



THE CANADIAN DEPOSITORY
FOR SECURITIES LIMITED



March 12, 2004

Mr. David Brown
Executive Sponsor, USTA Project
Ontario Securities Commission
19th Floor, 20 Queen Street West
Toronto, Ontario
M5H 3S8

Mr. Maxime Paré
Chair, USTA Task Force
Ontario Securities Commission
19th Floor, 20 Queen Street West
Toronto, Ontario
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Dear Sirs:

Re: Uniform Securities Transfer Act ("USTA")

On behalf of The Canadian Depository for Securities Limited ("CDS"), I am belatedly providing comments in respect of the Consultative Draft USTA posted on the website of the Ontario Securities Commission on August 1, 2003. This letter will provide more detailed comments relating to the issues listed at the end of the Consultation Paper posted with the Draft USTA. These comments are in addition to the general letter of support sent by our President Al Cooper on May 6, 2003 and my letter of March 5, 2004 relating to s. 54, "Clearing agency rules prevail", of the USTA. Furthermore, CDS has been participating in the work of the Canadian Capital Markets Association and concurs with the submissions of the CCMA.

I apologize for the delay in providing these comments. This should not be interpreted as a lack of interest in the project. As you know, CDS has been supporting this project from the time of the original Alberta Law Reform Institute study in 1993. We continue to view the completion of this project as the single most important legal initiative for the Canadian securities industry which will bring Canadian securities transfer legislation into line with similar laws of most other industrialized countries. Rather, the delay in responding results from my view that the Consultative Draft and Paper are so comprehensive and authoritative that, I confess, I have little to add in a substantive way. In any case, I do hope the comments in this letter will assist in the final implementation of the USTA.

Policy Objectives

CDS supports the four policy objectives of the project for the reasons set out in the Consultation Paper. In recent years, increasing numbers of international organizations (BIS, IOSCO, Group of Thirty) and private enterprises (Thomas Murray, Citibank, International Symposium of Securities Administrators) have conducted comparative analyses and risk assessments of clearing and depository systems around the world. Prominent among the questions in these surveys are the statutory framework and legal risks present in each securities market.

It is unacceptable for Canada to rank low on these questions and puts our industry at a competitive disadvantage against other markets. The international securities dealers, custodians and regulators have become very sophisticated in their views on legal risks. For Canada to have an outdated and patchwork securities transfer legislation results in offshore investors avoiding Canadian markets.

Uniformity

The importance of uniformity in the implementation of the USTA cannot be stressed enough. CDS has recently had reason to seek legal opinions across Canada relating to the validity and enforceability of the security interests granted by our participants under the newly-revised CDSX Rules. Although we have drafted our Rules as being governed by the laws of Ontario, our participants and their clients as well as the issuers of eligible securities are located in all provinces and territories. While we have taken the position that Ontario laws apply uniformly to all transactions in our domestic systems, this result is not absolutely certain, due to the outdated and non-uniform state of the relevant Canadian legislation.

The outcome of this opinion-seeking exercise was frustrating and less than satisfactory because of the subtle and technical differences in the legislation. Although we had intended to obtain opinions relating to the laws of all ten provinces and three territories, we terminated the exercise for budgetary reasons after having obtained opinions only for the federal jurisdiction and the four provinces in which most of our participants and eligible issuers are situated. The opinions themselves were quite long and duplicative, dealing with the many exceptions and differences in the relevant sections. By contrast, obtaining an opinion from New York legal counsel relating to similar issues under Revised Article 8 of the Uniform Commercial Code was relatively straightforward and clear.

USTA Comments

I am of the view that a formal Canadian version of the interpretive Comments, as included in the Consultative Draft USTA, will be helpful. The USTA is very complex and technical reflecting the complexities of the back office securities

systems. Subtle differences in wording can have significant impacts on the outcome of legal rights and obligations. Furthermore, the legislation deals with different concepts that apply to the myriad of transactions occurring every day in the securities markets, both domestically and internationally. Relatively few legal practitioners or judges have had experience in either the securities transfer laws or practices. Interpretive Comments will be a very useful aid to these persons and will ensure that the legislation is applied uniformly with predictable results. The use of examples will be particularly helpful to non-lawyers in understanding the implications of the USTA for their operations.

Constitutional Issues

The analysis of constitutional issues in section C of Part 1 is well-reasoned and the conclusions supported by valid arguments. In line with the comments above relating to uniformity, I suggest that the fewer statutes, federally and provincially, dealing with securities transfers, the simpler it will be to apply the laws.

Application to Crown

The USTA must apply to all securities which are issued, traded or settled in Canada, regardless of the type of issuer. Government securities constitute the bulk of the value of the securities on deposit at CDS. Federal, provincial and municipal securities are eligible; CDS intends to make foreign government issues eligible as necessary to meet the needs of our participants. Government securities are dealt with in the clearing and depository systems no differently from other securities; it would be curious if the legal structure did not apply to them. Furthermore, they are used as a primary source of collateral to underpin the settlement system. The validity and enforceability of such securities as collateral must be certain.

Choice of Law Provisions

The choice of law provisions set out in ss. 51-53 appear to work satisfactorily from CDS' standpoint.

S. 54, "Clearing agency rules prevail"

I refer to my letter of March 5, 2003.

Various Defined Terms

The defined terms listed in your request for comments have been appropriately articulated and will provide clarity within the tiered holding system for CDS' purposes and, I believe, for our participants as well.

Conforming Amendments to PPSAs and BCAs

From CDS' standpoint, the conforming amendments do not appear to raise issues for the operation of our services. Others who are more expert in personal property security legislation and corporate law will have to comment on the impacts of the conforming legislation as it affects other parties within the tiered holding system.

I look forward to the final discussions leading to the implementation of the USTA on a uniform basis across Canada.

Yours very truly,

A handwritten signature in black ink, reading "Thomas Marley". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas Marley
Vice-President, Legal, and Corporate Secretary

Cc: Eric Spink