



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Barbara Amsden
Director, Capital Markets
Tel: 1 (416) 687-5476
E-mail: bamsden@iiac.ca

October 18, 2006

Ms. Cheryl Ogilvie
Senior Economist, Financial Sector Division
Financial Sector Policy Branch, Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5
Tel: (416) 995-1750
Fax: (416) 943-8436
E-mail: ogilvie.cheryl@fin.gc.ca

Dear Ms. Ogilvie:

Re: IIAC Urges Priority on Updating Canadian Securities Transfer and Related Laws

The Investment Industry Association of Canada (IIAC)¹ is pleased that Finance Canada is consulting on Canadian securities transfer law, discussed with Finance Canada in June of this year. We see this effort as an important part of the broader economic productivity/competitiveness agenda that this government is pursuing. Specifically, we strongly believe that:

- Federal and provincial securities transfer and related legislation must be updated:
 - to give the significant majority of Canadians, who hold securities electronically through an intermediary, appropriate protections when those securities (and interests in them) are transferred, purchased, sold or pledged
 - to ensure that securities transfers in Canada meet the same legal standards adopted by the U.S. and European Union countries, thereby:
 - reducing risk, legal uncertainty and ultimately cost and
 - helping preserve the competitiveness of the Canadian capital markets and industry given evidence that transactions have been moved to the U.S. or abandoned due to uncertainty.
- The Canadian and certain provincial governments must meet their explicit and implicit commitments to modernize, harmonize and co-ordinate commercial and private law between different countries, for which there is strong support in Canada.
- To the extent that a broad-based rationalization of securities-related laws and regulations in Canada is unlikely in the near future, harmonization – in this case, introducing uniform legislation with absolute consistency of wording – represents progress and must be pursued as a priority.
- The most expedient approach is for the federal government to remove transfer rules from federal statutes, repeal the *Depository Bills and Notes Act* and harmonize federal law governing bills and notes with uniform securities transfer legislation provided that:
 1. the provinces commit to implementation of uniform securities legislation within a short fixed timeframe and to maintain it thereafter
 2. the ceding of jurisdiction in the above fields has no broader implications for federal jurisdiction in other areas now or in the future.

Attached are our more detailed views in this regard and we look forward to discussing them with you on October 18.

Yours truly,

¹ On April 1, 2006, the Investment Dealers Association of Canada (IDA) legally divided into a self-regulatory organization (SRO) and IIAC – the industry association. The Association represents the position of the Canadian investment industry on regulatory and public policy issues. Its mandate is to promote efficient, fair and competitive capital markets for Canada while helping its member firms succeed in the industry.



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IIAC SETS PRIORITY ON UPDATING CANADIAN SECURITIES TRANSFER LAWS TO PROTECT INVESTORS AND IMPROVE CAPITAL MARKETS' COMPETITIVENESS

Need for Updated Securities Legislation in Canada

Passage of uniform securities transfer legislation in Ontario and Alberta, as well as efforts to introduce identical or near-identical acts in other provinces and territories, are aimed at updating Canadian securities transfer law to be consistent with current indirect securities-holding practices in Canada. At least as important, the updated legislation will ensure that securities transfers in Canada meet the same legal standards adopted by the U.S. and European Union countries, reducing risk, uncertainty and ultimately cost. Canadian investors and issuers deserve improved legal clarity and certainty surrounding the purchase, sale, pledge and holding of securities and interests in securities, particularly in our increasingly global securities marketplace, where transactions can involve multiple jurisdictions. The Canadian capital markets and securities industry also need relevant legislation to be updated as there has already been evidence that transactions have been moved to the U.S. or abandoned as Canadian legal counsel could not give opinions with the high degree of legal certainty demanded by underwriters.

Benefits from Implementing Uniform Securities Transfer Legislation with Consequential Amendments to Other Laws

The positives from implementing uniform securities transfer legislation across Canada are widely accepted. From the August 11, 2004 MacMillan Binch submission to the Chair of the Ontario Standing Committee on Finance and Economic Affairs (and the name of every other province or territory can easily replace Ontario in the citation below), it would:

- “❖ Provide a sound legal foundation for modern securities holding and transfer practices, in particular the indirect or tiered holding system, which for publicly traded securities has largely replaced the older paper-based system on which the inadequate existing law is based [...];
- ❖ Provide the legal framework for the increased operational efficiencies of straight-through processing, which will save the Canadian securities industry an estimated \$140 million annually [...];
- ❖ Reduce transaction costs and legal uncertainty in multi-province transactions by achieving uniformity across Canada;
- ❖ Enable counsel to deliver clean legal opinions on transactions involving indirectly held securities, a task that is now all but impossible given the high degree of uncertainty generated by the existing patchwork of incomplete legislation and confused common law;
- ❖ Rationalize securities transfer law by making the [Uniform Securities Transfer Act (USTA)] a separate statute rather than an appendage to the *Ontario Business Corporations Act*;
- ❖ Facilitate the growing reality of cross-border transactions in securities and interests in investment property and promote Ontario as a investor-friendly jurisdiction with a familiar legal system by harmonizing Ontario law with Revised Article 8;
- ❖ Control systemic risk;
- ❖ Complement and reinforce clearing agency rules providing for finality of settlement;
- ❖ Facilitate the use of publicly traded securities as collateral by providing clear rules relating to the creation and perfection of security interests in investment property and simple and easily applied “conflicts of laws” rules that can quickly determine which jurisdiction governs such matters in multi-jurisdictional transactions; and

- ❖ Keep Ontario competitive in the world financial markets, particularly when measured against New York.”

Importantly, uniform securities transfer legislation will also contribute to fairness and transparency for investors and to Canadians’ and Canadian businesses’ ability to earn additional returns from securities lending or to pledge their securities for loans. It is also critical to the operation, liquidity, integrity and efficiency of securities markets.

Canadian Commitments

The Canadian and certain provincial governments – beyond the responsibilities they have to Canadian investors and issuers – have made explicit and implicit commitments to modernize, harmonize and co-ordinate commercial and private law between different countries through:

1. The Canadian government’s involvement in the PRIMA Convention in the Hague
2. Canada’s participation in UNIDROIT (Institut internationale pour l’unification du droit privé)
3. Canadian involvement in the Committee on Payments and Settlement Systems/International Organization of Securities Commissions (CPSS/IOSCO)
4. General Canadian support for the recommendations in the Group of Thirty report on clearing and settlement.

We believe that the federal government, and the provinces of Ontario and Quebec, must meet their obligations under 1., 2. and 3. and we believe that all provinces and territories will see benefits for their residents from implementation of the desired legislative changes.

Support for Uniform Securities Transfer Legislation

Despite the above-noted obligations, it has taken many years and the efforts of many people in Canada to reach the stage we are at today in terms of updating securities transfer law. Without being able to point to a clear market failure, it has been very difficult to establish uniform securities legislation as a priority. However, with the financial and securities industries dependent on confidence and with the Internet allowing rumour and innuendo to travel rapidly, Canadian markets cannot afford to wait until questions are raised as to the applicability of current legislation in today’s predominantly electronic nominee securities-holding regime.

Moreover, there is now strong and broad-based support by the Uniform Law Conference of Canada, many individuals and organizations in the legal profession generally, as well as companies and people operating in the securities industry in Canada. Legislation was drafted and endorsed for implementation by a wide range of stakeholders including investors, issuers, the financial industry and members of the Canadian bar. While technically complex, it has not proven politically sensitive: we are not aware of any controversy that arose when uniform legislation was introduced in Ontario and Alberta. As the U.S. was able to get commitment from 50 states to Revised Article 8 of the U.S. Uniform Commercial Code, we believe that Canada’s 14 federal, provincial and territorial jurisdictions can reach agreement and move forward.

IIAC Position

In light of:

- The importance of transparency of securities holding, transfer and pledging rights from the perspective of investors and other stakeholders
- The desire to avoid inconsistency, duplication and potentially contradictions among the legislation in jurisdictions across Canada
- The overwhelming industry preference for operational simplicity

- The market desire to have transfers of all securities, including debt issued by the federal government, under the same legislative regime
- The frequent impossibility of clearly establishing the location of a transfer given the different parties involved and current securities market practices
- Already negative international perceptions of the Canadian multi-jurisdictional marketplace despite Canada's strong economic and fiscal performance
- Commitments of the federal and many provincial governments to enhance the business environment

IIAC strongly supports moves to rationalize securities-related laws and regulations in Canada and, as a step to this end, accepts that harmonization – introducing uniform legislation – represents progress. Legislation updated in only some jurisdictions, in part only or not consistently, is not a real step forward. IIAC therefore is pressing, first, the remaining provinces for word-for-word consistency in the uniform securities transfer legislation introduced and, second, all jurisdictions – including the federal government – to make the consequential amendments required to other legislation.

IIAC believes that a single cross-country solution is the optimal model. This said, notwithstanding the federal government's responsibilities with respect to banking, government debt, the payments system/systemic risk, bankruptcy and federal incorporations, a unilateral federal move in the area of securities transfers would most likely lead to provincial opposition. The amount of time needed to resolve this and the even greater uncertainty that would ensue during this period, leaves a number of alternatives up to and including the federal government removing transfer rules from federal statutes, repealing the *Depository Bills and Notes Act* and harmonizing federal law governing bills and notes with the uniform securities transfer legislation. From the perspective of expediency, we recommend this latter alternative as providing the most certainty, being the most easily achievable and facilitating best the necessary dovetailing of securities transfer legislation with provincial personal property security acts. This said, our recommendation is that the federal government undertake such a change provided that:

1. the provinces commit to implementation of uniform securities legislation within a short fixed timeframe and to maintain it thereafter
2. the ceding of jurisdiction in the above fields has no broader implications for federal jurisdiction in other areas now or in the future.

Regarding next steps, IIAC will support Finance Canada, assuming comfort can be provided with respect to point 2 above, in pressing the provinces and territories to enact identical securities transfer acts and make the necessary consequential amendments to other legislation. IIAC will be including this issue, which we see as being of significant economic importance to our members given implications for the competitiveness of Canada's capital markets, in representations to all provinces. We hope that the federal government will undertake to champion the enactment and coming into force in the next six months of uniform securities transfer legislation in all remaining provinces.