

## Unclaimed Property **ADVISORY**

October 9, 2012

### **New Verus Unclaimed Property Audit Initiative Branches Out Past Insurance Industry**

We have learned that Verus Financial, LLC (“Verus”), the contract audit firm recently known for conducting multistate unclaimed property examinations of the insurance industry, has begun to focus its audit activity on companies in the securities/financial products and services arena. It is issuing notices on behalf of more than 20 states for these audits.

How will this development impact companies that fall into this business sector? It is premature to predict the potential audit focal points of Verus or to handicap the firm’s success in implementing specialized audit techniques. Our prior experience with other contract firms’ audit actions in relation to the financial and securities sectors, however, suggests that audited companies will be required to review and defend their compliance policies, including their implementation of dormancy/contact standards, as well as their establishment and monitoring of dormancy period trigger events. Verus will apply various, non-uniform standards adopted by the audit participating states for purposes of establishing state-specific liabilities of its audit targets. We also anticipate that Verus will focus on identifying accounts with deceased owners, utilizing techniques that Verus developed in its insurance industry audits.

Will Verus take a page out of the playbook of Kelmar Associates, LLC (“Kelmar”), with regard to audit methodology, to the extent that a company’s historical records are well-maintained? In the context of securities audits conducted on behalf of Delaware, Kelmar has clarified that it does not intend to use estimations to establish liabilities with regard to securities property, due to the fairly robust record-keeping associated with issued securities. Again, it is too early to tell how this question will play out in a Verus audit, to the extent that an audit target is domiciled in one of Verus’s audit-participating states.

We recommend that companies prepare for the possibility of such a Verus-initiated audit by doing at least the following things:

- Review and understand your company’s internal policies and procedures by entity, business activity and type of account.
- Review and understand your company’s prior unclaimed property compliance history, including prior audits and voluntary disclosure agreements.
- Line up internal and external resources to form an effective and proactive audit management team.

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- Assess potential areas of weakness/exposure and consider whether remediation is possible either prior to or in the context of the audit.
- Anticipate potential disputes and be prepared to raise those disputes with the audit staff and/or the participating states.
- Consider initiating voluntary disclosure processes if your internal review reveals potential liabilities from past practices; voluntary disclosures may shorten the “lookback” period for which liabilities must be reported, avoid imposition of penalties (and, in some cases, interest) and allow you and your consultants to maintain control over the review and disclosure process.
- Identify relevant third parties that will be essential to the administration of the audit—for example, contractors with whom your company or its stock transfer agents or exchange agents contract for SEC “lost shareholder” searches, pre-escheatment shareholder location services or unclaimed property due diligence and reporting.
- Network with peers within your industry segment(s) and trade associations.

If your company ultimately is subject to audit, be prepared for a lengthy and thorough examination process, and be ready to explain/defend corporate practices that were designed to meet federal regulatory standards and/or to ensure protection and maintenance of owner assets. Also, be prepared for disputes regarding the proper application of the participating states’ laws and regulations, in particular those that relate to when (and whether) property is considered presumed abandoned due to the owner’s communication (or lack thereof). We have dealt with Verus during their audits of the insurance industry, and found them to be very aggressive in their interpretation and application of the unclaimed property laws as applied to that industry.

Please contact the members of our Unclaimed Property Group if you have questions about this new audit initiative, its potential impact on your company, or the steps that you should take to prepare for a potential audit.

Alston & Bird offers clients unparalleled experience dealing with issues involving state unclaimed property/escheat laws. Our five senior attorneys with unclaimed property expertise together have more than 85 years of experience advising major corporations on unclaimed property matters. We assist our clients in analyzing complex legal issues, obtaining legal opinions, conducting multistate/multi-entity internal compliance reviews, designing corporate compliance policies, advising clients on planning and related restructurings, negotiating voluntary disclosure agreements, defending single-state and multistate audits, litigating unclaimed property issues and influencing unclaimed property policy and administration.

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