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and

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Dear Sirs:

**Re: Support for *Uniform Securities Transfer Act* (the  
"USTA")**

We have been provided with a copy of a letter dated June 17, 2004 from the Ontario Bar Association ("OBA"), expressing its support for the adoption of the USTA by Ontario and other provinces.

For the reasons already well articulated in the OBA letter, we strongly support adoption of the USTA at the earliest possible moment. If Ontario moves first to adopt the USTA - as it should - the goal of word-for-word uniformity throughout the country will be advanced. As a leader in the Canadian capital markets, Ontario should also provide leadership to the other provinces and territories in this important area of commercial legislation, and doing so will make it more likely that they will adopt the Ontario model verbatim for their own jurisdictions.

In case of the USTA, it is important to break the bad Canadian habit of tinkering with the language of proposed uniform commercial legislation, whether to conform to local legislative drafting styles or to appease regional or political interests. Tinkering will destroy uniformity

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within the country and undermine the degree of uniformity that the USTA would otherwise have with Revised Article 8 of the U.S. *Uniform Commercial Code* (“**Revised Article 8**”), on which the USTA is closely modelled.

One provision of the USTA that has caused some controversy is s. 54, which provides that the rules adopted by a clearing agency governing rights and obligations among the clearing agency and participants in the clearing agency will not be affected even if the rule conflicts with the USTA or the *Personal Property Security Act* (the “**PPSA**”). Section 54 of the USTA is modelled on s. 8-110 of Revised Article 8 and is an analogue of s. 8 of the *Payment, Clearing and Settlement Act* (Canada) (“the “**Canadian Payments Act**”), which provides for the paramountcy of the settlement rules of the Canadian clearing and settlement system.

We endorse s. 54 as a means of promoting greater certainty, uniformity and stability in that system. Like s. 8-110 of Revised Article 8 and s. 8 of the Canadian Payments Act, the purpose of s. 54 is to ensure that clearing agency rules are binding upon participants. It is designed both to minimize systemic risks and to maximize the transparency of rules governing the country’s top-level intermediary, the clearing agency. For example, s. 54 enables a clearing agency to establish a credit ring arrangement, allowing the clearing agency to immediately draw upon the cash or securities of other participants in order to complete outstanding settlements. A credit ring arrangement is conducive to minimizing systemic risk.

Clearing agencies in other countries need to be able to evaluate Canadian clearing agency rules without having to go behind them to see whether these rules conflict with the provisions of each provincial or territorial statute. The Canadian Depository for Securities Limited (“**CDS**”), the clearing agency used for settlement of most publicly traded issues in Canada, is recognized by provincial securities commissions, and its rules (which are now freely available on the CDS website) are therefore subject to regulatory oversight. Intermediaries that are contractually bound by the participant rules of CDS understand and accept the need for the paramountcy accorded to these rules.

The USTA and the companion changes to the PPSA and the *Business Corporations Act* (Ontario) have been closely studied and thought through by many of Canada’s leading academics and practitioners in the area. Their work is an outstanding achievement and, if implemented, will immediately transform the outdated and fragmented legal patchwork that now governs the transfer and pledge of investment securities in Canada with a coherent and unified structure modelled on one that is generally acknowledged to be the world’s best. If the USTA becomes law, Canadians will enjoy many immediate benefits. It will provide a key legal tool for the implementation of straight-through processing. It will allow parties to securities trades to proceed confidently on a sound legal footing. It will reduce transaction costs and enable counsel to deliver clean legal opinions on transactions involving book-based securities, a task that is now all but impossible given the existing patchwork of incomplete legislation and confused common law. Without it, Canada may one day become a marginalized backwater in the capital markets as business is increasingly lost to New York.

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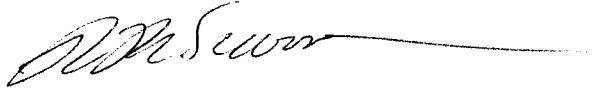
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We, therefore, endorse the OBA letter and likewise urge Ontario to give the USTA the highest possible priority.

Yours truly,



Wayne D. Gray



Robert M. Scavone