



NOTICE OF ADOPTION

COMMISSION RULE UP-001 *Unclaimed Property – General*

and

COMMISSION RULE UP-002 *Unclaimed Property – Fees*

Introduction

On 8 September 2021, the Financial and Consumer Services Commission (Commission) approved Financial and Consumer Services Commission Rule UP-001 *Unclaimed Property – General* (Rule UP-001) and Financial and Consumer Services Commission Rule UP-002 *Unclaimed Property – Fees* (Rule UP-002).

Rule UP-001 and Rule UP-002 will come into effect on **1 January 2022**, subject to the proclamation of the *Unclaimed Property Act*. Pursuant to section 8 of New Brunswick Regulation 2014-18 under the *Financial and Consumer Services Commission Act* (O.C. 2010-440), a rule comes into force on the day the rule is published electronically by the Commission as required under subsection 56(1) of the *Unclaimed Property Act*.

Background

On 8 September 2020, the Commission approved publication for comment Rule UP-001 and Rule UP-002 which were published electronically on the Commission website on 22 September 2020 and in the 30 September 2020 edition of *The Royal Gazette*. The 60-day consultation period ended on 23 November 2020.

There were 14 comment letters submitted during the comment period. We have considered the comments received and thank all commenters for their input. The names of the commenters and a summary of their comments, together with our responses were published on our website on 20 May 2021.

We made some minor changes in Rule UP-002. As the changes are not material, we have not published that Rule for a further comment period.

Changes were made to a revised Rule UP-001 which was published electronically on the Commission's website for a second comment period on 20 May 2021 and in the 2 June 2021 edition of *The Royal Gazette*. The second comment period ended on 19 June 2021. There were seven comment letters received. The names of the commenters and a summary of their comments, together with our responses are attached as Appendix "A."

Non-material changes were made to Rule UP-001 as a result of the second comment period. As these edits do not change the intention of the Rule, no further consultation periods are planned for this Rule.

Substance and Purpose of Rule UP-001 and Rule UP-002

The purpose of Rule UP-001 and Rule UP-002 is to provide the regulatory framework to support the *Unclaimed Property Act* (the *Act*). The *Act* establishes a regime to reconnect financial property that has been lost or forgotten to its rightful owner. The *Act* further provides a mechanism for holders of unclaimed property to reduce the liability of holding such property by delivering the property to the Director of Unclaimed Property. Rule UP-001 establishes the types of property included within the regime, the time frames for delivery to the Director as well as other requirements on holders, while the Rule UP-002 establishes the fees required by the Director.

Questions

If you have any questions, please refer them to:

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Contents of Annexes

Appendix A:	List of Commenters with Summary of Comments and Responses
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ANNEX A

Commenters

The Canadian Life and Health Insurance Association

New Brunswick Real Estate Association

The Association of Canadian Pension Management

Willis Towers Watson

Canadian Bankers Association

The Investment Funds Institute of Canada

J.D. Irving Limited

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

Section	Summarized Comment(s)	Commission’s Response
Excluded Property – Section 3	One commenter recommended that the ongoing pension plans be specifically listed in the Section 3, Excluded Property.	We have amended the section to include property that is not being wound-up.
	One commenter noted that material published by the Commission excludes “real estate” from the regime. They suggest that future Commission publications clarify that deposits held for a real estate transaction are covered.	We thank the commenters for submitting their comment and the Commission has identified the difference between monetary property received as a deposit and real property.
	One commenter noted that the current <i>Insurance Act</i> exclusion in paragraph 3(1)(f) may not cover instances where the terms of the policy are not met.	We have addressed this concern with an amendment to the provision as well as noting amendments to the <i>Insurance Act</i> that are anticipated to be proclaimed with the coming into force of the <i>Unclaimed Property Act</i> .
	One commenter noted that section 3(2) did not address “voluntary” delivery vs a “required” delivery of property.	We have amended the section to include any delivery addressed in accordance to another Act or a court.
	One commenter noted that there are situations where New Brunswick residents are entitled to a pension benefit where the plan administrator may not carry on business in New Brunswick as defined in Section 6 of the <i>Unclaimed Property Act</i> .	We appreciate your comments and acknowledge that there are situations beyond the jurisdiction of the <i>Unclaimed Property Act</i> .
Indication of Interest – Section 4	A commenter noted the discrepancy between the use of the word “statement” in 4(1) and “correspondence” in 5(2)(m).	We have amended the section to reflect the consistent language.
	One commenter noted that 4(1)(c) could be interpreted to mean that anyone with the password could claim an interest in the property.	We thank the commenter for submitting their opinion. We have added language to clarify the intent of this provision. The indication of interest is only used as a form of notice to a holder that property is not unclaimed, not for the delivery of the property to the owner.
	One commenter noted that 4(2) is confusing as it has two concepts in one provision.	We have amended the provision to separate both concepts.

Time Periods- Section 5	A commenter noted that section 5(1)(b)(i) and (c)(i) still identify federal financial institutions that are excluded in paragraph 3(1)(g).	We agree and have amended these provisions.
	One commenter asked for clarification of the intent of 5(1)(e)(ii).	We thank the commenter and have amended the provision to clarify the intent.
	Two commenters requested that the regime consider property held within ongoing pension plans.	The Commission may consider this at a future date. At this time, the main issue identified in New Brunswick surrounds wound-up pension plans.
	One commenter noted that a pension plan administrator would need to make required withholdings and remittances when delivering amounts to the Director. They ask if the Director intends to establish a means to accept amounts to be held “on a locked-in basis”.	An initial review of the property currently held by pension plans being wound-up in New Brunswick indicates most if not all of the pension benefits owed to unlocatable individuals could be unlocked under the <i>Pension Benefits Act</i> . Amendments have been made to paragraph 5(1)(h) to clarify our intent. The Commission may consider a method to accept “locked-in” amounts at a future date. Subsection 13(2) of the <i>Unclaimed Property Act</i> requires a holder to make all required remittances.
	A commenter noted that the only trigger for a TFSA to become unclaimed property is the death of the apparent owner in subsection 5(2).	We thank the commenter for submitting their opinion, we appreciate the concern. This provision is consistent with the triggering events for other registered plans.
When Obligation to Deliver is not Required – Section 6	One commenter agreed with the Commission decision to raise the cumulative total in this provision to \$1000. The same commenter further suggests the individual value be set at \$100 rather than \$50	The Commission has considered the balance between the benefit for a holder and the benefit to an owner of the unclaimed property. Section 22 of the <i>Act</i> requires the Director to include on the published list of unclaimed property all property valued over \$50. In order to remain consistent with the <i>Act</i> , we have determined that \$50 is the proper threshold amount.
	One commenter suggested the threshold in subsection 6(2) currently established at \$1 should be set at \$100 to reduce the holder’s time and resources in reporting and delivering unclaimed property.	During the first consultation period several stakeholders suggested there be no threshold and all property be reported and delivered regardless of value. During the development of this program and during consultation with stakeholders

		representing various industry groups the Commission has considered the thresholds for New Brunswick and decided the current limits are appropriate at this time.
Notice to Apparent Owner – Section 7	One commenter recommended that “regular mail through Canada Post” be removed from subsection 7(2) as this would limit holders from using a courier service or registered mail.	We have amended the provision to clarify that a written notice may be sent by mail or courier.
Submitting Report and Delivery of Property that is a Security – Section 11	<p>One commenter recommended an edit to 11(1) that proposed to clarify the role of an issuer of securities when there is another holder (such as a dealer).</p> <p>A second commenter also suggested an edit to clarify the roles when two holders are involved. In 11(2) they suggest changing “most recent contact” to “most frequent or usual contact”</p>	We have adopted the edit proposed to 11(2) that clarifies the responsibilities when two holders are involved.
Transitional Provisions – Section 18	One commenter noted that in section 18 holders should not be expected to file a report or deliver property prior to the coming into force of the Rule.	We agree and have amended the section to clarify its intention.