



Province of Alberta

SECURITIES TRANSFER ACT

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SECURITIES TRANSFER ACT

Chapter S-4.5

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Part 1 Interpretation and General Provisions

Definitions

1(1) In this Act,

- (a) “adverse claim” means a claim that
 - (i) the claimant has a property interest in a financial asset,
and
 - (ii) it is a violation of the rights of the claimant for another
person to hold, transfer or deal with the financial asset;
- (b) “appropriate person” means,
 - (i) with respect to an endorsement, the person specified by a
security certificate or by an effective special
endorsement to be entitled to the security,
 - (ii) with respect to an instruction, the registered owner of an
uncertificated security,
 - (iii) with respect to an entitlement order, the entitlement
holder,

- (iv) in the case of a person referred to in subclause (i), (ii) or (iii) being deceased, that person's successor taking under the law, other than this Act, or that person's personal representative acting for the estate of the deceased person, or
- (v) in the case of a person referred to in subclause (i), (ii) or (iii) lacking capacity, that person's guardian or other similar representative who has power under the law, other than this Act, to transfer the security or other financial asset;
- (c) "bearer form" means, in respect of a certificated security, a form in which the security is payable to the bearer of the security certificate according to the security certificate's terms but not by reason of an endorsement;
- (d) "broker" means a dealer as defined in the *Securities Act*;
- (e) "certificated security" means a security that is represented by a certificate;
- (f) "clearing agency" means a person
 - (i) that carries on a business or activity as a clearing agency or clearing house within the meaning of the *Securities Act* or the securities regulatory law of another province or territory in Canada,
 - (ii) that is recognized or otherwise regulated as a clearing agency or clearing house by the Alberta Securities Commission or by a securities regulatory authority of another province or territory in Canada, and
 - (iii) that is a securities and derivatives clearing house for the purposes of section 13.1 of the *Payment Clearing and Settlement Act* (Canada) or whose clearing and settlement system is designated under Part I of that Act;
- (g) "communicate" means
 - (i) send a signed writing, or
 - (ii) transmit information by any other means agreed to by the person transmitting the information and the person receiving the information,

and “communication” has a corresponding meaning;

- (h) “control” has the meaning set out in sections 23 to 26;
- (i) “corporation” means any body corporate whether or not it is incorporated under the laws of Alberta;
- (j) “delivery”, with respect to a certificated or uncertificated security, has the meaning set out in section 68, and “deliver” has a corresponding meaning;
- (k) “effective”, in relation to an endorsement, instruction or entitlement order, has the meaning set out in sections 29 to 32, and “effectiveness”, “ineffective” and “ineffectiveness” have corresponding meanings;
- (l) “endorsement” means a signature that, alone or accompanied by other words, is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem the security;
- (m) “entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary and includes a person who acquires a security entitlement by virtue of section 95(1)(b) or (c);
- (n) “entitlement order” means a notice communicated to a securities intermediary directing the transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;
- (o) “financial asset” means, except as otherwise provided in sections 10 to 16,
 - (i) a security,
 - (ii) an obligation of a person that
 - (A) is, or is of a type, dealt in or traded on financial markets, or
 - (B) is recognized in any other market or area in which it is issued or dealt in as a medium for investment,

- (iii) a share, participation or other interest in a person, or in property or an enterprise of a person, that
 - (A) is, or is of a type, dealt in or traded on financial markets, or
 - (B) is recognized in any other market or area in which it is issued or dealt in as a medium for investment,
- (iv) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Act, or
- (v) a credit balance in a securities account, unless the securities intermediary has expressly agreed with the person for whom the account is maintained that the credit balance is not to be treated as a financial asset under this Act;
- (p) “genuine” means free of forgery or counterfeiting;
- (q) “government” means
 - (i) the Crown in right of Canada or in right of Alberta or another province of Canada,
 - (ii) the government of a territory in Canada,
 - (iii) a municipality in Canada, or
 - (iv) the government of a foreign country or of any political subdivision of it;
- (r) “in collusion” means in concert, by conspiratorial arrangement or by agreement for the purpose of violating a person’s rights in respect of a financial asset;
- (s) “instruction” means a notice communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed;
- (t) “issuer”,
 - (i) with respect to a registration of a transfer of a security, means a person on whose behalf transfer books are maintained,

- (ii) with respect to an obligation on or a defence to a security, includes
 - (A) a person who places or authorizes the placing of the person's name on a security certificate, other than as authenticating trustee, registrar, transfer agent or the like, to evidence
 - (I) a share, participation or other interest in the person's property or in an enterprise, or
 - (II) the person's duty to perform an obligation represented by the security certificate,
 - (B) a person who creates a share, participation or other interest in the person's property or in an enterprise, or undertakes an obligation, that is an uncertificated security,
 - (C) a person who directly or indirectly creates a fractional interest in the person's rights or property, if the fractional interest is represented by a security certificate,
 - (D) a guarantor, to the extent of the guarantor's guarantee, whether or not the guarantor's obligation is noted on a security certificate, and
 - (E) a person that becomes responsible for, or in place of, another person described as an issuer in this definition;
- (u) "knowledge" means actual knowledge, and "know" and "known" have corresponding meanings;
- (v) "overissue" means the issue of securities in excess of the amount that the issuer is authorized to issue;
- (w) "person" means an individual, including an individual in his or her capacity as trustee, executor, administrator or other representative, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, including a business trust, a corporation, a government or an agency of a government, or any other legal or commercial entity;

- (x) “protected purchaser” means a purchaser of a certificated or uncertificated security, or of an interest in the security, who
 - (i) gives value,
 - (ii) does not have notice of any adverse claim to the security, and
 - (iii) obtains control of the security;
- (y) “purchase” means a taking by sale, discount, negotiation, mortgage, hypothec, pledge, security interest, issue or reissue, gift or any other voluntary transaction that creates an interest in property;
- (z) “purchaser” means a person who takes by purchase;
- (aa) “registered form” means, in respect of a certificated security, a form in which
 - (i) the security certificate specifies a person entitled to the security, and
 - (ii) a transfer of the security may be registered on books maintained for that purpose by or on behalf of the issuer, or the security certificate states that it may be so registered;
- (bb) “representative” means any person empowered to act for another, including an agent, an officer of a corporation or association and a trustee, executor or administrator of an estate;
- (cc) “secured party” means a secured party as defined in the *Personal Property Security Act*;
- (dd) “securities account” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that constitute the financial asset;
- (ee) “securities intermediary” means
 - (i) a clearing agency, or

- (ii) a person, including a broker, bank or trust company, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;
- (ff) “security” means, except as otherwise provided in sections 10 to 16, an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer,
 - (i) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer,
 - (ii) that is one of a class or series, or by its terms is divisible into a class or series, of shares, participations, interests or obligations, and
 - (iii) that
 - (A) is, or is of a type, dealt in or traded on securities exchanges or securities markets, or
 - (B) is a medium for investment and by its terms expressly provides that it is a security for the purposes of this Act;
- (gg) “security certificate” means a certificate representing a security, but does not include a certificate in electronic form;
- (hh) “security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset that are specified in Part 6;
- (ii) “security interest” means a security interest as defined in the *Personal Property Security Act*;
- (jj) “unauthorized” means, when used with reference to a signature or endorsement, a signature or endorsement that is made without actual, implied or apparent authority or that is forged;
- (kk) “uncertificated security” means a security that is not represented by a certificate;

(1) “value” means any consideration sufficient to support a simple contract and includes an antecedent debt or liability.

(2) As the context requires, “financial asset” means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate and a security entitlement.

(3) The characterization of a person, business or transaction for the purposes of this Act does not determine the characterization of the person, business or transaction for the purposes of any other statute, law, regulation or rule.

Meaning of valid security

2 A security is valid if it is issued in accordance with the applicable law described in section 44(1) and the constating provisions governing the issuer.

Notice and knowledge

3(1) For the purposes of this Act, a person has notice of a fact if

- (a) the person has knowledge of it,
- (b) the person has received a notice of it, or
- (c) information comes to the person’s attention under circumstances in which a reasonable person would take cognizance of it.

(2) A person gives a notice to another person by taking such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person comes to know of it.

(3) A person receives a notice when

- (a) the notice comes to the person’s attention,
- (b) in the case of a notice under a contract, the notice is duly delivered to the place of business through which the contract was made, or
- (c) the notice is duly delivered to any other place held out by that person as the place for receipt of those notices.

(4) Notice, knowledge or a notice received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting the transaction and, in any event, from the time when it would have been brought to the attention of that individual if the organization had exercised due diligence.

(5) For the purpose of subsection (4), an organization exercises due diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with those routines.

(6) For the purpose of subsection (4), due diligence does not require an individual acting for the organization to communicate information unless

- (a) that communication is part of the individual's regular duties, or
- (b) the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Obligation of good faith

4(1) Every contract to which this Act applies and every duty imposed by this Act imposes an obligation of good faith in its performance or enforcement.

(2) In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

Variation of Act by agreement

5(1) Subject to subsection (2), the effect of provisions of this Act may be varied by agreement.

(2) The obligations of good faith, diligence, reasonableness and care imposed by this Act may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured so long as such standards are not manifestly unreasonable.

Principles of law and equity apply

6 Except insofar as they are inconsistent with this Act, the principles of law and equity supplement this Act and continue to apply, including

- (a) the law merchant,
- (b) the law relating to the capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion and mistake, and
- (c) other validating or invalidating rules of law.

Clearing agency rules prevail

7 A rule adopted by a clearing agency governing rights and obligations between the clearing agency and its participants or between participants in the clearing agency is effective even if the rule conflicts with this Act or the *Personal Property Security Act* and affects another person who does not consent to the rule.

Application to Crown

8(1) Subject to subsection (2), this Act applies to the Crown.

(2) Nothing in this Act limits the application of the *Proceedings Against the Crown Act*.

Existing proceedings

9 This Act does not affect a legal proceeding that was commenced before this section comes into force.

Part 2 General Matters Concerning Securities and Other Financial Assets

Classification of Obligations and Interests

Share, equity interest

10 A share or similar equity interest issued by a corporation, business trust or similar entity is a security.

Mutual fund security

11(1) A mutual fund security is a security.

(2) In this section,

- (a) “mutual fund security” means a share, unit or similar equity interest issued by an open-end mutual fund, but does not include an insurance policy, endowment policy or annuity contract issued by an insurance company;
- (b) “open-end mutual fund” means an entity that makes a distribution to the public of its shares, units or similar equity interests and that carries on the business of investing the consideration it receives for the shares, units or similar equity interests it issues, all or substantially all of which shares, units or similar equity interests are redeemable on the demand of their holders or owners.

Interest in partnership, limited liability company

12(1) An interest in a partnership or limited liability company is not a security unless

- (a) that interest is dealt in or traded on securities exchanges or in securities markets,
- (b) the terms of that interest expressly provide that the interest is a security for the purposes of this Act, or
- (c) that interest is a mutual fund security within the meaning of section 11.

(2) An interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(3) In this section, “limited liability company” means an unincorporated association, other than a partnership, formed under the laws of another jurisdiction, that grants to each of its members limited liability with respect to the liabilities of the association.

Bill of exchange, promissory note

13 A bill of exchange or promissory note to which the *Bills of Exchange Act* (Canada) applies is not a security, but is a financial asset if it is held in a securities account.

Depository bill, depository note

14 A depository bill or depository note to which the *Depository Bills and Notes Act* (Canada) applies is not a security, but is a financial asset if it is held in a securities account.

Clearing house option

15(1) A clearing house option or similar obligation is not a security, but is a financial asset.

(2) In this section, “clearing house option” means a clearing house option as defined in the *Personal Property Security Act*.

Futures contract

16(1) A futures contract is not a security or a financial asset.

(2) In this section, “futures contract” means a futures contract as defined in the *Personal Property Security Act*.

**Acquisition of Financial Assets
or Interests in Them****Security**

17(1) A person acquires a security or an interest in a security under this Act if

- (a) the person is a purchaser to whom a security is delivered under section 68, or
- (b) the person acquires a security entitlement to the security under section 95.

(2) A person acquires a financial asset, other than a security, or an interest in such a financial asset under this Act if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 6, but is a purchaser of any security, security entitlement or other financial asset held by a securities intermediary only to the extent provided in section 97.

(4) Unless the context of another statute, law, regulation, rule or agreement shows that a different meaning is intended, a person who is required by that statute, law, regulation, rule or agreement to transfer, deliver, present, surrender, exchange or otherwise put in the possession of another person a security or other financial asset satisfies that requirement by causing the other person to acquire an interest in the security or other financial asset as set out in subsection (1) or (2).

Notice of Adverse Claims

What constitutes notice of adverse claim

18 A person has notice of an adverse claim if

- (a) the person knows of the adverse claim,
- (b) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim, or
- (c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists and the investigation, if carried out, would establish the existence of the adverse claim.

Notice of transfer

19(1) Having knowledge that a financial asset, or an interest in a financial asset, is being or has been transferred by a representative does not impose any duty of inquiry into the rightfulness of the transaction and is not notice of an adverse claim.

(2) Despite subsection (1), a person has notice of an adverse claim if that person knows that

- (a) a representative has transferred a financial asset, or an interest in a financial asset, in a transaction, and
- (b) the transaction is, or the proceeds of the transaction are being used,
 - (i) for the individual benefit of the representative, or
 - (ii) otherwise in breach of a duty owed by the representative.

Delay

20 An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate, or that sets a date on or after which a security certificate is to be presented or surrendered for redemption or exchange, does not by itself constitute notice of an adverse claim except in the case of a transfer that takes place more than

- (a) one year after a date set for presentation or surrender for redemption or exchange, or
- (b) 6 months after a date set for payment of money against presentation or surrender of the security certificate, if money was available for payment on that date.

Statement on security certificate

21(1) A purchaser of a certificated security has notice of an adverse claim if the security certificate,

- (a) whether in bearer form or registered form, has been endorsed “for collection” or “for surrender” or for some other purpose not involving a transfer, or
- (b) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor.

(2) For the purposes of subsection (1)(b), the mere writing of a name on a security certificate does not by itself constitute an unambiguous statement that the security certificate is the property of a person other than the transferor.

Registration of financing statement

22 The registration of a financing statement under the *Personal Property Security Act* is not notice of an adverse claim.

Control of Financial Assets**Purchaser’s control of certificated security**

23(1) A purchaser has control of a certificated security that is in bearer form if the certificated security is delivered to the purchaser.

- (2) A purchaser has control of a certificated security that is in registered form if the certificated security is delivered to the purchaser and
- (a) the security certificate is endorsed to the purchaser or in blank by an effective endorsement, or
 - (b) the security certificate is registered in the name of the purchaser at the time of the original issue or registration of transfer by the issuer.

Purchaser's control of uncertificated security

- 24(1)** A purchaser has control of an uncertificated security if
- (a) the uncertificated security is delivered to the purchaser, or
 - (b) the issuer has agreed that the issuer will comply with instructions that are originated by the purchaser without the further consent of the registered owner.
- (2) A purchaser to whom subsection (1) applies in relation to an uncertificated security has control of the uncertificated security even if the registered owner retains the right
- (a) to make substitutions for the uncertificated security,
 - (b) to originate instructions to the issuer, or
 - (c) to otherwise deal with the uncertificated security.

Purchaser's control of security entitlement

- 25(1)** A purchaser has control of a security entitlement if
- (a) the purchaser becomes the entitlement holder,
 - (b) the securities intermediary has agreed that it will comply with entitlement orders that are originated by the purchaser without the further consent of the entitlement holder, or
 - (c) another person has control of the security entitlement on behalf of the purchaser or, having previously obtained control of the security entitlement, acknowledges that the person has control on behalf of the purchaser.

- (2) A purchaser to whom subsection (1) applies in relation to a security entitlement has control of the security entitlement even if the entitlement holder retains the right
- (a) to make substitutions for the security entitlement,
 - (b) to originate entitlement orders to the securities intermediary, or
 - (c) to otherwise deal with the security entitlement.

Securities intermediary's control of security entitlement

26 If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control of the security entitlement.

Agreement re control of uncertificated security

27(1) An issuer shall not enter into an agreement of the kind referred to in section 24(1)(b) without the consent of the registered owner.

(2) An issuer that has entered into an agreement of the kind referred to in section 24(1)(b) is not required to confirm the existence of the agreement to another person unless requested to do so by the registered owner.

(3) An issuer is not required to enter into an agreement of the kind referred to in section 24(1)(b) even if the registered owner so requests.

Agreement re control of security entitlement

28(1) A securities intermediary shall not enter into an agreement of the kind referred to in section 25(1)(b) without the consent of the entitlement holder.

(2) A securities intermediary that has entered into an agreement of the kind referred to in section 25(1)(b) is not required to confirm the existence of the agreement to another person unless requested to do so by the entitlement holder.

(3) A securities intermediary is not required to enter into an agreement of the kind referred to in section 25(1)(b) even if the entitlement holder so requests.

Endorsements, Instructions and Entitlement Orders

Effectiveness of endorsement, etc.

29 An endorsement, instruction or entitlement order is effective if

- (a) it is made by the appropriate person,
- (b) it is made by a person who, in the case of an endorsement or instruction, has the power under the law of agency to transfer the security, or in the case of an entitlement order, has the power under the law of agency to transfer the financial asset, on behalf of the appropriate person, including,
 - (i) in the case of an instruction referred to in section 24(1)(b), the person who has control of the uncertificated security, or
 - (ii) in the case of an entitlement order referred to in section 25(1)(b), the person who has control of the security entitlement,

or

- (c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

Effectiveness of endorsement, etc., made by representative

30 An endorsement, instruction or entitlement order made by a representative is effective even if

- (a) the representative has failed to comply with a controlling instrument or with the law of the jurisdiction governing the representative's rights and duties, including any law requiring the representative to obtain court approval of the transaction, or
- (b) the representative's action in making the endorsement, instruction or entitlement order or using the proceeds of the

transaction is otherwise a breach of duty owed by the representative.

Endorsement, etc., remains effective

31 If a security is registered in the name of or specially endorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an endorsement, instruction or entitlement order made by the person is effective even if the person is no longer serving in that capacity.

Date when effectiveness is determined

32(1) The effectiveness of an endorsement, instruction or entitlement order is determined as of the date that the endorsement, instruction or entitlement order is made.

(2) An endorsement, instruction or entitlement order does not become ineffective by reason of any later change of circumstances.

Warranties Applicable to Direct Holdings**Warranties on transfer of certificated security**

33 A person who transfers a certificated security to a purchaser for value warrants to the purchaser and, if the transfer is by endorsement, also warrants to any subsequent purchaser, that

- (a) the security certificate is genuine and has not been materially altered,
- (b) the transferor does not know of any fact that might impair the validity of the security,
- (c) there is no adverse claim to the security,
- (d) the transfer does not violate any restriction on transfer,
- (e) if the transfer is by endorsement, the endorsement is made by the appropriate person or, if the endorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person, and
- (f) the transfer is otherwise effective and rightful.

Warranties on transfer of uncertificated security

34(1) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that

- (a) the instruction is made by the appropriate person or, if the instruction is made by an agent, the agent has actual authority to act on behalf of the appropriate person,
- (b) the security is valid,
- (c) there is no adverse claim to the security, and
- (d) at the time that the instruction is presented to the issuer,
 - (i) the purchaser will be entitled to the registration of transfer,
 - (ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction,
 - (iii) the transfer will not violate any restriction on transfer, and
 - (iv) the transfer will otherwise be effective and rightful.

(2) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants to the purchaser that

- (a) the security is valid,
- (b) there is no adverse claim to the security,
- (c) the transfer does not violate any restriction on transfer, and
- (d) the transfer is otherwise effective and rightful.

Warranties on endorsement of security certificate

35 A person who endorses a security certificate warrants to the issuer that

- (a) there is no adverse claim to the security, and
- (b) the endorsement is effective.

Warranties on instruction re uncertificated security

36 A person who originates an instruction for the registration of transfer of an uncertificated security warrants to the issuer that

- (a) the instruction is effective, and
- (b) at the time that the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

Warranty on presentation of security certificate

37 A person who presents a certificated security for the registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants to the issuer only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

Warranties by agent delivering certificated security

38 If

- (a) a person acts as agent of another person in delivering a certificated security to a purchaser,
- (b) the identity of the principal was known to the person to whom the security certificate was delivered, and
- (c) the security certificate delivered by the agent was received by the agent from the principal or from another person at the direction of the principal,

the person delivering the security certificate warrants, to the purchaser, only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

Warranties on redelivery of security certificate

39 A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent set out in section 38.

Broker's warranties

- 40(1)** Except as otherwise provided in section 38, a broker acting for a customer makes to the issuer and a purchaser the warranties set out in sections 33 to 37.
- (2)** A broker that delivers a security certificate to the broker's customer makes to the customer the warranties set out in section 33 and has the rights and privileges of a purchaser provided under sections 33, 38 and 39.
- (3)** A broker that causes the broker's customer to be registered as the owner of an uncertificated security makes to the customer the warranties set out in section 34 and has the rights and privileges of a purchaser provided under section 34.
- (4)** The warranties of and in favour of the broker acting as an agent are in addition to applicable warranties given by and in favour of the customer.

Warranties Applicable to Indirect Holdings**Warranties on entitlement order**

- 41** A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary
- (a) that the entitlement order is made by the appropriate person or, if the entitlement order is made by an agent, that the agent has actual authority to act on behalf of the appropriate person, and
 - (b) that there is no adverse claim to the security entitlement.

Warranties on security credited to securities account

- 42(1)** A person who delivers a security certificate to a securities intermediary for credit to a securities account makes to the securities intermediary the warranties set out in section 33.
- (2)** A person who originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties set out in section 34.

Securities intermediary's warranties

43(1) If a securities intermediary delivers a security certificate to its entitlement holder, the securities intermediary makes to the entitlement holder the warranties set out in section 33.

(2) If a securities intermediary causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties set out in section 34.

Conflict of Laws**Applicable law re validity, etc.**

44(1) The validity of a security is governed by the following laws:

- (a) if the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of Canada;
- (b) if the issuer is the Crown in right of Canada, the law, other than the conflict of law rules, of Canada;
- (c) if the issuer is the Crown in right of a province in Canada, the law, other than the conflict of law rules, of the province;
- (d) if the issuer is the Commissioner of a territory in Canada, the law, other than the conflict of law rules, of the territory;
- (e) in any other case, the law, other than the conflict of law rules, of the jurisdiction under which the issuer is incorporated or otherwise organized.

(2) The law, other than the conflict of law rules, of the issuer's jurisdiction governs

- (a) the rights and duties of the issuer with respect to the registration of transfer,
- (b) the effectiveness of the registration of transfer by the issuer,
- (c) whether the issuer owes any duties to an adverse claimant to a security, and
- (d) whether an adverse claim can be asserted against a person
 - (i) to whom the transfer of a certificated or uncertificated security is registered, or

(ii) who obtains control of an uncertificated security.

(3) The following issuers may specify the law of another jurisdiction as the law governing the matters referred to in subsection (2)(a) to (d):

- (a) an issuer incorporated or otherwise organized under the law of Alberta;
- (b) the Crown in right of Alberta.

(4) Whether a security is enforceable against an issuer despite a defence or defect described in sections 57 to 59 is governed by the following laws:

- (a) if the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of the province or territory in Canada in which the issuer has its registered or head office;
- (b) if the issuer is the Crown in right of Canada, the law, other than the conflict of law rules, of the issuer's jurisdiction;
- (c) if the issuer is the Crown in right of a province in Canada, the law, other than the conflict of law rules, of the province;
- (d) if the issuer is the Commissioner of a territory in Canada, the law, other than the conflict of law rules, of the territory;
- (e) in any other case, the law, other than the conflict of law rules, of the jurisdiction under which the issuer is incorporated or otherwise organized.

(5) In this section, "issuer's jurisdiction" means the jurisdiction determined in accordance with the following rules:

- (a) if the issuer is incorporated under a law of Canada, the province or territory in Canada in which the issuer has its registered or head office or, if permitted by the law of Canada, another jurisdiction specified by the issuer;
- (b) if the issuer is the Crown in right of Canada, the jurisdiction specified by the issuer;
- (c) if the issuer is the Crown in right of a province in Canada, the province or, if permitted by the law of that province, another jurisdiction specified by the issuer;

- (d) if the issuer is the Commissioner of a territory in Canada, the territory or, if permitted by the law of that territory, another jurisdiction specified by the issuer;
- (e) in any other case, the jurisdiction under which the issuer is incorporated or otherwise organized or, if permitted by the law of that jurisdiction, another jurisdiction specified by the issuer.

**Matters governed by law of securities
intermediary's jurisdiction**

45(1) The law, other than the conflict of law rules, of the securities intermediary's jurisdiction governs

- (a) acquisition of a security entitlement from the securities intermediary,
- (b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement,
- (c) whether the securities intermediary owes any duty to a person who has an adverse claim to a security entitlement, and
- (d) whether an adverse claim may be asserted against a person who
 - (i) acquires a security entitlement from the securities intermediary, or
 - (ii) purchases a security entitlement, or interest in it, from an entitlement holder.

(2) In this section, "securities intermediary's jurisdiction" means the jurisdiction determined in accordance with the following rules:

- (a) if an agreement between a securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for the purposes of the law of that jurisdiction, this Act or any provision of this Act, the jurisdiction expressly provided for is the securities intermediary's jurisdiction;

- (b) if clause (a) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;
 - (c) if neither clause (a) nor (b) applies and an agreement between a securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;
 - (d) if none of the preceding clauses applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located;
 - (e) if none of the preceding clauses applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.
- (3) In determining a securities intermediary's jurisdiction, the following matters are not to be taken into account:
- (a) the physical location of certificates representing financial assets;
 - (b) if an entitlement holder has a security entitlement with respect to a financial asset, the jurisdiction in which the issuer of the financial asset is incorporated or otherwise organized;
 - (c) the location of facilities for data processing or other record keeping concerning the securities account.

**Adverse claim governed by law of jurisdiction
of security certificate**

46 The law, other than the conflict of law rules, of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim may be asserted against a person to whom the security certificate is delivered.

Seizure

Seizure governed by laws re civil enforcement of judgments

47 Subject to any necessary modifications for the purposes of permitting the operation of sections 48 to 51, the laws governing the civil enforcement of judgments apply to seizures described in those sections.

Seizure of interest in certificated security

48(1) Except as otherwise provided in subsection (2) and in section 51, the interest of a judgment debtor in a certificated security may be seized only by actual seizure of the security certificate by a civil enforcement agency.

(2) A certificated security for which the security certificate has been surrendered to the issuer may be seized by a civil enforcement agency serving a notice of seizure on the issuer at the issuer's chief executive office.

Seizure of interest in uncertificated security

49 Except as otherwise provided in section 51, the interest of a judgment debtor in an uncertificated security may be seized only by a civil enforcement agency serving a notice of seizure on the issuer at the issuer's chief executive office.

Seizure of interest in security entitlement

50 Except as otherwise provided in section 51, the interest of a judgment debtor in a security entitlement may be seized only by a civil enforcement agency serving a notice of seizure on the securities intermediary with whom the judgment debtor's securities account is maintained.

Notice of seizure to secured party

51 The interest of a judgment debtor in any of the following may be seized by a civil enforcement agency serving a notice of seizure on the secured party:

- (a) a certificated security for which the security certificate is in the possession of a secured party;

- (b) an uncertificated security registered in the name of a secured party;
- (c) a security entitlement maintained in the name of a secured party.

Enforceability of Contracts and Rules of Evidence

Enforceability of contracts

52 A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is some writing signed or record authenticated by a person against whom enforcement is sought.

Rules of evidence re certificated security

53(1) The evidentiary rules set out in this section apply to a legal proceeding on a certificated security against the issuer of that security.

(2) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary endorsement is admitted.

(3) A signature on a security certificate is presumed to be genuine and authorized but, if the effectiveness of the signature is put in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature.

(4) If signatures on a security certificate are admitted or established, the production of the security certificate entitles a holder to recover on the security certificate unless the defendant establishes a defence or defect that goes to the validity of the security.

(5) If it is shown that a defence or defect that goes to the validity of the security exists, the plaintiff has the burden of establishing that the defence or defect cannot be asserted against

- (a) the plaintiff, or
- (b) a person under whom the plaintiff claims.

(6) In this section,

- (a) “defendant” includes respondent;
- (b) “plaintiff” means a person attempting to recover on a security certificate in a legal proceeding, whether described in that proceeding as a plaintiff, appellant, claimant, petitioner, applicant or any other term.

**Securities Intermediaries —
Liability and Status as Purchasers for Value**

Securities intermediary’s liability to adverse claimant

54(1) Subject to subsection (3), a securities intermediary that has transferred a financial asset in accordance with an effective entitlement order is not liable to a person having an adverse claim to, or a security interest in, the financial asset.

(2) Subject to subsection (3), a broker or other agent or bailee who has dealt with a financial asset at the direction of a customer or principal is not liable to a person having an adverse claim to, or a security interest in, the financial asset.

(3) A securities intermediary referred to in subsection (1) or a broker or other agent or bailee referred to in subsection (2) is liable to a person having an adverse claim to, or a security interest in, the financial asset if the securities intermediary, broker or other agent or bailee, as the case may be, did one or more of the following:

- (a) took the action described in subsection (1) or (2) after having been served with an injunction, restraining order or other legal process issued by a court of competent jurisdiction enjoining the securities intermediary, broker or other agent or bailee, as the case may be, from doing so and after having had a reasonable opportunity to obey or otherwise abide by the injunction, restraining order or other legal process;
- (b) acted in collusion with the wrongdoer in violating the rights of the person who has the adverse claim or the person who has the security interest;
- (c) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

Securities intermediary as purchaser for value

55(1) A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favour of an entitlement holder is a purchaser for value of the financial asset.

(2) A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favour of an entitlement holder.

**Part 3
Issue and Issuer****Terms of a security**

56(1) Even against a purchaser for value and without notice, the terms of a certificated security include

- (a) the terms stated on the security certificate, and
- (b) any terms made part of the security by reference on the security certificate to another instrument, indenture or other document or to a statute, regulation, rule, order or the like, to the extent that those terms do not conflict with the terms stated on the security certificate.

(2) A reference described in subsection (1)(b) does not by itself constitute notice to a purchaser for value of a defect that goes to the validity of the security, even if the security certificate expressly states that a person accepting it admits notice.

(3) The terms of an uncertificated security include those stated in any instrument, indenture or other document or in a statute, regulation, rule, order or the like under which the security is issued.

Enforcement of security

57(1) An unauthorized signature placed on a security certificate before or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by

- (a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security certificate or of any similar security certificate or with the immediate preparation for signing of any of those security certificates, or
- (b) an employee of the issuer, or of any persons referred to in clause (a), entrusted with responsible handling of the security certificate.

(2) Except as provided in subsection (3), a security issued with a defect going to its validity is enforceable against the issuer if held by a purchaser for value and without notice of the defect.

(3) Subsection (2) does not apply to a security issued by a government or agency of it unless

- (a) there has been substantial compliance with the legal requirements governing the issue, or
- (b) the issuer has received all or a substantial part of the consideration for the issue as a whole or for the particular security and the purpose of the issue is one for which the issuer has power to borrow money or issue the security.

Lack of genuineness of certificated security

58 Except as otherwise provided in section 57(1), lack of genuineness of a certificated security is a complete defence, even against a purchaser for value and without notice of the lack of genuineness.

Other defences

59 All other defences of the issuer of a security that are not referred to in sections 56 to 58, including non-delivery and conditional delivery of a security, are ineffective against a purchaser for value who has taken the security without notice of the particular defence.

Right to cancel contract

60 Nothing in sections 56 to 59 affects the right of a party to a “when, as and if issued” contract or a “when distributed” contract

to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement under which the security is to be issued or distributed.

Staleness as notice of defect or defence

61(1) After an act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of any defect in the security's issue or of any defence of the issuer

- (a) if
 - (i) the act or event requires that, on presentation or surrender of the security certificate, money be paid, a certificated security be delivered or a transfer of an uncertificated security be registered,
 - (ii) the money or security is available on the date set for payment or exchange, and
 - (iii) the purchaser takes delivery of the security more than one year after the date referred to in subclause (ii),

or

- (b) if
 - (i) the act or event is not one to which clause (a) applies, and
 - (ii) the purchaser takes delivery of the security more than 2 years after the date on which performance became due or the date set for presentation or surrender.

(2) Subsection (1) does not apply to a call that has been revoked.

Effect of issuer's restriction on transfer

62 A restriction on the transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless

- (a) the security is a certificated security and the restriction is noted conspicuously on the security certificate, or
- (b) the security is an uncertificated security and the registered owner has been given a notice of the restriction by a person required to give such notice in order to make the restriction effective.

Completion of security certificate

63(1) If a security certificate contains the signatures necessary to the security's issue or transfer but is incomplete in any other respect,

- (a) any person may complete the security certificate by filling in the blanks in accordance with the person's authority, and
- (b) even if any of the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took the security certificate for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

Rights and duties of issuer re registered owners

64(1) Before due presentation for registration of transfer of a certificated security in registered form or the receipt of an instruction requesting registration of transfer of an uncertificated security, an issuer or indenture trustee may treat the registered owner as the person exclusively entitled

- (a) to vote,
- (b) to receive notices,
- (c) to receive any interest, dividend or other payments, and
- (d) to otherwise exercise all the rights and powers of an owner.

(2) Nothing in this Act affects the liability of the registered owner of a security for a call, assessment or the like.

Warranties by person signing security certificate

65(1) A person signing a security certificate as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect in respect of that security, that

- (a) the security certificate is genuine,
- (b) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer, and
- (c) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing a security certificate under subsection (1) does not assume responsibility for the validity of the security in any respect other than that set out in subsection (1).

Issuer's lien

66 A lien in favour of an issuer on a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

Overissue

67(1) Except as otherwise provided in subsections (2) and (3), the provisions of this Act that make a security enforceable against an issuer despite a defence or defect or that compel a security's issue or reissue do not apply to the extent that the application of such provision would result in an overissue.

(2) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided under section 57, 58 or 59 or under a similar law of another jurisdiction, may compel the issuer to purchase the security and deliver it, if certificated, or register its transfer, if uncertificated, against surrender of any security certificate the person holds.

(3) If an identical security not constituting an overissue is not reasonably available for purchase, a person entitled to issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided under section 57, 58 or 59 or under a similar law of another jurisdiction, may recover from the issuer the price that the last purchaser for value paid for the security with interest from the date of the person's demand.

(4) An overissue is deemed not to have occurred if appropriate action has cured the overissue.

Part 4

Transfer of Certificated and Uncertificated Securities

Delivery and Rights of Purchaser

Delivery of security

68(1) Delivery of a certificated security to a purchaser occurs when

- (a) the purchaser acquires possession of the security certificate,
 - (b) another person, other than a securities intermediary, either
 - (i) acquires possession of the security certificate on behalf of the purchaser, or
 - (ii) having previously acquired possession of the security certificate, acknowledges that the person holds the security certificate for the purchaser,
- or
- (c) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, the security certificate is in registered form and the security certificate is
 - (i) registered in the name of the purchaser,
 - (ii) payable to the order of the purchaser, or
 - (iii) specially endorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

- (2) Delivery of an uncertificated security to a purchaser occurs when
- (a) the issuer registers the purchaser as the registered owner, on the original issue or the registration of transfer, or
 - (b) another person, other than a securities intermediary, either
 - (i) becomes the registered owner of the uncertificated security on behalf of the purchaser, or
 - (ii) having previously become the registered owner, acknowledges that the person holds the uncertificated security for the purchaser.

Rights of purchaser

69(1) Except as otherwise provided in subsections (2) and (3), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest in a security acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve that purchaser's position by virtue of taking from a protected purchaser.

Protected purchaser

70 A protected purchaser, in addition to acquiring the rights of a purchaser, also acquires the purchaser's interest in the security free of any adverse claim.

Endorsements and Instructions

Form of endorsement

71(1) An endorsement may be in blank or special.

(2) An endorsement in blank includes an endorsement to bearer.

(3) For an endorsement to be a special endorsement, the endorsement must specify to whom the security is to be transferred or who has power to transfer the security.

(4) A holder may convert an endorsement in blank to a special endorsement.

Endorsement of part of a security certificate

72 An endorsement of a security certificate, if the endorsement purports to be in respect of only some of the units represented by the certificate, is effective to the extent of the endorsement if the units are intended by the issuer to be separately transferable.

When endorsement constitutes transfer of security

73 An endorsement of a security certificate, whether special or in blank, does not constitute a transfer of the security

- (a) until the delivery of the security certificate on which the endorsement appears, or
- (b) if the endorsement is on a separate document, until the delivery of both the security certificate and the document on which the endorsement appears.

Endorsement missing

74 If a security certificate in registered form has been delivered to a purchaser without a necessary endorsement, the purchaser may become a protected purchaser only when the endorsement is supplied, but against the transferor, the transfer is complete on delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

Notice of adverse claim on endorsement

75 A purported endorsement of a security certificate in bearer form may constitute notice of an adverse claim to the security certificate, but the purported endorsement does not otherwise affect any right that the holder has.

Obligations of endorser

76 Unless otherwise agreed, a person making an endorsement makes only the warranties set out in sections 33 and 35 and does not warrant that the security will be honoured by the issuer.

Completion of instruction

77 If an instruction has been originated by the appropriate person but is incomplete in any other respect, any person may complete the instruction in accordance with the person's authority and the issuer may rely on the instruction as completed, even if it has been completed incorrectly.

Obligations of person originating an instruction

78 Unless otherwise agreed, a person originating an instruction makes only the warranties set out in sections 34 and 36 and does not warrant that the security will be honoured by the issuer.

**Signature Guarantees and Other Requisites
for Registration of Transfer****Warranties by guarantor of endorser's signature**

79 A person who guarantees a signature of an endorser of a security certificate warrants that, at the time of signing,

- (a) the signature was genuine,
- (b) the signer was the appropriate person to endorse or, if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, and
- (c) the signer had legal capacity to sign.

**Warranties by guarantor of signature of
originator of instruction**

80(1) A person who guarantees a signature of the originator of an instruction warrants that, at the time of signing,

- (a) the signature was genuine,

- (b) if the person specified in the instruction as being the registered owner was, in fact, the registered owner, the signer was the appropriate person to originate the instruction or, if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, and
- (c) the signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction does not by that guarantee warrant that the person who is specified in the instruction as the registered owner is in fact the registered owner.

**Warranties by special guarantor of signature
of originator of instruction**

81 A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under section 80 and also warrants that, at the time that the instruction is presented to the issuer,

- (a) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner, and
- (b) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction.

Warranty re rightfulness of transfer by guarantor

82(1) A guarantor under section 79 or 80 or a special guarantor under section 81 does not otherwise warrant the rightfulness of the transfer.

(2) A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor under section 79 and also warrants the rightfulness of the transfer in all respects.

(3) A person who guarantees an instruction that requests the transfer of an uncertificated security makes the warranties of a special signature guarantor under section 81 and also warrants the rightfulness of the transfer in all respects.

Guarantee may not be condition to registration of transfer

83 An issuer shall not require a special guarantee of signature, a guarantee of endorsement or a guarantee of instruction as a condition to the registration of transfer.

Liability of guarantor, endorser and originator

84(1) The warranties under sections 79 to 82 are made to a person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to the person for any loss resulting from any breach of those warranties.

(2) An endorser or an originator of an instruction whose signature, endorsement or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor resulting from any breach of the warranties of the guarantor.

Purchaser's right to requisites for registration of transfer

85(1) Unless otherwise agreed, the transferor of a security shall, on demand, supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security.

(2) Despite subsection (1), if the transfer is not for value, a transferor need not comply with a demand made under subsection (1) unless the purchaser pays the necessary expenses.

(3) If the transferor fails within a reasonable time to comply with the demand made under subsection (1), the purchaser may reject or rescind the transfer.

Part 5 Registration

Duty of issuer to register transfer

86(1) If a certificated security in registered form is presented to an issuer with a request to register a transfer of the certificated security or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer shall register the transfer as requested if

- (a) under the terms of the security, the proposed transferee is eligible to have the security registered in that person's name,
 - (b) the endorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person,
 - (c) reasonable assurance is given that the endorsement or instruction is genuine and authorized,
 - (d) any applicable law relating to the collection of taxes has been complied with,
 - (e) the transfer does not violate any restriction on transfer imposed by statute or by the issuer in accordance with section 62,
 - (f) in the case of a demand made under section 88 that the issuer not register a transfer,
 - (i) the demand has not become effective under section 88, or
 - (ii) the issuer has complied with section 89, but legal process has not been obtained or an indemnity bond has not been provided to the issuer in accordance with section 90,
- and
- (g) the transfer is rightful or is to a protected purchaser.

(2) If, under subsection (1), an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration, or to that person's principal, for any loss resulting from unreasonable delay in registration or the failure or refusal to register the transfer.

Assurances re endorsement or instruction

87(1) An issuer may require the following assurance that each necessary endorsement or each instruction is genuine and authorized:

- (a) in all cases, a guarantee of the signature of the person making the endorsement or originating the instruction, including, in the case of an instruction, reasonable assurance of identity;
 - (b) if the endorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to act;
 - (c) if the endorsement is made or the instruction is originated by a fiduciary or successor referred to in section 1(1)(b)(iv) or (v), appropriate evidence of appointment or incumbency;
 - (d) if there is more than one fiduciary or successor referred to in section 1(1)(b)(iv) or (v), reasonable assurance that all who are required to sign have done so;
 - (e) if the endorsement is made or the instruction is originated by a person not referred to in clause (b), (c) or (d), assurance appropriate to the case corresponding as nearly as may be to the assurance required by clause (b), (c) or (d).
- (2) An issuer may elect to require reasonable assurance beyond that specified in this section.
- (3) In this section,
- (a) “appropriate evidence of appointment or incumbency” means,
 - (i) in the case of a fiduciary appointed or qualified by a court, a document issued by or under the direction or supervision of the court or an officer of the court and dated within 60 days before the date of presentation for transfer,
 - (ii) in any other case,
 - (A) a copy of a document showing the appointment,
 - (B) a certificate certifying the appointment issued by or on behalf of a person reasonably believed by the issuer to be a responsible person, or
 - (C) in the absence of a document or certificate referred to in paragraph (A) or (B), other evidence that the issuer reasonably considers appropriate;

- (b) “fiduciary” means any person acting in a fiduciary capacity, and includes a personal representative acting for the estate of a deceased person;
- (c) “guarantee” means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be a responsible person.

(4) For the purposes of the definition of “guarantee” in subsection (3), an issuer may adopt any standards with respect to responsibility so long as those standards are not manifestly unreasonable.

Demand that issuer not register transfer

88(1) A person who is the appropriate person to make an endorsement or to originate an instruction may demand that the issuer not register a transfer of a security by communicating a notice to the issuer setting out

- (a) the identity of the registered owner,
- (b) the issue of which the security is a part, and
- (c) an address of the person making the demand to which communications may be sent.

(2) A demand made under subsection (1) becomes effective when the issuer has had a reasonable opportunity to act on the demand, having regard to the time and manner of receipt of the demand by the issuer.

Duty of issuer re demand not to register transfer

89(1) If, after a demand made under section 88 becomes effective, a certificated security in registered form is presented to an issuer with a request to register a transfer or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer shall promptly give a notice as described in subsection (2) to the following persons:

- (a) the person who initiated the demand, at the address provided in the demand;

- (b) the person who presented the security for the registration of transfer or originated the instruction requesting the registration of transfer.
- (2) A notice given by an issuer under subsection (1) must state
- (a) that the certificated security has been presented for the registration of transfer or the instruction for the registration of transfer of the uncertificated security has been received,
 - (b) that a demand that the issuer not register a transfer had previously been received, and
 - (c) that the issuer will withhold registration of transfer for a period of time stated in the notice in order to provide the person who initiated the demand an opportunity to obtain legal process or to provide an indemnity bond referred to in section 90.
- (3) The period of time that may be provided for under subsection (2)(c) shall not exceed 30 days from the date the notice was given and the issuer may specify a shorter period of time in the notice so long as the shorter period of time being specified is not manifestly unreasonable.

Liability of issuer re demand not to register transfer

90(1) An issuer is not liable, to a person who initiated a demand under section 88 that the issuer not register a transfer, for any loss that the person suffers as a result of the registration of a transfer in accordance with an effective endorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's notice given under section 89, either

- (a) obtain an appropriate restraining order, injunction or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer, or
- (b) provide the issuer with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved from any loss that those persons may suffer by refusing to register the transfer.

(2) Nothing in subsection (1) or in section 88 or 89 relieves an issuer from liability for registering a transfer under an endorsement or instruction that was not effective.

Wrongful registration of transfer

91(1) Except as otherwise provided in section 93, an issuer is liable for wrongful registration of transfer if

- (a) the issuer has registered a transfer of a security to a person not entitled to the security, and
- (b) the transfer was registered by the issuer
 - (i) under an ineffective endorsement or instruction,
 - (ii) after a demand that the issuer not register a transfer became effective under section 88 and the issuer did not comply with section 89,
 - (iii) after the issuer had been served with an injunction, restraining order or other legal process referred to in section 90 enjoining the issuer from registering the transfer and the issuer had a reasonable opportunity to obey or otherwise abide by the injunction, restraining order or other legal process, or
 - (iv) acting in collusion with the wrongdoer.

(2) An issuer that is liable for the wrongful registration of transfer under subsection (1) shall, on demand, provide the person entitled to the security with

- (a) a like certificated or uncertificated security, as the case may be, and
- (b) any payments or distributions that the person did not receive as a result of the wrongful registration.

(3) If the provision of a security under subsection (2) would result in an overissue, the issuer's liability to provide the person with a like security is governed by section 67.

(4) Except as otherwise provided in subsection (1) or in any applicable law of Canada or of any province or territory of Canada relating to the collection of taxes, an issuer is not liable to an owner

or other person suffering loss as a result of the registration of transfer of a security if the registration was made under an effective endorsement or instruction.

Replacement of security certificate lost, etc.

92(1) If an owner of a certificated security, whether in registered form or bearer form, claims that the security certificate has been lost, destroyed or wrongfully taken, the issuer shall issue a new security certificate if the owner

- (a) so requests before the issuer has notice that the lost, destroyed or wrongfully taken security certificate has been acquired by a protected purchaser,
- (b) provides the issuer with an indemnity bond sufficient in the issuer's judgment to protect the issuer from any loss that the issuer may suffer by issuing a new certificate, and
- (c) satisfies any other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original security certificate presents the original security certificate for the registration of transfer, the issuer

- (a) shall register the transfer unless the registration would result in an overissue, in which case the issuer's liability is governed by section 67,
- (b) may exercise the rights the issuer may have under the indemnity bond referred to in subsection (1)(b), and
- (c) may recover the new security certificate from a person to whom it was issued or from any person, other than a protected purchaser, taking under that person.

Obligation to notify issuer of lost, destroyed or wrongfully taken security certificate

93 An owner of a security may not assert against the issuer a claim for wrongful registration of transfer under section 91 or a claim to a new security certificate under section 92 if

- (a) a security certificate has been lost, apparently destroyed or wrongfully taken and the owner fails to give a notice to the issuer of that fact within a reasonable time after the owner has notice of it, and
- (b) the issuer registers a transfer of the security before receiving a notice of the loss, apparent destruction or wrongful taking of the security certificate.

Obligation of authenticating trustee, transfer agent, etc.

94 A person acting as authenticating trustee, registrar, transfer agent or other agent for an issuer in the registration of a transfer of the issuer's securities, in the issue of new security certificates or uncertificated securities or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular function performed as the issuer has in regard to that function.

Part 6 Security Entitlements

Acquisition of security entitlement

95(1) Except as otherwise provided in subsections (3) and (4), a person acquires a security entitlement if a securities intermediary

- (a) indicates by book entry that a financial asset has been credited to the person's securities account,
- (b) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account, or
- (c) becomes obligated under another statute, law, regulation or rule to credit a financial asset to the person's securities account.

(2) If a condition of subsection (1) has been met, a person has a security entitlement even if the securities intermediary does not itself hold the financial asset.

(3) A person is to be treated as holding a financial asset directly rather than as having a security entitlement with respect to the

financial asset if a securities intermediary holds the financial asset for that person and the financial asset

- (a) is registered in the name of, payable to the order of or specially endorsed to that person, and
- (b) has not been endorsed to the securities intermediary or in blank.

(4) Issuance of a security is not establishment of a security entitlement.

Protection of entitlement holders from adverse claim

96 A legal proceeding based on an adverse claim to a financial asset, however framed, may not be brought against a person who acquires a security entitlement under section 95 for value and without notice of the adverse claim.

Property interest of entitlement holders in financial asset

97(1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary

- (a) are held by the securities intermediary for the entitlement holders,
- (b) are not the property of the securities intermediary, and
- (c) are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 105.

(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a proportionate property interest in all interests in that financial asset held by the securities intermediary, without regard to

- (a) the time that the entitlement holder acquired the security entitlement, or
- (b) the time that the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against the securities intermediary only by the exercise of the entitlement holder's rights under sections 99 to 102.

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset, or interest in it, only if

- (a) bankruptcy or insolvency proceedings have been initiated by or against the securities intermediary,
- (b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset,
- (c) the securities intermediary violated its obligations under section 98 by transferring the financial asset, or interest in it, to the purchaser, and
- (d) the purchaser is not protected under subsection (7).

(5) For the purposes of subsection (4), a trustee or other liquidator acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset may recover the financial asset, or interest in it, from the purchaser.

(6) If the trustee or other liquidator elects not to pursue the right provided under subsection (5), an entitlement holder whose security entitlement remains unsatisfied has the right to recover the entitlement holder's interest in the financial asset from the purchaser.

(7) A legal proceeding based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), however framed, may not be brought against any purchaser of a financial asset, or interest in it, who

- (a) gives value,
- (b) obtains control or possession, and
- (c) does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 98.

Duty of securities intermediary re financial asset

98(1) A securities intermediary shall promptly obtain and then maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements that the securities intermediary has established in favour of its entitlement holders with respect to that financial asset.

(2) The securities intermediary may maintain the financial assets referred to in subsection (1) directly or through one or more other securities intermediaries.

(3) Except to the extent otherwise agreed to by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain under subsection (1).

(4) A securities intermediary satisfies the duty imposed under subsection (1) if

- (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary, or
- (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(5) This section does not apply to a clearing agency that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

Duty of securities intermediary re payments and distributions

99(1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

(3) A securities intermediary satisfies the duty imposed under subsection (1) if

- (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary, or
- (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

Duty of securities intermediary to exercise rights

100(1) A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder.

(2) A securities intermediary satisfies the duty imposed under subsection (1) if

- (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary, or
- (b) in the absence of an agreement referred to in clause (a), the securities intermediary either
 - (i) places the entitlement holder in a position to exercise the rights directly, or
 - (ii) exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Duty of securities intermediary to comply with entitlement order

101(1) A securities intermediary shall comply with an entitlement order if

- (a) the entitlement order is originated by the appropriate person,
- (b) the securities intermediary has had a reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and
- (c) the securities intermediary has had a reasonable opportunity to comply with the entitlement order.

- (2) If a securities intermediary transfers a financial asset under an ineffective entitlement order, the securities intermediary shall
- (a) re-establish a security entitlement in favour of the person entitled to it, and
 - (b) pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer.
- (3) If a securities intermediary does not re-establish a security entitlement in accordance with subsection (2), the securities intermediary is liable to the entitlement holder for damages.
- (4) A securities intermediary satisfies the duty imposed under subsection (1) if
- (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary, or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

Duty of securities intermediary re entitlement holder's direction

- 102(1)** A securities intermediary shall act at the direction of an entitlement holder
- (a) to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or
 - (b) to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary.
- (2) A securities intermediary satisfies the duty imposed under subsection (1) if
- (a) the securities intermediary acts with respect to the duty as agreed to by the entitlement holder and the securities intermediary, or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance

with reasonable commercial standards to follow the direction of the entitlement holder.

Duties of securities intermediary – general

103(1) If the substance of a duty imposed on a securities intermediary under section 98, 99, 100, 101 or 102 is the subject of another statute, regulation or rule, compliance with that other statute, regulation or rule satisfies the duty.

(2) The obligation of a securities intermediary to perform the duties imposed under sections 98 to 102 is subject to

- (a) the rights of the securities intermediary arising out of a security interest, whether that security interest arises under a security agreement with the entitlement holder or otherwise, and
- (b) the rights of the securities intermediary under another statute, law, regulation, rule or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(3) Nothing in sections 98 to 102 requires a securities intermediary to take any action that is prohibited by another statute, regulation or rule.

(4) To the extent that specific standards for the performance of any duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by another statute, regulation or rule or by agreement between the securities intermediary and the entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise the entitlement holder's rights in a commercially reasonable manner.

Rights of purchaser re adverse claim

104(1) In a case not covered by the priority rules under the *Personal Property Security Act* or the rules set out in subsection (3), a legal proceeding based on an adverse claim to a financial asset or a security entitlement, however framed, may not be brought against a person who purchases a security entitlement, or interest in it, from an entitlement holder if that purchaser

- (a) gives value,
- (b) does not have notice of the adverse claim, and
- (c) obtains control.

(2) If a legal proceeding based on an adverse claim could not have been brought against an entitlement holder under section 96, a legal proceeding based on the adverse claim may not be brought against a person who purchases a security entitlement, or interest in it, from the entitlement holder.

(3) In a case not covered by the priority rules under the *Personal Property Security Act*, the following rules apply:

- (a) a purchaser for value of a security entitlement, or interest in it, who obtains control has priority over a purchaser of a security entitlement, or interest in it, who does not obtain control;
- (b) except as otherwise provided in subsection (4), purchasers who have control rank according to priority in time of
 - (i) the purchaser's becoming the person for whom the securities account in which the security entitlement is carried is maintained, if the purchaser obtained control under section 25(1)(a),
 - (ii) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 25(1)(b), or
 - (iii) if the purchaser obtained control through another person under section 25(1)(c), the time on which priority would be based under this subsection if the other person were the purchaser.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

Priority of entitlement holders to financial asset

105(1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both the securities intermediary's obligations to entitlement holders who have security entitlements to that financial asset and the securities intermediary's obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing agency does not have sufficient financial assets to satisfy both the clearing agency's obligations to entitlement holders who have security entitlements with respect to a financial asset and the clearing agency's obligation to a creditor of the clearing agency who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

Part 7

Consequential Amendments, Repeals and Coming into Force

106 to 108 *(These sections amend other Acts; the amendments have been incorporated into those Acts.)*

Coming into force

109 This Act comes into force on Proclamation.

(NOTE: Proclaimed in force January 1, 2007.)



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