



THE CANADIAN DEPOSITORY
FOR SECURITIES LIMITED

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March 5, 2004

Mr. Maxime Paré
Senior Legal Counsel
Ontario Securities Commission
19th Floor, 20 Queen Street West
Toronto, Ontario
M5H 3S8



Dear Max:

Re: Section 54 of the Uniform Securities Transfer Act ("USTA")

In reviewing the Consultative Draft of the USTA and the related Consultation Paper released by the USTA Task Force of the Canadian Securities Administrators, I wish to submit these specific comments relating to a section of the USTA which is of particular interest to The Canadian Depository for Securities Limited ("CDS"). On behalf of CDS, I am writing to express our strong support for section 54, "Clearing agency rules prevail", of the USTA as proposed by the USTA Task Force.

This provision is extremely important to the effective operation of the legislation. The legislative framework for book entry clearing in Ontario has been in place without such a provision since the formation of CDS in the 1970's. During this time, however, the usage of the depository by the securities industry and its critical importance to the infrastructure of the marketplace has grown to the point where CDS is now a fundamental utility which must be operational and financially viable at all times to support the financial infrastructure of the economy.

While it is true that Canada has never experienced a catastrophic event that would have stress tested CDS' Rules, we have always been vigilant and taken steps wherever and whenever possible to ensure that any possible weaknesses in the legal framework have been eliminated. Examples include the super-priority of CDS' security interests in s. 85 of the Ontario *Business Corporations Act*, the protections afforded designated clearing systems under the *Payment Clearing and Settlement Act* and the *Bankruptcy and Insolvency Act*.

In particular, under the *Payment Clearing and Settlement Act*, s. 8(1) gives statutory precedence to the Rules of CDS in the following terms:

8. (1) Notwithstanding anything in any statute or other law of Canada or a province,

(a) the settlement rules of a designated clearing and settlement system are valid and are binding on the clearing house, the participants, a central counter-party and the Bank and any action may be taken or payment made in accordance with the settlement rules; ...

A uniform provincial statutory provision in the terms of the proposed s. 54 would complement the federal provision and provide added security to the stakeholders using the clearing and settlement system of CDS.

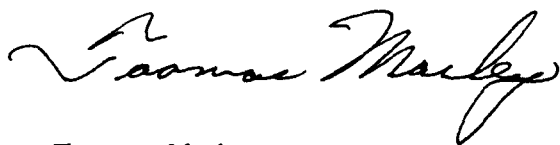
I concur with the Official Comment statement relating to section 8-111 of the U.S. *Uniform Commercial Code*, which is equally applicable to USTA s. 54. The CDS' Rules, which are publicly available through our website on the Internet, form a common basis for all investors and their service suppliers in Canada and internationally to have access to the fundamental principles upon which their securities transactions are processed. Given the rigorous process of review of the Rules and amendments from time to time, it is difficult to conceive of a situation where the interests of third parties, not participants in CDS' services, would be unjustifiably disadvantaged. It is in the best interests of all investors in Canadian securities to ensure that the clearing, settlement and netting of their transactions are as secure and efficient as possible and that the participants' obligations to each other and to the central system are performed timely and without default on each operating day.

Section 54 is also consistent with international best practices as set out in CPSS/IOSCO and Group of 30 reports. Furthermore, the precedent in the *PCSA* at the federal level should be supported by a similar provision in provincial uniform legislation to ensure that both levels of Canadian governments have taken all reasonable steps to risk-proof the securities clearing infrastructure. At the international level, such support will be viewed particularly favourably by foreign investors and regulators.

Finally, s. 54 will assist in the achievement of the policy objectives of the USTA project—it will help provide a solid legal foundation for securities industry practices, control systemic risk and enable the achievement of finality of

settlement. The Rules of CDS strive to attain these objectives also; having a statutory recognition in provincial legislation will ensure they are achieved.

Yours very truly,

A handwritten signature in black ink, appearing to read "Toomas Marley". The signature is written in a cursive style with a large, sweeping initial "T".

Toomas Marley
Vice-President, Legal, and Corporate Secretary

Cc: Eric Spink