

November 23, 2020

Andrew Nicholson  
Financial and Consumer Services Commission  
85 Charlotte St  
Suite 300  
Saint John, NB E2L 2J2

Via email to: [andrew.nicholson@fcnb.ca](mailto:andrew.nicholson@fcnb.ca)

Dear Mr. Nicholson

**Re: Proposed Rules for New Brunswick's Unclaimed Property Program**

The Investment Industry Association of Canada ("IIAC") appreciates the opportunity to comment on New Brunswick's proposed rules governing its planned Unclaimed Property program ("Rule UP-001" or the "Rule") and the accompanying fees ("Rule UP-002"). The IIAC is the professional association representing 115 IIROC-regulated investment dealers. Many of our members serve the investing and wealth management needs of New Brunswick residents and, as such, will be impacted by your province's forthcoming Unclaimed Property program.

**General Comments**

The IIAC appreciates the efforts made by New Brunswick to align its Unclaimed Property Act and regulations with those of other Canadian jurisdictions. Given that many of our members operate nationally, this will facilitate their understanding and operational implementation of New Brunswick's requirements pertaining to unclaimed property. However, there are some provisions in Rule UP-001 where we require additional clarity, have identified inconsistent policy application, or ask that you reconsider in their entirety. We also question the appropriateness of some of the 'triggers' embedded in the regulations for identifying when property is to be considered unclaimed.

We would also like to stress the importance of publishing the first property remittance dates well in advance to provide our members, and other stakeholders, sufficient opportunity to prepare. Specifically, we recommend that our members be provided at least one year of preparation before the

first notice to apparent owners is required. It would also be helpful if property holders can be provided supporting guidance and tools (such as sample letters to apparent owners) to help them in their change processes.

### **Excluded Property**

Section 2.1 of Rule UP-001 excludes from the definition of “property” any property with a fair market value of less than one dollar. Additionally, section 2.4(1) specifies that there is no obligation by the holder to deliver unclaimed property if each of the individual properties held by the holder is less than \$50 (and the total value of property held by the holder is less than \$500). Presumably, these provisions were included to relieve holders, and the New Brunswick Director, of some of the administrative burden associated with the program while also recognizing the benefits to owners would be very limited when property values are sufficiently small.

Our members commented that the one-dollar threshold in the definition of “property” will likely not capture a material number of properties and, as such, will not provide any meaningful burden reduction. Furthermore, our reading of section 2.1 in conjunction with section 2.4 is that Rule UP-001 would exclude from reporting and delivery **all** property with a fair market value of less than one dollar as well as **some** property with a fair market value of \$50. In essence, therefore, the rule establishes two different thresholds for excluding property for delivery which can be confusing.

Section 2.4 also presents an inconsistent policy application given that it will result in some property owners with property valued at less than \$50 having the opportunity to claim their property while other property owners, also with less than \$50 in property value, will not depending on who the holder of their property is and the composition of this holder’s other properties.

We recommend the definition of excluded property be amended to exclude any property with a fair market value of less than 50 dollars. This will provide meaningful burden reduction to property holders and establish one consistent threshold in Rule UP-001 for deciding what property gets excluded from reporting and delivery. It will also address the inconsistent policy application in section 2.4.

### **When Property is Unclaimed – Individual Properties versus Accounts**

Section 2.3 of Rule UP-001 prescribes the time periods for owners or apparent owners to make an indication of right or interest before the property is presumed to be unclaimed. A concern of the IIAC is that in some instances in the Rule the period for inactivity appears to be based on the property without regard to the account in which the property is held.

For example, section 2.3(1)(b)(ii) indicates guaranteed investment certificates (GICs) that have matured are presumed to be unclaimed after 3 years. Similarly, section 2.3(1)(o)(i) indicates that securities are presumed to be unclaimed after 3 years of a dividend, share split or other unclaimed distribution. It is not uncommon for some investors to leave their matured GICs sitting in cash for an extended period. It

is also not uncommon for investors to hold securities for many years without transacting in that security or receiving a dividend on that security. It is important to realize that our members' typically hold these properties in client accounts with other properties of the client that the client may have transacted on or received dividends from or otherwise made an indication of right or interest on.

Typically, our members' practice is not to identify individual properties as unclaimed but rather focus on the client or account. They use various indicia, such as Return-Mail, to identify the clients and accounts that they have lost relations with.

We believe it more appropriate, therefore, for our members to follow an account-based or client-based approach, instead of a product-based approach, when determining unclaimed property. This would be consistent with other sections of the Rule including sections 2.3(h) dealing with property in a registered retirement savings plan and section 3.4(5) pertaining to securities accounts valued at \$1000 or more.

### **When Property is Unclaimed –RRIFs**

Section 2.3(i) of the Rule considers property paid out of a registered retirement income fund (RRIF) unclaimed three years after the date of payment. Our members are unclear on the application of this provision. Specifically, our members as administrators of these plans, are required to payout an amount **each year** to their RRIF annuitants. The RRIF payments are either sent directly to the annuitant or paid into a related account of the annuitant. Where applicable, taxes are withheld from the annuitant's annual payment and remitted to the Canada Revenue Agency. Our members, therefore, would never find themselves in a situation where they hold a RRIF with no payment activity for three years. We are seeking clarification on how the three-year time provision should be applied related to property paid out of a RRIF.

### **When Property is Unclaimed –RRSPs**

Section 2.3(h) of the Rule considers property in a registered retirement savings plan (RRSP) unclaimed three years after receipt of information that the owner is deceased. Current industry practices does not rely on the date of death notification to determine unclaimed RRSP assets. Our members rely on other indicia such as 'Return Mail' or the inability to connect with the client or in this case the executors/trustees handling the affairs of the deceased. Typically, once our members are informed of the annuitant's passing the RRSP account is either: i) reclassified as an "estate account" waiting further direction from the executor on how the property is to be distributed<sup>1</sup> or ii) by December 31 of the year following the year of death, all the RRSP property is directly transferred to an RRSP, RRIF, or other permitted plan, under which the spouse or common-law partner is the annuitant.

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<sup>1</sup> When the annuitant of an unmatured RRSP dies, the Canada Revenue Agency considers that the annuitant received, immediately before death, an amount equal to the fair market value (FMV) of all the property held in the RRSP at the time of death.

### **When Property is Unclaimed –RESPs**

Section 2.3 (1)(e) of the Rule considers property in a registered education savings plan (RESP) for which the subscriber has made no request regarding beneficiary payments to be unclaimed three years after the expiry date of the plan. As you are aware, an RESP must be terminated on or before the last day of the 35th year following the year in which the plan was entered into. We do not foresee, therefore, how such plans can continue to exist three years after expiry of the plan. Further clarification is required.

### **When Property is Unclaimed – TFSAs, RDSPs and Locked-In Plans.**

Tax-Free Savings Accounts (TFSAs) and Registered Disability Savings Plans (RDSPs) are additional types of plans administered by our members. Our members also administer various locked-in retirement plans. The Rule is silent on when property in these plans are to be considered unclaimed. Any clarifications you can provide as they relate to these plans would be appreciated.

Regarding TFSA's specifically, how would unclaimed property from a TFSA which is delivered to you impact the holder's TFSA contribution room?

### **Notice to Apparent Owner**

Under Section 3.1(2) of the Rule, if a holder has a postal mailing address for an apparent owner, the notice must be sent by regular mail through Canada Post. Under Section 3.1(3) of the Rule, if a holder has an electronic address for an apparent owner, the notice must be sent electronically. Can you please provide clarity on how to send the notice in situations where the holder has **both** a postal mailing address and electronic address? Our recommendation is that the holder be permitted to use either mean at their discretion.

### **Delivery of Property that is a Security**

Section 3.4(1) of the Rule states that for property that is a security, the holder is deemed to be the person with the books, records and/or documents regarding the apparent owner. For some securities, multiple entities may hold books and records regarding the apparent owner. For example, for mutual fund securities both the investment dealer and the mutual fund company may hold such information. To ensure clarity and avoid duplication we recommend the Rules clarify that the dealer be deemed the holder for securities held in nominee form.

Section 3.4(3) of the Rule requires the holder to liquidate and deliver to you securities of an apparent owner if such securities have a total estimated fair market value of less than \$1000. The nature of securities markets is such that asset prices can fluctuate. Our members commented that it is conceivable that some of the securities liquidated under Section 3.4(3) may appreciate over time and thereby possibly expose the dealer to recourse from the owner or apparent owner. Our reading of the

Act is that holders would not be subject to any liability for complying with the requirements of New Brunswick's Unclaimed property program, including section 3.4(3) of the Rule. Please confirm no holder would be held liable for damages incurred by the property owner as a result of the holder complying with New Brunswick's Unclaimed Property Act and Regulations.

Under Section 3.4(5) of the Rule, if an apparent owner has securities with a total estimated fair market value in an account of \$1000 or more, the holder shall submit a report to the Director but continue to hold the property until the Director gives permission to deliver the unclaimed property. It is unclear how long our members will be expected to continue holding this property. Our members are concerned that they may be required to hold this property indefinitely which is not a desirable outcome for our members or the property owners. The New Brunswick government may have access to resources that our members do not have for tracking down property owners. Our expectation is that New Brunswick will utilize these resources and undertake serious efforts to reunite owners with their unclaimed property.

We would also appreciate additional clarity surrounding the timing of the valuation to determine if the fair market value is \$1000 or less. Is this done at the time our members make the determination that the client's account/property is unclaimed? Or is it up to each firm to determine a policy of when the review and valuation will be done?

## **Fees**

Rule UP-002 details the fees associated with New Brunswick's Unclaimed Property Program. Part 5 of Rule UP-002 outlines expenses that are recoverable by the Commission from a holder in respect of which a compliance review was carried out. We are concerned that the long list of recoverable expenses could translate into significant added costs to our members. These costs would be in addition to the expenses our members would have to incur to ensure compliance with New Brunswick's Unclaimed Property Program such as modifying internal systems and retraining/hiring staff.

Section 5.1 (1) (a) indicates that your Commission will charge holders \$50 per hour for each employee of the Commission involved in the compliance review. Our members are subject to normal-course compliance reviews from other regulators and we are not aware of other regulators charging fees in instances where our member has met all obligations. Furthermore, there is no indication of how long it will take your staff to undertake their compliance review which leaves this cost open-ended for holders.

Section 5.1 also lists as expenses recoverable by the Commission those costs and disbursements related to 'experts' and legal services. We are concerned that these costs may also potentially be large. We would appreciate a better understanding of on what basis the Commission will decide to incur the services of 'experts' and legal professionals and will holders have the opportunity to contest the Commission's decision to bring in these external resources?

We are very concerned, therefore, with the approach taken by the Commission regarding recoverable expenses as it potentially exposes our members to significant added and unknown costs. If the

Commission is going to expand its mandate to include administration of New Brunswick's Unclaimed Property Program then it should incorporate these added compliance responsibilities into its existing budget or seek a funding framework that does not weigh heavily on the holders of unclaimed property. Alternatively, the Commission should establish a reasonable cap on the charges it can recover from holders in respect of which a compliance review was carried out and preferably only apply charges to those holders that were proven not to have met their obligations.

Thank you for considering our comments. We would be pleased to arrange a meeting with our members to discuss any part of our letter.

**Sincerely,**

Investment Industry Association of Canada

*Jack Rando*

Jack Rando, CFA  
Managing Director