



January 30, 2017

The Honorable Jason Rapert  
Chair, Senate Insurance and Commerce Committee  
Arkansas Senate  
State Capitol  
500 Woodlane St. Suite 320  
Little Rock, AR 72201

RE: HB 1142 – An Act to amend the law concerning the payment of a security presumed to be abandoned property; and to declare an emergency; and for other purposes.

Dear Chairman Rapert:

The Securities Industry and Financial Markets Association (SIFMA)<sup>1</sup> is writing to express our concerns with HB 1142 - currently in your committee - which would impose an obligation on property holders (financial institutions) to liquidate client securities prior to escheatment and send the proceeds of the sale to the state as part of Arkansas' unclaimed property process. Such a liquidation would be a violation of the core spirit and letter of federal securities laws designed to protect customer assets. This proposal is particularly concerning as Arkansas savers who are not lost - but merely inactive - can have their entire securities accounts liquidated prior to seizure by the state, which can cause significant, unanticipated financial harm to the state's residents and businesses under what are supposed to be consumer protection laws. The legislation would also require the state to sell all securities currently in their possession within 90 days.

Imposing an obligation on the holder to liquidate property and send the proceeds of the sale to the state, as proposed in HB 1142, would establish an unprecedented and unique standard, in place in no other state in the country. A holder of securities is bound to a web of federal, state, and self-regulatory organization rules and laws<sup>2</sup> designed, at their essence, to protect customer assets. Protecting customer assets from unauthorized use or conversion forms the core of the obligations a holder owes its customers. State unclaimed property laws generally assist in reuniting citizens with his or her property, instructing the holder to escheat property to the state for safekeeping. The property at issue, securities, are a bundle of legal rights that entitle the customer to, among other things, share in any appreciation of value associated with those securities. The liquidation of securities converts those rights into a cash value, fundamentally changing the property and potentially robbing the customer of

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. For more information, visit <http://www.sifma.org>.

<sup>2</sup> See e.g., Securities and Exchange Commission (SEC) Rule 15c3-3 Customer protection - reserves and custody of securities (17 CFR 240.15c3-3) (requiring broker-dealers to safeguard both the cash and securities of their customers); Financial Industry Regulatory Authority (FINRA) Rule 4330 Customer Protection — Permissible Use of Customers' Securities.

the appreciation in value of those rights. Federal securities laws require the segregation and safe keeping of customer securities, and do not permit holders to liquidate customer securities without the customer's consent.<sup>3</sup> Only the state, after it has lawful possession of the property through the escheatment process, can give a lawful order to liquidate said property. Currently, Arkansas law outlines the right of the state to instruct liquidation by the transfer agent or their own securities intermediary once they are in possession and control of the securities. To the extent Arkansas seeks to liquidate securities received through the escheatment process, the state must first take possession of those securities.

Moreover, this bill would prevent owners from being able to claim their escheated property in its original form – which can have serious tax consequences (i.e., if a tax-advantaged account, such as a retirement or 529 account is liquidated and escheated), as well as cause Arkansas savers to lose significant value in the investments (especially when a saver discovers that their long-term, buy-and-hold portfolio was liquidated, preventing those investments from growing). On this point, the state enjoys certain legal protections regarding the harm that may come to customer as a result of the liquidation of his or her securities; a holder of securities does not.

Enactment of HB 1142 would also run directly counter to the national movement on this issue. In June 2016, the Uniform Law Commission adopted, by unanimous vote, a Revised Uniform Unclaimed Property Act (RUUPA). In adopting RUUPA, State Treasurers from across the nation supported language barring the liquidation of unclaimed property held by the state for at least 3 years, and mandating that the property be returned either in its original form or at full market value (at the time of the claim) if a valid claim is filed within 6 years of receipt.

SIFMA strongly urges you to maintain the existing consumer protection laws that all Arkansas savers and investors currently enjoy.

We thank you for your time and consideration. Please feel free to contact me at 212-313-1317 or [mgibson@sifma.org](mailto:mgibson@sifma.org) if you have any questions or if there is any further information I can provide.

Sincerely,



Marin E. Gibson  
Managing Director & Associate General Counsel  
State Government Affairs  
SIFMA

CC: Rep. Charlie Collins, Chair, House Insurance & Commerce Committee  
Commissioner Edmond Waters, Arkansas Securities Department

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<sup>3</sup> *Id.*