



## **REQUEST FOR COMMENTS**

**Notice and Request for Comments** – Publication of proposed Financial and Consumer Services Commission Rule UP-001 *Unclaimed Property – General* (the “Proposed Rule”).

### **Introduction**

On 20 May 2021, the Financial and Consumer Services Commission (Commission) approved republication of the Proposed Rule to receive feedback from stakeholders on the rule for unclaimed property in New Brunswick.

### **Substance and Purpose of the Proposed Rule**

The purpose of the Proposed Rule is to provide the framework to support the *Unclaimed Property Act* (the *Act*). The *Act* establishes the rights and duties of holders, rights and duties of the Director, claims process, holder record keeping requirements, as well as compliance and enforcement provisions. It is proposed that the *Act* will be supported by two rules; the *Unclaimed Property - General* rule which establishes the specific requirements set out in the *Act*, while the *Unclaimed Property - Fees* rule establishes the fees and expenses required by the *Act*.

### **Contents of Annexes**

<b><u>Annex A:</u></b>	Proposed Rule UP – 001 <i>Unclaimed Property – General</i>
<b><u>Annex B:</u></b>	Summary of comments of a general nature
<b><u>Annex C:</u></b>	Summary of the comments UP-001 <i>Unclaimed Property – General</i>
<b><u>Annex D:</u></b>	Summary of comments UP – 002 <i>Unclaimed Property – Fees</i>

### **Request for Comment**

The Commission welcomes your comments on the Proposed Rule.

The Commission initially published both rules; UP-001 *Unclaimed Property – General* and UP-002 *Unclaimed Property – Fees* for comment on 23 September 2020. The initial consultation period was for 60 days, during which time 14 comments were received from the businesses and organizations listed below;

- New Brunswick Apartment Owners Association
- Kelmar Associates, LLC
- Avenu Insights & Analytics
- The Canadian Bar Association
- The Investment Funds Institute of Canada
- Morneau Shepell
- Investment Industry Association of Canada

- RSA (a registered trade name of Royal & Sun Alliance Insurance Company of Canada)
- Credit Union Managers' Association (New Brunswick)
- Canadian Bankers Association
- Canadian Life and Health Insurance Association
- Securities Transfer Association of Canada
- Willis Towers Watson
- J.D. Irving, Limited

The Commission appreciates this valuable feedback. A summary of the comments received, and our responses can be found in Annexes B, C and D. Annex B provides a summary of the feedback received of a general nature, Annex C contains a summary applicable to the Proposed Rule and Annex D contains a summary of the comments received related to Rule UP – 002 *Unclaimed Property – Fees*. In response to these comments as well as follow-up consultations with selected authors of the submissions, the Commission has amended the Proposed Rule to further improve clarity. As not all edits are included in Annex C, readers are encouraged to consider the Proposed Rule as a new document.

The significant changes that were made to the Proposed Rule are:

- Changes to the types of property that are excluded from the requirements of the *Act*
- Restructuring the format to clarify the distinction between registered accounts and non-registered accounts
- Increasing the fair market value of property that is not required to be reported or delivered
- Amendments to add registered disability savings plans and tax-free savings accounts

Changes made to Rule UP – 002 *Unclaimed Property – Fees* were determined non-material and as such do not require further consultation.

### **Timelines for Planning Purposes**

The Commission is preparing for the Unclaimed Property program to be in force beginning 1 January 2022, with a first filing period in 2023. These dates are provided to stakeholders for planning purposes only and may change. Stakeholders are encouraged to monitor our website for updates.

### **How to Obtain a Copy and Provide your Comments**

The texts of the Proposed Rules are included with this notice.

A paper copy of the proposed materials may be obtained by writing, telephoning or emailing the Commission. Comments are to be provided, in writing, by no later than 19 June 2021 to:

Secretary  
 Financial and Consumer Services Commission  
 85 Charlotte Street, Suite 300  
 Saint John, N.B. E2L 2J2  
 Telephone: 506-658-3060  
 Toll Free: 866-933-2222  
 Fax: 506-658-3059  
 E-mail: [information@fcnb.ca](mailto:information@fcnb.ca)

We cannot keep submissions confidential. Any submission received during the comment period may be disclosed in accordance with provincial legislation. A summary of the written comments received during the comment period may be published. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

### **Questions**

If you have any questions, please refer them to:

Andrew Nicholson  
Financial and Consumer Services Commission  
Tel: 506-658-3021  
Email: [andrew.nicholson@fcnb.ca](mailto:andrew.nicholson@fcnb.ca)



FINANCIAL AND CONSUMER SERVICES COMMISSION  
RULE UP-001 *Unclaimed Property - General*

PART 1

PRELIMINARY MATTERS

Definitions

1. (1) In this Rule:

“accident insurance” means accident insurance as defined in the *Insurance Act*;

“Act” means the *Unclaimed Property Act*;

“business organization” includes a cooperative as defined in the *Cooperatives Act*;

“disability insurance” means disability insurance as defined in the *Insurance Act*;

“endowment insurance” means endowment insurance as defined in the *Insurance Act*;

“life insurance” means life insurance as defined in the *Insurance Act*;

“loyalty program” means an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services;

“security” means a security as defined in the *Securities Act*;

“sickness insurance” means sickness insurance as defined in the *Insurance Act*;

“utility” means a business organization that performs a necessary public service and is subject to government oversight;

“wind-up” means wind-up as defined in the *Pension Benefits Act*.

(2) The definitions contained in the *Act* apply to this Rule, unless the terms in question are defined in this Rule.

Fair market value

2. For the purposes of the *Act* and the Rules, fair market value means any of the following:

- (a) if the property is in a Canadian currency, the value of the property in Canadian dollars;

- (b) if the property is in a foreign currency, the value of the property converted into Canadian dollars;
- (c) if the property is a negotiable instrument or another item that is equivalent to cash, the face value of the instrument plus any interest owing;
- (d) for all other property, the fair market value as determined by any of the following:
  - (i) a professional appraiser;
  - (ii) an appraisal guide;
  - (iii) the historical records or the recorded value of the property on a financial statement of, or prepared for, the apparent owner;
  - (iv) the books, records or documents of the holder;
  - (v) any other method that the Director considers reasonable.

## **PART 2 APPLICATION**

### **Excluded Property**

- 3. (1)** The definition of “property” does not include any of the following:
- (a) a gift card as defined in the *Gift Cards Act*;
  - (b) property acquired from participation in a loyalty program;
  - (c) property in safekeeping or in a safe deposit box held by a provincially regulated credit union, trust company, *caisse populaire* or federal financial institution;
  - (d) property owed to an owner under an accident, disability or sickness insurance policy that is in force;
  - (e) property owed to an owner under an accident, disability or sickness insurance policy that has been terminated and either:
    - (i) the policy is a contract of group insurance that has been replaced by another contract in compliance with subsection 191.1(5) of the *Insurance Act*; or
    - (ii) the fair market value of the property owed under the policy that has ceased to be in force is less than \$250;
  - (f) property that is an insurance policy and is deemed non-payable due to an exclusion permitted by the *Insurance Act*;
  - (g) property that is held by a federal institution as defined in the *Canada Deposit Insurance Corporation Act* (Canada).

- (2) A holder is not obligated to submit a report or deliver property to the Director if delivery is required by another Act of the Legislature, an Act of another province or territory of Canada, an Act of the Parliament of Canada or by an order or judgment of a New Brunswick court and the holder is complying with the other requirement.

#### **When Property is Unclaimed – Indication of Interest**

4. (1) For the purposes of paragraph 4(1)(b) of the *Act*, any of the following indicate that an owner or apparent owner has a right or interest in the property:
  - (a) the delivery of a statement relating to the property of the apparent owner, unless the statement is not normally provided, is returned as undeliverable or could not be delivered;
  - (b) a verification or review of the property's balance that creates a record;
  - (c) electronic access to an account relating to the property, if the account requires a unique password for access.
- (2) If property is held in the name of an apparent owner or owners, an indication of interest by one owner or apparent owner is an indication of interest in all of the property held in the name of the apparent owner or owner.
- (3) If property is held by a holder pursuant to a rental agreement and that agreement requires a regular automatic withdrawal from an account belonging to the apparent owner, the successful regular withdrawal indicates the apparent owner's interest in the property.
- (4) If property is acquired by means of regular automatic withdrawals of premiums by a holder from an account belonging to the apparent owner, the successful regular withdrawal of those premiums indicates the interest of the apparent owner in the property.
- (5) If property is acquired by means of regular automatic deposits, the successful regular deposit indicates the interest of the apparent owner in the property.

#### **When Property is Unclaimed – Time Period**

5. (1) For the purposes of subsection 4(1) of the *Act*, property that is not held in a registered retirement savings plan, a registered retirement income fund under the *Income Tax Act* (Canada), other similar plan or account that is qualified for tax deferral, or a trust established under the *Income Tax Act*, is presumed to be unclaimed if the owner or apparent owner has not made an indication of right or interest in the property during the following periods:
  - (a) for a cheque, or money order, three years after the date of issuance;
  - (b) for a certificate of deposit, demand deposit, guaranteed investment certificate, guaranteed investment confirmation or other deposit made for a fixed period that has matured, the following:

- (i) property held by a credit union regulated under the *Credit Unions Act* or a federal financial institution, ten years;
  - (ii) property held by other holders, three years;
- (c) for a savings or other deposit that does not have a fixed period or does not have a maturity date, the following:
  - (i) property held by a credit union regulated under the *Credit Unions Act* or a federal financial institution, ten years;
  - (ii) property held by other holders, three years;
- (d) for property that is a deposit held in trust under the *Pre-Arranged Funeral Services Act*, the following:
  - (i) property held by a licensed funeral provider three years after the death, or the date the provider knew or ought to have known the named beneficiary died;
  - (ii) property held by a licensed funeral provider where the date of death of the named beneficiary is unknown, the date the named beneficiary would be 105 years of age;
- (e) for property held in trust by other holders, three years after the later of the following:
  - (i) the last indication of interest;
  - (ii) the date of the transaction for which the property was received;
- (f) for property owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the earlier either of the following:
  - (i) the date of the obligation to pay;
  - (ii) if payable as a result of the death of the person whose life was insured, the date the insurer knew or ought to have known the insured died or the date the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;
- (g) for property owed under an accident, disability or sickness insurance policy, three years after the date the policy ceased to be in force;
- (h) for any entitlement to a pension benefit under the *Pension Benefits Act* resulting from the wind-up of a pension plan, three years after the wind-up report is approved

by the Superintendent of Pensions or the authority designated under the *Pension Benefits Act*;

- (i) for wages, salary or other remuneration, three years after the wages, salary or other remuneration are due and payable;
  - (j) for property held by a utility, three years after the property is credited, due and payable or distributable;
  - (k) for property held by a court, government or governmental organization, three years after the date the property is due and payable or distributable;
  - (l) for property received by a court as proceeds of a class action and not distributed under the judgment, three years after the distribution date set out in the judgment;
  - (m) for a security, three years after the earlier of any of the following:
    - (i) a dividend, share split, or other distribution that was unclaimed by the apparent owner;
    - (ii) an event or action that the apparent owner did not respond to or complete as required; or
    - (iii) correspondence to the apparent owner that is returned as undeliverable or could not be delivered;
  - (n) for property that is a debt of a business organization and is owed to an apparent owner, three years after the date of the earliest unclaimed payment;
  - (o) for property of a business organization distributable in the course of dissolution, three years after the date of dissolution.
- (2)** For the purposes of subsection 4(1) of the *Act*, property that is held in or the proceeds from, a registered retirement savings plan, a registered retirement income fund under the *Income Tax Act* (Canada), other similar plan or account that is qualified for tax deferral, or a trust established under the *Income Tax Act*, is presumed to be unclaimed if the owner or apparent owner has not made an indication of right or interest in the property during any of the following periods:
- (a) for property where the owner or apparent owner has made no request for payment under the plan, three years following the expiry date of the plan;
  - (b) three years after the receipt of information that the apparent owner is deceased;
  - (c) three years after the earliest of any of the following:
    - (i) the date of distribution or attempted distribution of the property,



- (ii) the date of the required distribution as stated in the plan or the trust agreement governing the plan, or
    - (iii) the date, if determinable by the holder, specified in the income tax laws of the jurisdiction in which the plan or account is registered or held, by which the distribution of the property must begin; or
  - (d) three years after the date of payment or obligation to pay.
- (3)** For the purposes of subsection 4(1) of the *Act*, all other property is presumed to be unclaimed if the owner or apparent owner has not made an indication of right or interest in the property after three years.

#### **When Obligation to Deliver is Not Required**

- 6. (1)** A holder is not obligated to submit to the Director the unclaimed property report and is not obligated to deliver the unclaimed property referred to in the report under section 9 of the *Act*, if all of the following apply:
- (a) the total fair market value of the property included in the unsubmitted unclaimed property reports from the previous 5 years, inclusive of the current year's report, is less than \$1000;
  - (b) each individual property listed in the unsubmitted unclaimed property report has a fair market value of less than \$50 as of December 31<sup>st</sup> of the year covered in the report.
- (2)** A holder is not obligated to submit to the Director the unclaimed property report and is not obligated to deliver the unclaimed property referred to in the report under section 9 of the *Act*, if the property has a fair market value of less than one dollar as of December 31<sup>st</sup> of the year covered in the report.
- (3)** Even if not required to submit a report and deliver unclaimed property due to subsections (1) or (2), a holder may choose to submit a report and deliver the unclaimed property referred to in that report under section 9 of the *Act*.

### **PART 3 RIGHTS AND DUTIES OF HOLDERS**

#### **Notice to Apparent Owner**

- 7. (1)** For the purposes of section 7 of the *Act*, a notice to apparent owner must contain all of the following:
- (a) the name of the apparent owner;
  - (b) a statement that the holder may be holding unclaimed property in the apparent owner's name;

- (c) a statement indicating that the continued failure to communicate with the holder will result in the delivery of the property to the Director;
  - (d) the estimated date on which that delivery to the Director will take place;
  - (e) how the apparent owner can claim the property from the holder and prevent the delivery of the property to the Director.
- (2) If a holder has a mailing address for an apparent owner, the notice must be sent by regular mail through Canada Post.
- (3) A notice sent electronically shall not include personal information of the apparent owner other than the apparent owner's name and requirements in subsection (1).
- (4) If a holder has both an electronic address and a mailing address, the holder may choose which method to use first and utilise a secondary method if there is no response from the first notice.
- (5) If a holder does not know the identity of an apparent owner of the property, the holder is not required to give notice.

#### **Late delivery – voluntary disclosure program**

8. (1) For the purposes of subsection 10(3) of the *Act*, a holder who has not delivered property in accordance with section 9 of the *Act* may voluntarily apply to the Director to become compliant, unless either of the following has occurred:
- (a) the Director has notified the holder that the Director intends to conduct a compliance review or an examination;
  - (b) the holder has filed repeatedly under this section.
- (2) An application under section 10 of the *Act* must contain documentation to describe the circumstances as to why the holder is non-compliant.
- (3) An application approved under this section will not be subject to late fees and interest under section 14 of the *Act*.

#### **Voluntary delivery**

9. For the purposes of section 11 of the *Act*, a holder may submit a report and deliver property to the Director for property that would have been presumed to be unclaimed prior to the commencement of the *Act* if the holder has complied with the notice requirements in section 7 of the *Act*.

### **Delivery on the Holder's Initiative**

- 10.** An application under section 12 of the *Act* must set out the reasons to support the early delivery of the property before the property is presumed to be unclaimed and include documentation in support of the application that specifically addresses:
- (a) the burden to the holder of holding the property until the applicable time period in section 5 of this Rule;
  - (b) the holder has provided notice to the apparent owner pursuant to section 7 of the *Act*; and
  - (c) such notice is returned as undeliverable or could not be delivered.

### **Submitting report and delivery of property that is a security**

- 11. (1)** For property that is a security, the holder is the person with the books, records and/or documents regarding the apparent owner.
- (2)** If two or more holders have the books, records and/or documents regarding the apparent owner, then the holder with the most recent contact with the apparent owner shall be deemed the holder, unless there is a written agreement that specifies the holder with the obligation to deliver for the purposes of the *Act*.
- (3)** The holder must submit the most recent account statement of the apparent owner with the report required under subsection 9(2) of the *Act*.
- (4)** If an apparent owner has securities with a total estimated fair market value of less than \$1000 as of December 31<sup>st</sup> of the year covered in the report, the holder shall liquidate the account of the apparent owner and deliver the liquidated property to the Director, in accordance with section 18 of the *Act*.
- (5)** Pursuant to subsection 13(2) of the *Act*, the holder will deliver to the Director the net amount realized along with a copy of any remittances.
- (6)** If an apparent owner has securities with a total estimated fair market value in an account of \$1000 or more as of December 31<sup>st</sup> of the year covered in the report, the holder shall submit a report to the Director in accordance with sections 9, 10, 11, or 12 of the *Act*, as applicable, and continue to hold the property until the Director gives the holder permission to deliver the unclaimed property.
- (7)** For any property that continues to be held by the holder under 11(6) of this Rule, the holder will amend the name and address on the account statement to include the following:

Apparent Owner's Name  
C/O Financial and Consumer Services Commission  
Unclaimed Property Division  
300-85 Charlotte Street  
Saint John, NB E2L 2J2

**PART 4**  
**RIGHTS AND DUTIES OF DIRECTOR**

**Time for Reconsideration**

- 12.** Pursuant to subsection 17(2) of the *Act*, the prescribed period for the Director to reconsider a claim is 60 days from the date the Director receives notice of objection from the holder.

**PART 5**  
**CLAIMS**

**Claims**

- 13. (1)** In addition to the requirements under section 25 of the *Act*, for property held in more than one apparent owner's name, the Director may require any of the following:
- (a) the claim to be submitted by all apparent owners;
  - (b) proof of death of an apparent owner or owners.
- (2)** The Director may require a probate certificate for claims of property of an apparent owner who is deceased.
- (3)** All payments for a claim of the property of a deceased individual will be payable to the estate of the deceased individual.

**Time Periods**

- 14. (1)** For the purposes of subsections 25(2) and 26(3) of the *Act*, the prescribed period for the Director to consider a claim is 120 days from the date the claim is submitted with all the necessary information to the Director.
- (2)** For the purposes of subsections 25(5) and 26(6) of the *Act*, if the Director allows a claim, the Director shall deliver the unclaimed property within 60 days of the date the Director allowed the claim.

**Other Claims**

- 15.** Pursuant to paragraph 26(1)(b) of the *Act*, the Director may pay a claim to any of the following:
- (a) an executor or an administrator of an apparent owner;
  - (b) a legal representative of an apparent owner;
  - (c) a successor company;
  - (d) a former holder, upon proof that the former holder made an equivalent payment to the apparent owner;
  - (e) a former holder that made a delivery in error;

- (f) a trustee in bankruptcy authorized to act on behalf of the creditors of the apparent owner.

**PART 6  
GENERAL**

**Agreements to Locate Unclaimed Property**

- 16. For the purposes of paragraph 52(2)(b) of the Act, a provision in an agreement referred to in subsection 52(1) that establishes compensation in excess of 10% of the value of the unclaimed property is of no force or effect.

**Effective Date**

- 17. This Rule comes into force on *[Insert Date]*.

**PART 7  
TRANSITIONAL PROVISIONS**

- 18. *A holder that is required to submit a report and deliver property to the director at any time preceding the date of the commencement of the Act and who has expunged the information identifying the apparent owner or owner of the unclaimed property from its books and records is not required to recreate the expunged records where the holder has taken all reasonable actions to comply with the requirements and the holder is otherwise in compliance with the Act. The holder remains liable to the apparent owner or owner for this unclaimed property. The holder may voluntarily submit a report and deliver property presumed to be unclaimed if, for any reason, a holder's books, records or documents are not sufficiently complete to allow the holder to submit a report containing all of the information required by the Act.*

## Annex B

### Summary of Comments of a General Nature

Summary of Comment(s)	Commission's Response
Several commenters commended the creation of the program to facilitate owners or their beneficiaries claiming property.	We thank the commenters for their support.
Several commenters suggested that the Rule be harmonized with other Canadian jurisdictions who have existing unclaimed property regimes.	The Commission strives for harmonization in all its regulated sectors, where it is possible.
One commenter suggested that the Commission should require negative reports from holders, who do not have property that requires an annual filing.	We are aware of the additional requirements a new regime places on holders. The Commission will focus its compliance efforts on educating holders on the filing and delivery requirements.
One commenter suggested that to facilitate the process of delivery, an electronic submission option that would enable bulk delivery of unclaimed properties be implemented.	We agree and intend to have a bulk filing process in our on-line filing solution.
One commenter indicated that the Province of New Brunswick has a fund of unclaimed damage deposits that belong either to the tenants who paid the deposit or the landlords who collected them. The commenter states that these unclaimed funds should be returned to the appropriate party as part of the process.	The <i>Residential Tenancies Act</i> establishes the process and timelines for a landlord's claim against a rental deposit. As those timelines have expired prior to the property becoming unclaimed, property received by the Director would be claimable by the owner or the apparent owner.
One commenter indicated it would be helpful if the Commission provided supporting guidance and tools such as sample letters to assist holders	The Commission has a mandate to develop and conduct educational services, educational resources will be available before the program launch.
Two commenters suggested the Commission apply the <i>Act</i> on a go forward bases rather than the 5-year period preceding commencement of the <i>Act</i> as contemplated in section 4(1).	We recognize the burden that may exist for some holders to retroactively apply the delivery requirement.  To assist holders a transition period has been added to UP – 001 <i>Unclaimed Property – General</i>
One commenter noted that neither the <i>Act</i> nor the Rules specify how the amount of pension benefits to be delivered to the Director will be established.	UP – 001 <i>Unclaimed Property – General</i> contemplates delivery of unclaimed property resulting from the wind-up of a pension plan. The wind-up report will determine the amount to be paid to the apparent owner. The amount to be included on the report filed and delivered is the amount due to the owner on 31 December of the year the property became unclaimed.

<p>One commenter suggests that the Rules should support section 3 of the <i>Act</i>, regarding the Director’s ability to grant an exemption from the <i>Act</i> or regulations. They recommend that the Rules set out details with respect to when and for how long the Director will grant this exemption.</p>	<p>The Commission has experience in other regulated sectors with the application of exemptive relief. Relief will be considered on a case by case basis, and the Director’s approval may include terms and conditions the Director considers appropriate. The Director will publish on the website additional guidance on the exemption process.</p>
<p>One commenter asked for clarification on which party to a pension plan is considered the holder; the pension plan sponsor, the pension plan administrator or the pension plan itself?</p>	<p>Under the <i>Pension Benefits Act</i> the pension plan administrator is required to act in accordance to the wind-up report. In most situations the administrator would be considered the holder of the unclaimed property.</p>
<p>One commenter sought clarification on the application of the <i>Act</i> and Rules on a pension administrator that is not in New Brunswick, however they administer plans with New Brunswick members.</p>	<p>The pension plan must be administered in accordance with the <i>Pension Benefits Act</i> if there are New Brunswick members.</p>
<p>One commenter recommended that the Rules be amended to clarify how section 13(2) of the <i>Act</i> applies to holders of property. They indicated that different types of property have different required remittances and withholdings.</p>	<p>Under Section 13 of the <i>Act</i> it is the holder’s responsibility to comply with the applicable legislation that requires the remittances or withholdings.</p>
<p>One commenter noted that given the administrative burden the program places on holders any amounts greater than \$500 should be returned to the former holder after 10 years.</p>	<p>In reference to section 27 of the <i>Act</i>, amounts over \$500 are not subject to the 10-year time limit.</p> <p>The Director must maintain, at all times, sufficient funds to deliver property to an owner who submits an approved claim.</p>
<p>One commenter recommended that the Rules clarify how the place of residency of the owner affects the application of the Rules.</p>	<p>Section 9(1) of the <i>Act</i> defines the circumstances under which a holder is obligated to file a report and deliver property.</p>
<p>Several commenters addressed the start-up date for the unclaimed property program and recommended that the first remittance date should be no earlier than one full calendar year after the proclamation of the <i>Act</i> to allow time for system upgrades and staff training.</p>	<p>The Commission will strive to provide holders with at least one year between proclamation date of the <i>Act</i> and the start of the first filing period.</p>

## Annex C

### Summary of Comments on Proposed Rule UP-001 *Unclaimed Property – General*

Section	Summarized Comment(s)	Commission’s Response
Definitions	One commenter suggested that the Commission consider adding the word “public” before utility for clarity.	The term “utility” is broad so as to capture a “public utility” or any other business organization that performs an essential public service and that is subject to government regulations.
	One commenter suggested that the Rule refer to the <i>Insurance Act</i> definitions in the same way as the definition of “life insurance”.	We acknowledge the recommendation and have amended the definitions.
	One commenter recommends a definition of “loyalty program” be added that limits those programs to where no consideration is paid by the owner, and rewards are redeemable exclusively for goods or services, and not redeemable for cash.	Loyalty program definition has been added to the Rule.
Fair Market Value	A commenter noted that there is no specific procedure discussed for the valuation of securities. The commenter suggests that most State unclaimed property laws would reference the exchange on which a security was traded.	We agree with the suggestion to identify the marketplace for securities, the Director will include detailed instructions when the holder is given permission to deliver the unclaimed property.
Excluded Property	One commenter suggested that the gift card exemption be limited to those gift cards redeemable exclusively for goods or services, and not redeemable for cash.	Gift card is defined in the <i>Gift Card Act</i> and that definition indicates that they include any voucher or device that is issued or sold in exchange for the future purchase or delivery of goods or services and includes a gift certificate.
	One commenter noted that under section 165 of the <i>Insurance Act</i> , no amounts are payable under contracts of life insurance until a claim has been made and the insurer has had sufficient opportunity to investigate the claim and the status of the policy	We agree that in circumstances where the contract is deemed non-payable by the insurer the property would not become unclaimed.  We have amended the Excluded Property section to address these circumstances.
	One commenter supported the exclusion of the contents safe deposit boxes; they also recommended the exclusion provision include “property held in safe keeping”.	We have amended the section to exclude property held in safe keeping.
	A commenter questioned why benefits owed under an accident, disability or a sickness insurance policy are excluded in this section.	While a policy is in force the owner and the holder have a means to resolve the matter of amounts owed under the policy without the benefit of the <i>Unclaimed Property Act</i> .  As well, benefits owed to a person under such policies are not generally considered to be at high risk of becoming unclaimed as the



		amount due and owing is a result of a recent action taken by the owner (e.g. filing a claim).
	<p>One commenter agreed with the exclusion of property resulting from an in-force accident, disability or sickness insurance policy.</p> <p>They further suggest the exclusion extend to terminated policies.</p>	The Commission does not consider that excluding all amounts owed under a terminated policy to be in the public interest. However, an exclusion has been added to the Rule to cover situations where a group policy has been replaced by another contract for insurance and the liability transferred to another insurer.
	One commenter suggested that the minimum amount required to be delivered in relation to a terminated accident, disability or sickness insurance policy be raised to \$250, as a requirement to deliver an amount less than \$250 would create a unique requirement compared to other Canadian jurisdictions.	<p>The Commission strives to establish a regime that is, where possible, harmonized with other Canadian jurisdictions.</p> <p>We have amended the Rule to set the minimum amount for this property type to \$250 in line with the Alberta precedent.</p>
	One commenter suggested an expanded exclusion to cover foreign currency deposits, foreign currency instruments, and items held in safekeeping by a federal financial institution.	The excluded property provision has been reworded to exclude any property held by federal institutions.
	A commenter supported the concept of excluding property covered by another statutory requirement. They added that “compliance” with the other statutory requirements need to be addressed. They state a holder should not be exempt from this Act if the holder has failed to deliver the property under another statute.	This comment is noted and the concept of compliance with the other statutory obligation is now included in the Rule.
Indication of Interest	A commenter asked why automatic withdrawals of premiums indicates an owner’s interest in the insurance policy. An owner could be deceased, and a death benefit owing, but the premium still is paid because that payment is set up as an automated debit.	The provision is consistent with other Canadian jurisdictions.
	<p>Several commenters noted 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.</p> <p>They prefer to follow an account-based or client-based approach, instead of a product-based approach.</p>	The Rule has been amended for greater clarity; that an indication of interest in any property held by the holder is an indication of interest in all property held by the holder for that owner.
	One commenter suggested property could be received by a trustee on an ongoing basis, if the whereabouts of the owner are unknown, this would appear to prevent the property due to the owner from being reported.	In the Act, subsection 4(4)(b), it states that where activity including an increase in amount is conducted it is considered an owner’s indication of interest.

		In the scenario described by the commenter, the property would be unclaimed three-years following the last increase made to the trust account.
Time Periods	Several commenters suggested that the three-year time period could be considered as too long. They refer to the property arising from the dissolution of a holder, a pension plan wind-up or a final pay cheque owed to an employee as examples.	Our policy has been, where possible, to be harmonized with our neighbouring province on time periods. Following their precedent, a standard three-year period is proposed.  In a situation where a holder has unsuccessfully attempted to contact the owner and has a reasonable business or operational reason, the holder can apply to the Director under Section 12 of the <i>Act</i> to request early filing and delivery of the property.
	Several commenters sought clarification on how the time periods apply to registered plans.	We have restructured the Rule to distinguish between property held in a registered plan and property outside of such plans.
	One commenter questioned why the time period for deposits held by credit unions is set at ten years.	The time periods prescribed for credit unions were set to match those already in place for Canadian banks.
	One commenter suggested in connection with a deposit held under the <i>Pre-Arranged Funeral Services Act</i> that the age be reduced.	The Rule has been amended to reflect an age of 105.
	Two commenters recommended in addition to entitlements in a wound-up pension plan, unclaimed entitlements from ongoing pension plans be made eligible for transfer to the unclaimed property fund, at the option of the plan administrator.	The Commission has considered the issues facing pension plan administrators in New Brunswick. At this time, the main issue in connection to unclaimed property relates to plans for which a wind-up report has been approved.  The Commission may consider additional accommodation for ongoing pension plans at some future date.
	One commenter noted that a pension plan can be terminated, and the liquidation report can be approved by a superintendent in the other jurisdiction.	We have amended the section to contemplate a wind-up report approved by the Superintendent of Pensions or the authority designated under the <i>Pension Benefits Act</i> .
	One commenter suggests that unpaid amounts remaining in a pension plan after it is wound-up, be presumed unclaimed as soon as the administrator has conducted a reasonable search and is satisfied that the former members and beneficiaries to whom those unclaimed entitlements relate are unlocatable.	It is the holder's responsibility to issue a notice to the apparent owner under Section 7 of the <i>Act</i> . Additional requirements are placed on the holder by the <i>Pension Benefits Act</i> . The three-year period should provide sufficient time for a holder to comply with both <i>Acts</i> .
	One commenter agreed with the three-year timeline after which property must be transferred from a wound-up plan but	A holder has the option under section 12 of the <i>Act</i> , to apply to the Director for permission to file a report and deliver

	encourages the Commission to allow the plan administrator the option of transferring amounts earlier.	property prior to the property being presumed to be unclaimed.
	One commenter noted that when money is received by the Court and deposited to a bank account, a conflict may exist with the <i>Bank Act</i> (Canada) if the provision is intended to impose an obligation to deliver on the Bank rather than the Court.	The obligation to deliver the property is on the holder of the property, in this example the obligation would be with the Court.
	One commenter recommends including an undeliverable mail standard for securities held outside of a plan registered under the <i>Income Tax Act</i> (Canada)	We have amended the section to include an undelivered mail standard as suggested.
	Two commenters pointed out the requirements in the Rule for debts owed between businesses were unclear.	We have amended the Rule for clarity.
	One commenter asked for clarification as to how “subscriber” and “beneficiary” in a registered education savings plan relate to the definitions of “owner” and “apparent owner”.	The legislation that enables the establishment of the registered plan determines the apparent owner.
	A commenter recommends that the Rule clarify how a property becomes unclaimed if the subscriber does not make a request for payment, but the beneficiary cannot be located.	Federal regulations clarify how a subscriber can obtain return of their contribution.
	Two commenters noted in relation to a registered education savings plan that it must be terminated on or before the last day of the 35th year following the year in which the plan was entered into.	We have amended the section to add clarity to the triggering event that commences the time period.
	One commenter sought clarification on who is the “owner” of a registered retirement savings plan when the apparent owner is deceased.	The Act defines “apparent owner” and “owner” and those definitions apply to the Rules.
	One commenter sought clarification on a situation where there is no automatic conversion of a registered retirement savings plan to a registered retirement income fund and the owner cannot be found, and there has been no receipt of information that the owner is deceased.	We have added new language to define the nature of an activity for determining the start of the time period.
	One commenter wrote that industry does not rely on the date of death notification to determine unclaimed registered retirement savings plan assets. They note that industry relies on other indicia such as ‘Return Mail’ or the inability to connect with the client.	We acknowledge the comment and have restructured the Rule to clarify the triggering event that starts the time period for property to be considered unclaimed.
	One commenter asked the Commission to clarify when considering a property held in a plan registered under the <i>Income Tax Act</i>	The holder becomes aware the owner of the property is deceased. This section has been redrafted to better reflect the triggering event.

	(Canada) “who” is in receipt of the information that the owner is deceased.	
	One commenter informed the Commission that holders may receive information concerning a death, but holders may not receive sufficient proof of death until a later time.	This section has been redrafted to reflect the triggering event.
	One commenter requested clarification regarding the property held in the registered retirement income fund.	Property not due to be paid out of the registered retirement income fund remains with the holder inside the registered account.
	One commenter asked for clarification of how the Rule applies to registered accounts that are locked in under New Brunswick pension legislation.	Property inside a registered product remains inside the registered product, unless the triggering event has occurred.
	One commenter indicated that when a payment is made from a registered retirement income fund and deposited to an unregistered bank account that a conflict with the <i>Bank Act</i> (Canada) may exist.	When the payment is successfully deposited to a bank account the payment is considered to be acknowledged by the apparent owner and is not unclaimed property.  In a situation where the attempt to deposit to the apparent owner’s bank account is not successful, the trigger event has occurred.
	Two commenters asked the Commission to clarify that after the first payment when remittance is done, the handing over of the registered retirement income fund account acts as a total delivery notwithstanding subsequent payments.	Property within the registered retirement income fund that is not paid out remains in the registered account and held by the holder as it is not considered unclaimed property.  The property that is required to be paid out of the registered retirement income fund as specified in the contract or by the <i>Act</i> that established the registered account and when that individual payment is unclaimed by the owner, is the property that becomes unclaimed.
	Two commenters noted that the Rule does not cover tax free savings accounts and registered disability savings plans.	We have amended the Rule to include other registered accounts.
Obligation to Deliver is not Required	One commenter asked if a holder is required to send a due diligence notice when the holder is not obligated to file a report or deliver property.	In the <i>Act</i> , paragraph 7(4)(b) exempts a holder from the notice requirements for property valued at less than \$100.  Holders of property that qualifies for the exemption in this section would also be exempted from the notice requirements.
	One commenter questioned if when the holder gets enough property to meet the limit established in the Rule, is the holder then required to report?	Yes, if a holder can no longer meet the requirements of the exemption, they are obligated to conduct due diligence, file a report and deliver the property.

	One Commenter indicated that the exemption amount is reasonable while providing an alternative total exemption amount of \$1000.	We have considered the suggestion and have increased the total exemption amount to \$1000 as recommended.
	Two commenters requested the fair market value be increased to \$100 from the existing \$50.	\$50 was chosen for consistency as section 22 of the <i>Act</i> requires the Director to publish an electronic list of property with a value greater than \$50.
	One commenter suggested that the exemption amount be cumulative, and not annual.	We agree and that is the intended application, the amount is cumulative.
	One commenter suggests that holders file a summary report confirming reliance on the exemption.	The Commission is reducing the burden on holders of small amounts of property. Compliance reporting is not contemplated at this time.
	Two commenters indicated they prefer to deliver all property.	Holders may choose not to rely on the exemption.
	Two commenters recommended using a single amount under which the holder is not obligated to report and deliver and further recommend using the same amount as the Alberta Act.	We thank the commenters for submitting their opinions.
	<p>Several commenters recommended that there be no threshold value and that any intangible asset regardless of value be included under the definition of property.</p> <p>The commenters further suggest that if amounts less than \$1 are exempt, holders will not receive the benefit of clearing their records of such items.</p> <p>Other commenters suggested raising the fair market value. The range of suggestions went from \$5 to \$100.</p>	The Commission has made the delivery of property under \$1.00 optional.
Notice to Apparent Owner	Two commenters sought clarity on how to send the notice in situations where the holder has <b>both</b> a postal mailing address and electronic address.	We have amended the sections to indicate that when a holder has both a mailing address and an electronic address the holder may choose which method to use first and utilise the secondary method if there is no response from the first notice.
	One commenter recommended additional requirements be added to the contents of an electronic notice.	We have amended the Rule to provide additional direction.
	A commenter pointed out that virtually all the State Administrators waive a notice mailing where the holder is aware that the address of record is inaccurate, as evidenced by return mail.	In the <i>Act</i> under subsection 7(4)(a) a holder is relieved of the requirement to send a notice if the holder has reasonable grounds to believe the address is not correct.
Late Delivery	One commenter expressed support for the voluntary disclosure program	We thank the commenter for their support.

<p>Delivery on the Holder's Initiative</p>	<p>One commenter suggested that the Commission may want to consider requiring that due diligence to be conducted prior to early reporting.</p>	<p>We have added a requirement to the Rule that the holder provide the notice pursuant to section 7 of the <i>Act</i>.</p>
<p>Submitting Report and Delivery of Property that is a Security</p>	<p>Two commenters recommended guidance to clarify the respective responsibilities of dealers and fund managers in reporting and delivering unclaimed property. For example, for nominee accounts, the dealer should be responsible for the reporting and delivery. For client name accounts, other arrangements or procedures may apply for the dealers and the fund managers.</p>	<p>We have amended the Rule to clarify the party that has the responsibility of a holder.</p>
	<p>Two commenters noted the nature of securities markets is such that asset prices can fluctuate. It is conceivable that some of the securities liquidated under this section may appreciate over time and thereby possibly expose the dealer to recourse from the owner or apparent owner.</p>	<p>When a holder complies with the delivery requirements set out in the <i>Act</i> and the Rules along with any direction issued by the Director, the holder is relieved of liability for the property or the amount delivered in accordance with section 13 of the <i>Act</i>.</p>
	<p>Two commenters suggested the Rule should prescribe a period at which the unclaimed properties should be liquidated before they are delivered to the Director (for example 15 days before the date of delivery). This would protect holders from liability in case of changes in the value of the properties due to market effects.</p>	<p>For property valued at less than \$1000 the fair market value is established as 31 December of the year the covered in the report. For property over \$1000, the Director will provide instructions for delivery.</p>
	<p>One commenter stated that it is not clear why different reporting and delivery processes are prescribed depending on the fair market value. They stated that having two processes adds regulatory burden for the industry.</p> <p>They recommend prescribing a single process regardless of the fair market value of the account. The preferred option is to liquidate and deliver all accounts to the Director. Accounts should be reported to the Director and held by the holder until such time that the Director gives the holder permission to deliver the unclaimed property.</p>	<p>The Commission strives for cross jurisdictional harmonization in all its regulated sectors; the process for handling securities is intended to mirror the requirements already in place in our neighbouring province.</p> <p>Because of the potential tax consequences to the investor in liquidating the unclaimed securities holdings, the Commission has taken a case by case approach to reporting and delivery of amounts over \$1000.</p>
	<p>One commenter noted that the Rule does not specify in what form the property should be delivered to the Director.</p> <p>They added that they prefer to liquidate all accounts before delivery.</p>	<p>The Director will instruct the holder on the required delivery method on a case by case basis.</p>

	<p>One commenter is concerned that the Rule might require holders to maintain property indefinitely, creating a burden.</p>	<p>Upon filing of a report, the Commission intends to publish a list of property available to be claimed. The Commission is planning a public awareness campaign to educate and inform consumers about unclaimed property.</p>
	<p>One commenter noted that if the reported securities to the Director remain outstanding on the transfer agent’s books, it continues to be a transferrable position, despite notice being provided to the Director. In the event the original holder submits the relevant share certificates or instructions, along with any other requirements, the transfer agent would be obligated to transfer the position as instructed.</p>	<p>We agree that this may occur on an infrequent basis. If it does occur, the holder can file a notice in the online filing system to inform the Director the property is no longer unclaimed.</p>
	<p>One commenter noted that when the issuer or transfer agent cannot liquidate and remit the market value of the securities because it is not possible to transfer, and there is no market in any event, the Commission may wish to follow the lead of a number of states that have adopted the 2016 Revised Uniform Unclaimed Property Act (“RUUPA”) and exclude worthless and non-transferable securities from the definition of “property.”</p>	<p>We thank the commenter and we agree that worthless and non-transferable securities can not be accommodated in the unclaimed property program. We have set a fair market value for unclaimed property at \$1.00.</p>

## Annex D

### Summary of Comments on Proposed Rule UP-002 *Unclaimed Property – Fees*

Section	Summarized Comment(s)	Commission's Response
Applications	Three commenters questioned the necessity for fees to be applied for early reporting of property under section 12 of the <i>Act</i> .	We have amended the Rule to remove the fee as suggested.
Late Fees	One commenter agrees with the maximum late fee.	We thank the commenter for their support.
Other Fees Payable	One commenter suggests "actual out-of-pocket costs" or "actual direct costs."	We concur with this suggestion and have added the language to implement the change.
Recoverable Expenses - Compliance Review	<p>Four commenters indicated that Commission's expenses for normal-course compliance reviews should not be charged to holders.</p> <p>Several of these commenters suggest the Commission should limit the recovery to situations of non-compliance by the holder.</p>	<p>The recoverable expenses listed in this Rule are consistent with the Commission's Fee Rules in place in the other regulated sectors.</p> <p>Consistent with our other regulated sectors the Director has discretion to charge for recoverable expenses on a case by case basis.</p>
Discretionary Reduction	One commenter noted the Rule is silent on the circumstances in which this rate reduction would apply.	Consistent with our other regulated sectors the Director has discretion to vary any fee, expense or interest on a case by case basis.