions; the custody of assets; and the receipt and delivery of funds and securities. In addition, such firms may in turn contract with transfer agents and third party administrators that provide unclaimed property compliance/reporting services, proxy services, and other support services.

To the extent that a clearing firm has assumed unclaimed property compliance responsibilities for accounts with respect to which there is a corresponding [introducing broker](#), both parties may possess information relevant to a determination whether the owner's account is dormant and potentially escheatable. However, because the direct customer relationship is usually with the introducing broker, the clearing firm will generally rely in large part, if not solely, on information provided by the introducing broker dealer

to determine whether and when an account is escheatable. The structure and contractual arrangements (assuming such exist) between broker dealers and various third parties have given rise to questions such as (1) which entity (or entities) may be deemed the “holder” of such property, (2) whether the holder role and corresponding legal liability may be shifted by contract, and (3) whether it is also possible that multiple parties could be deemed the/a holder for different purposes and/or in different contexts.

Broker dealers need to understand the rules in order to effectively contract with clients and counter-parties, as well as to ensure compliance through the effective construction/implementation of unclaimed property policies and procedures. Moreover, the above-referenced questions carry particular significance in an environment characterized by active multistate enforcement efforts.

## B. LEGAL STANDARDS OF DORMANCY AND STATE ENFORCEMENT OF UNCLAIMED PROPERTY LAWS WITH RESPECT TO CUSTOMER ACCOUNTS AND RELATED PROPERTY

It is impossible to overstate the complexities of applying state unclaimed property laws to investment assets. The challenges that broker dealers face include, but are by no means limited to:

- Identifying the appropriate statutory dormancy triggers (one or more of (i) receipt of undeliverable-mail or “RPO” notifications, (ii) owner inactivity, (iii) failure to cash one or more distributions associated with shares, and (iv) combinations of the foregoing) for each state and for each specific type of property;
- Applying dormancy standards that are different depending on different types of securities held in broker dealer accounts which contain an aggregation of different securities and other assets;
- Identifying and appropriately handling special types of accounts (e.g., IRAs, tax-deferred accounts and accounts with respect to which a minor is beneficial owner) that are not freely “payable or distributable,” and thereby not subject to dormancy analysis;
- Proper handling of unclaimed account distributions (as a separate and distinct item of property from a customer account) for unclaimed property purposes, as most states’ provisions were crafted decades ago and do not reflect modern transaction models or the use of technology/online platforms exacerbates the difficulty in ensuring multistate compliance; and

---

### FEDERAL SEARCH AND NOTICE RULES

**SEC Rule 17Ad-17 is similarly concerned with the issue of “lost securityholders” and imposes obligations on broker dealers to search for natural person owners with respect to whom the broker dealer receives an undeliverable mail (RPO) notice. The Rule also requires notice to securityholders who have failed to negotiate checks. The mandatory federal lost securityholder search process is similar in certain respects to state unclaimed property law requirements to conduct “due diligence” outreach to property owners, prior to transmitting the owner’s property to a state.**

---

- Data privacy concerns associated with auditor requests for a review of voluminous, and sensitive, customer information, as well as confidential corporate information.

As a consequence of this complexity—which is further magnified by a lack of uniformity in states’ approaches—most broker dealers with unclaimed property obligations have operations staff dedicated to unclaimed property processing. Today, professionals find their unclaimed property compliance protocols under close examination by both federal and state regulators concerned with the proper handling of lost shareholders and presumed-abandoned accounts and related property. State unclaimed property laws are essentially consumer protection statutes, and as such serve a critically important public policy purpose that SIFMA’s membership embrace.

The audit enforcement initiatives being undertaken by states become potentially more problematic, however, when multistate audits (involving more than 30 states in many instances) are designed and conducted by [contract audit firms](#) with a financial stake in the outcome of their compliance examinations.<sup>12</sup> Some of the specific concerns that have been identified by broker dealers subject to these audits include the following:

- Audit firms are asserting novel (i.e., non-statutory) theories of liability and apply inconsistent definitions of “holder,” dormancy standards and dormancy triggers;
- The standards to rebut presumptions of abandonment are difficult to meet, especially where evidence of owner activity/contact is in possession of parties other than the holder; and
- Audit firms threaten interest and penalties even where the holder thinks it is in compliance and where states have not historically imposed these sanctions.

Where a state administrator or contract auditor asserts a non-statutory theory of liability, broker dealers must assess whether agreeing to implement the proposed dormancy standard could trigger potential owner lawsuits on the theory that their property has actually been escheated prematurely; this question becomes relevant in situations where a state liquidates the assets that are transferred to it and the market value of such assets increases post-[liquidation](#). This owner-facing risk arises given the fact that (i) the state will only return to the owner the value of the assets as of date of liquidation, and (ii) if the holder failed to follow the state law strictly, it may lose the right to [indemnification](#) by the state, and hence could be liable to the owner for the differential value of the assets. Separately, owners may face adverse tax consequences when tax beneficial instruments (e.g. IRA, 529) are liquidated by the state.



**HOW ESCHEATMENT IMPACTS BROKER DEALER CUSTOMERS**

**LIQUIDATION** – beyond the inconvenience to customers of having to locate and claim their property from the state, true customer impact often occurs due to the state practice of liquidating a customer’s assets shortly after receipt. This impact generally takes two forms.

**(1) Loss of Investment Value** – as states generally only return the value of a security on the date the state liquidated the security, customers lose the investment value of the security that appreciates in value between the time the security was liquidated by the state and the time the customer claims the property from the state, which is often significant.

**(2) Adverse Tax Consequences** – when a state liquidates certain tax deferred accounts (e.g., IRAs, 529 Plan Accounts), the liquidation often constitutes a distribution that may: (1) be taxable in ways contrary to the intent of the customer (i.e., taxable as capital gains), and (2) give rise to penalties for premature distribution/liquidation of the account pursuant to federal and/or state laws (e.g., the minimum tax and penalty-free distribution age for IRAs).

**CERTAIN CUSTOMERS ARE DISPROPORTIONATELY IMPACTED BY ESCHEATMENT**

Some customers are, for various reasons, more likely to be subject to a dormancy trigger and less likely to respond to a due-diligence letter from a broker dealer.

- Customers with Long-Term Investment Strategies (e.g., “Buy and Hold” strategies)
- Customers with Tax Deferred Accounts (e.g., IRA, 529 Plan)
- Elderly Customers
- Customers with a Diminished Mental Capacity
- Active U.S. Military Service Persons Stationed Abroad
- Foreign Customers
- Accounts Held on Behalf of Minor Customers (e.g., Uniform Gift / Transfer to Minor Act Accounts)

**IV. TAKE-AWAYS AND POTENTIAL ACTION PLAN**

The costs of both “under-compliance” (late or non-escheatment of dormant property) and “over-compliance” (premature escheatment of property) in this particular sector are considerable, given (i) the value of investment accounts and related property and (ii) the fact that escheated assets are typically quickly liquidated by the states. Broker dealers must balance and effectively manage these risks in a regulatory landscape that is far from uniform or clear.

SIFMA recommends that broker dealers consider the following action items:

ACTION ITEM CHECKLIST	
FUNCTION	SUMMARY DESCRIPTION
Arm yourself with knowledge	Educate relevant firm staff well on unclaimed property issues and understand what the firm’s current compliance practices, in order to assess whether they have implemented effective compliance controls.
Review relationship with firms with whom you custody assets or on whose behalf you custody assets.	Dialogue with clients and counter-parties may be appropriate, especially when contractual arrangements are being negotiated or reviewed, to ensure that the broker dealers (introducing and clearing) and their respective service providers share a common understanding of which compliance duties are imposed on each party by law and/or by contract.
Account Owner Education	Outreach to account owners (consistent with contractual arrangements) may be advisable, to level-set the firm’s monitoring of accounts and related property and to prevent as many accounts as possible from becoming escheatable.
State Outreach	Contact with state administrators may also be appropriate, given the numerous pragmatic concerns that firms have in an environment where guidance is limited and the costs of both under-compliance and “over-compliance” (premature escheatment of customer accounts) is so high.

## V. CONCLUSION AND MORE INFORMATION

As outlined above, broker dealers face unique and varied challenges when complying with state unclaimed property rules and laws. This document is intended as a primer and gateway to further study for financial industry professionals. For more information, please refer to SIFMA’s Unclaimed Property Resource Center, [www.sifma.org/unclaimedProperty](http://www.sifma.org/unclaimedProperty), and get your firm engaged in industry discussions on unclaimed property challenges and current events via SIFMA’s Unclaimed Property Task Force.

## GLOSSARY

- **Activity** – Owner-generated contact or activity with respect to the property in question; may also be initiated by an owner’s authorized representative.
- **Clearing Firm** – A specialized broker dealer that performs clearing, execution, and/or custody activities on behalf of other firms pursuant to a contractual agreement.
- **Contract Audit Firms** – Private businesses that execute audit services contracts with numerous states for the purposes of conducting unclaimed property compliance examinations of holders.
- **Derivative Rights Doctrine** – The principle that a state’s jurisdictional interest in abandoned property is derived from the owner’s right to such property and is custodial (i.e., the state claims on the owner’s behalf).
- **Dormancy Period** – The statutory period of time which must elapse without owner activity before the property is presumed to be abandoned.
- **Dormancy Trigger** - The event which starts the running of the dormancy period (e.g., receipt of undelivered mail, date of last owner contact, or date of issuance of a distribution).
- **Due-Diligence Letter** – A statutorily mandated outreach letter from a holder to an owner whose property is presumed abandoned, sent for the purpose of reestablishing contact with the owner and preventing escheatment of the property to a state.
- **Escheatment** – Reporting and remittance of property that is presumed abandoned to a state.
- **First-Priority Rule** – Pursuant to federal common law rules of jurisdictional priority, property that is presumed abandoned is reportable to the state of last known address of the owner as set forth on the holder’s books and records.
- **Holder** – While not consistently defined among state and federal laws, a holder is generally an entity that bears an obligation to and/or maintains custody property on behalf of an owner.
- **Indemnification** – In the context of unclaimed property, states generally provide that a holder which reports and remits abandoned property to a state in good faith and/or in compliance with the state’s unclaimed property law will be indemnified by such state against subsequent claims of any person to the property.

- **Intangible Property** – Intangible property that is held, issued or owing in a holder’s course of business and that remains unclaimed by the owner for a statutorily prescribed dormancy period is subject to escheatment (i.e., reporting and remittance to the state with custodial jurisdiction); intangible property is generally defined to include specifically a wide variety of obligations and instruments, and state “catch-all” provisions also include non-enumerated intangible property.
- **Introducing Broker Dealer** – A broker dealer that contracts with a clearing firm to settle and/or execute orders that it receives from its clients or from its own proprietary accounts to buy and sell securities.
- **Liquidation** – The process whereby a custodial state converts securities and other intangible assets other than cash which are transferred to it by a broker dealer to cash; liquidation of non-cash assets such as brokerage accounts typically occurs within a short period of time after most states receive such property from holders that report and remit such non-cash assets as unclaimed property.
- **Owner** – Generally, a person or legal entity that has a legal or beneficial right to the benefit of physical or intangible property.
- **Payable or Distributable** – The 1981 and 1995 Uniform Unclaimed Property Acts utilize the term “payable or distributable” to refer to property with respect to which all conditions have been satisfied and therefore all rights of an owner are vested; such property is freely transferrable and therefore is subject to potential abandonment by an owner.
- **Remit** – A holder is required to transfer, or ‘remit,’ property into the custody of the proper state unclaimed property which is identified on its annual unclaimed property report.
- **Report** – States require holders to file annual reports of property that is presumed abandoned and with respect to which the holder has conducted due diligence outreach efforts but failed to reestablish contact with the owner.
- **RPO** – “Returned by Post Office,” this term is used to reference the receipt by a broker dealer or other party of an undeliverable mail notice. State unclaimed property statutes may trigger the running of a dormancy period upon a holder’s receipt of first or second RPO.
- **Second-Priority Rule** – If a holder’s records do not reflect a last known address for the owner of property or where the state of last known address does not provide for escheat of the property, the state of domicile of the holder is then entitled to assert custodial jurisdiction over such property.

---

<sup>1</sup>“State UP Program Claims Paid 3 vs 5 year Dormancy,” NAUPA, Submission to the Uniform Law Commission Committee to Revise the Uniform Unclaimed Property Act, 2014. Available at: <http://www.uniformlaws.org/Committee.aspx?title=Revise%20the%20Uniform%20Unclaimed%20Property%20Act>

<sup>2</sup>12 Del. Code Ann. § 1198(7).

<sup>3</sup>507 U.S. 490 (1993),

<sup>4</sup>507 U.S. at 499, 501.

<sup>5</sup>379 U.S. 674 (1965).

<sup>6</sup>For purposes of applying the second-priority rule, the Supreme Court has held that the domicile of a corporation is its state of incorporation. The domicile of an unincorporated entity is either the state of its principal place of business or the state of its formation; the Supreme Court has not ruled on this issue.

<sup>7</sup>Texas, 379 U.S. at 682. See also *Pennsylvania v. New York*, 407 U.S. 206 (1972), and *Delaware v. New York*, 507 U.S. 490 (1993), in which the Court reaffirmed the Texas v. New Jersey priority rules.

<sup>8</sup>36 states and the District of Columbia have adopted a ‘transaction-based’ priority rule. Such a rule authorizes states to claim unclaimed property if: the first-priority rule does not apply; the state of domicile does not “provide for” the escheat of the property (or, in some states, if the domiciliary state’s escheat rules are not “applicable” to the property); and the property arose out of a transaction occurring within that state (this is referred to as the “third-priority rule”). There are strong arguments, however, that such rule is preempted by the priority rules adopted by the Supreme Court in *Texas v. New Jersey*.

<sup>9</sup>See, e.g., *Blue Cross of Northern California v. Cory*, 120 Cal. App. 3d 723 (1981) (holding that “the Controller’s rights under the [Unclaimed Property Law] are ‘derivative,’ and that he accordingly succeeds to whatever rights the owner of un-claimed property may have and no more”) (emphasis added).

<sup>10</sup>See, e.g., *Bank of America Nat’l Trust & Sav. Ass’n v. Cranston*, 252 Cal. App. 2d 208, 211 (1967) (“The Controller’s rights under the act are derivative. He succeeds, subject to the act’s provisions, to whatever rights the owners of the abandoned property may have.”).

<sup>11</sup>Most broker dealers conduct and/or oversee voluntary and robust owner outreach programs (in advance of and in addition to what is required by state unclaimed property laws), in coordination with other relevant parties (e.g., unclaimed property service providers), that are designed to inform owners of the potential impact of state unclaimed property laws and to reestablish contact with owners whose accounts have been flagged as RPO or who have not engaged in recent discernible account activity.

<sup>12</sup>While this paper does not examine the novel theories of liability and audit methodologies being implemented by such contract audit firms, broker dealers that are currently under audit have experienced these firms’ use of external databases (e.g., the Social Security Administration’s Death Master File and the U.S. Postal Service’s National Change of Address database) to trigger the running of dormancy periods, even though state unclaimed property statutes do not rely on such data points to presume customer accounts to be abandoned.

<sup>13</sup>See footnote, 1, *supra*.

[WWW.SIFMA.ORG](http://WWW.SIFMA.ORG)