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STA SECURITIES TRANSFER ASSOCIATION

September 2, 2020

Mr. Mark William Bracken, JD
President
National Association of Unclaimed Property Administrators
Via email: mark.william.bracken@state.ma.us

Dear Mr. Bracken:

The Securities Transfer Association ("STA") represents more than 100 transfer agents who are responsible for the record keeping for more than 15,000 issuers of securities, representing the investments of over 100,000,000 registered shareholders. The Shareholder Services Association ("SSA") is a nationwide network of shareholder services industry professionals. The SSA's membership includes corporations of all sizes, transfer agents and a wide variety of specialized service providers. The SSA and STA's combined membership works diligently to ensure that unclaimed property compliance is accomplished, while protecting the interests of our shareholders. We are proud that our industry has worked cooperatively with the states on so many issues and continues to implement proactive measures to keep shareholders engaged with their investments. To that end, effective mailings are essential. All types of mailings matter, including: a dividend check, proxy ballot, annual meeting notice, and particularly related to reporting and remitting, owner outreach/due diligence letters.

As noted in the combined letter sent from STA and SSA on May 08, 2020,[1] we jointly expressed concerns surrounding international mail service suspensions impacting many different countries.[2] Additionally, we are mutually concerned about any type of significant mail disruption and how it will impact property owners. This is of particular concern to the securities industry for a number of reasons. One reason is all states liquidate at least some securities property. Certain states liquidate as early as upon receipt. These prompt liquidations apparently are performed without notice to owners from the state. Without prior notification, owners do not receive notice and the necessary due process requirements cannot be satisfied. This poses risks for the shareholder, the state, the issuer, and the transfer agent.

[1] https://cdn.ymaws.com/stai.org/resource/resmgr/comment_letters/ssa-sta_naupa_050820.pdf
[2] https://about.usps.com/newsroom/service-alerts/international/welcome.htm#:~:text=International%20Mail%20Service%20Suspensions&text=The%20Postal%20Service%E2%84%A2%20is,to%20the%20COVID%2D19%20pandemic.&text=Customers%3A%20please%20refrain%20from%20mailing,listed%20here%2C%20until%20further%20notice.

States, issuers, and transfer agents have all been exposed to claims and litigation for large market loss. Moreover, if issuers and transfer agents report and remit securities without first performing due diligence, it risks receiving the benefit of statutory indemnification provisions. In certain situations, indemnification is expressly conditioned, or pursuant to case law, on due diligence being conducted.

As such, if due diligence is not possible, there should be a means to delay potential escheatment and shares should not be reported and remitted/delivered until after a successful mailing can occur.

Due to COVID-19, the capacity to conduct due diligence and other required mailings[3] has been enormously impacted. Being able to send due diligence is of immediate concern for the STA, SSA, and our members. Our nation has experienced widespread disruptions which have limited or stopped our ability for employees to go into offices and perform duties, based on governors' and local officials orders to shelter in place and phased reopening. This has greatly hampered holders' capability to follow their normal unclaimed property compliance practices and meet important reporting deadlines, including mailing of due diligence.

Many states proactively, or upon requests from holders, have modified processes and due dates considering the unique circumstances and we applaud their foresight and flexibility. Unfortunately, this has resulted in a confusing mixture of steps a holder should follow. While a resolution cannot eliminate state differences, it will provide leadership to states on a reasonable course of action.

To complicate matters further, with COVID-19 there are currently mail suspensions or delays to various Diplomatic Post Office (DPO) addresses and some foreign countries.[4] Additionally, some mail has been shifted from air transportation to transportation by sea.[5] These suspensions are beginning to lift, but not all at the same time.[6] If Transfer Agents and other holders need to mail due diligence and report and remit as each suspension is lifted, this will lead to excessive monitoring and multiple reports needing to be filed, causing inefficiencies for holders and states. Also, these suspensions or disruptions could be reinstated if the pandemic were to take a very unfortunate turn.

While COVID-19 is particularly unusual, this is not the only circumstance where transfer agents and other holders cannot successfully perform owner outreach/due diligence. Instead we have seen periodic events compromising mailing due diligence and other reporting difficulties beyond the control of transfer agents, such as Hurricane Katrina, Super Storm Sandy, and the Camp Fire wildfire.

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[3] The SEC has acknowledged this and answered inquiries in Staff Statement Regarding Temporary International Mail Service Suspensions to Certain Jurisdictions Related to the COVID-19 Pandemic, https://www.sec.gov/tm/temporary-international-mail-service-suspension.

[4] Not being able to appropriately send mail to Army Post Office (APO), Fleet Post Office (FPO), and Diplomatic Post Office (DPO) addresses would mean that Army, Air Force, Navy, and Diplomatic personnel overseas could be penalized for serving their country.

[5] https://about.usps.com/newsroom/service-alerts/

[6] https://faq.usps.com/s/article/Mail-Service-Alerts-and-Updates

While many times states have individually responded to extreme situations causing disruptions, we respectfully request the NAUPA board consider passing a resolution to help both the states and the holder community deal with this issue in an easy and efficient manner. Specifically, please consider a resolution such as the following:

When state-required due diligence cannot be performed due to mail disruptions, it is permissible for the owner's property to be held until the next reporting cycle. Assuming any restrictions are no longer in place at the next annual reporting period, the state-required due diligence would be performed in the normal course of the next reporting cycle, after which if the property was not claimed by the owner, it would be reported and remitted/delivered to the appropriate jurisdiction.

We believe this solution would be beneficial to all parties involved as it would be easier for both the state and the holders to administer and it errs on the side of preserving the value of fluctuating shareholder property.

Sincerely,

Kim Hanlon
President
Shareholder Services Association

Todd May
President
Securities Transfer Association

cc: Mr. Jeremy Dawson jeremy@statetreasurers.org
Mr. Shaun Snyder shaun@statetreasurers.org