



# **BILL NO. 33**

*Government Bill*

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*2nd Session, 61st General Assembly  
Nova Scotia  
59 Elizabeth II, 2010*

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## **An Act Respecting the Transfer of Securities**

CHAPTER 8  
ACTS OF 2010

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
MAY 11, 2010**

The Honourable Ramona Jennex  
*Minister of Service Nova Scotia and Municipal Relations*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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# An Act Respecting the Transfer of Securities

Be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Securities Transfer Act*.

## PART I

### INTERPRETATION

- 2 (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, and
    - (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 a territory of Canada,

(ii) that is recognized or otherwise regulated as a clearing agency or clearing house by the Nova Scotia Securities Commission or by a securities regulatory authority of another province or a territory of Canada, and

(iii) that is a securities and derivatives clearing house for the purpose of Section 13.1 of the *Payment Clearing and Settlement Act* (Canada) or whose clearing and settlement system is designated under Part 1 of that Act;

(g) “communicate” means

(i) sending a signed writing, and

(ii) transmitting information by another means agreed by the person transmitting the information and the person receiving the information;

(h) “control” has the meaning set out in Sections 23 to 26;

(i) “corporation” means a body corporate, company or corporation whether or not it is incorporated under the laws of the Province;

(j) “delivery”, with respect to a certificated or uncertificated security, has the meaning set out in Section 68;

(k) “effective”, in relation to an endorsement, instruction or entitlement order, has the meaning set out in Sections 29 to 32;

(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 clause 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 another 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 another market or area in which it is issued or dealt in as a medium for investment,

(iv) a 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 the Province or another province of Canada,

(ii) the government of a territory of Canada,

(iii) a municipality in Canada, or

(iv) the government of a foreign country or of a 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”, with respect to a registration of a transfer of a security, means a person on whose behalf transfer books are maintained and, with respect to an obligation on or a defence to a security, includes

(i) 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 another like person, to evidence a share, participation or other interest in the person's property or in an enterprise or the person's duty to perform an obligation represented by the security certificate,

(ii) 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,

(iii) 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,

(iv) a guarantor, to the extent of the guarantor's guarantee, whether or not the guarantor's obligation is noted on a security certificate, and

(v) a person that becomes responsible for, or in place of, another person described as an issuer in this clause;

(u) “knowledge” means actual knowledge and actual knowing;

(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 agency of a government or another 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 an adverse claim to the security, and
- (iii) obtains control of the security;

(y) “province” of Canada does not include a territory of Canada;

(z) “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;

(aa) “purchaser” means a person who takes by purchase;

(ab) “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;

(ac) “representative” means a 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;

(ad) “secured party” means a secured party as defined in the *Personal Property Security Act*;

(ae) “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;

(af) “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;

(ag) “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 purpose of this Act;

(ah) “security certificate” means a certificate representing a security, but does not include a certificate in electronic form;

(ai) “security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part VI;

(aj) “security interest” means a security interest as defined in the *Personal Property Security Act*;

(ak) “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;

(al) “uncertificated security” means a security that is not represented by a certificate;

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

(2) Notwithstanding clause (1)(o), “financial asset” means, as the context requires, 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 purpose of this Act does not determine the characterization of the person, business or transaction for the purpose of any other statute, law, regulation or rule.

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

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

(a) the person has knowledge of it;

(b) the person has received 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 notice to another person by taking those steps that may be reasonably required to inform the other person in the ordinary course, whether or not the other person actually comes to know of it.

(3) A person receives notice or knowledge when

- (a) the notice or knowledge 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 another 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 that transaction and 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.

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

(2) A contract to which this Act applies and a duty imposed by this Act imposes an obligation of good faith in its performance or enforcement.

5 (1) The effect of this Act may be varied by agreement.

(2) Notwithstanding subsection (1), 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 those obligations is to be measured so long as those standards are not manifestly unreasonable.

6 Except in so far 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.



**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 where the rule conflicts with this Act or the *Personal Property Security Act* and affects another person who does not consent to the rule.

**8** (1) This Act binds Her Majesty in right of the Province.

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

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

## PART II

### GENERAL MATTERS CONCERNING SECURITIES AND OTHER FINANCIAL ASSETS

**10** A share or similar equity interest issued by a corporation, business trust or similar entity is a 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, and all or substantially all of which shares, units or similar equity interests are redeemable on the demand of their holders or owners.

**12** (1) 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.

(2) 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 purpose of this Act; or

(c) that interest is a mutual fund security within the meaning of Section 11.

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

**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.

**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.

**15 (1)** In this Section, “clearing house option” means an option, other than an option on futures, issued by a clearing house to its participants.

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

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

**(2)** A futures contract is not a security or a financial asset.

**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 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 VI, but is a purchaser of a 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).

**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.

**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 a duty of inquiry into the rightfulness of the transaction and is not notice of an adverse claim.

**(2)** Notwithstanding 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.

**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) six 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.

**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 purpose of clause (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.

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

**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.

- 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.
- 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.
- 26** Where 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.
- 27 (1)** An issuer shall not enter into an agreement of the kind referred to in clause 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 clause 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 clause 24(1)(b) even if the registered owner requests the agreement.
- 28 (1)** A securities intermediary shall not enter into an agreement of the kind referred to in clause 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 clause 25(1)(b) is not required to confirm the existence of the agreement to another person unless requested to make that confirmation by the entitlement holder.

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

**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 clause 24(1)(b), the person who has control of the uncertificated security, or

(ii) in the case of an entitlement order referred to in clause 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.

**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.

**31** Where a security is registered in the name of or specially endorsed to a person described as a representative, or where 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.

**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 a later change of circumstances.

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

(a) the security certificate is genuine and has not been materially altered;

- (b) the transferor does not know of a fact that might impair the validity of the security;
- (c) there is no adverse claim to the security;
- (d) the transfer does not violate a restriction on transfer;
- (e) where the transfer is by endorsement, the endorsement is made by the appropriate person or, where 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.

**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, where 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 a 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 a restriction on transfer; and
- (d) the transfer is otherwise effective and rightful.

**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.

**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.

**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 an unauthorized signature in a necessary endorsement.

**38** Where

(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 an adverse claim to the certificated security.

**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.

**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 that Section.

(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.

**41** A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that

(a) the entitlement order is made by the appropriate person or, where the entitlement order is made by an agent, that the agent has actual authority to act on behalf of the appropriate person; and

(b) there is no adverse claim to the security entitlement.

**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.

**43 (1)** Where 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)** Where 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.

**44 (1)** In this Section, “issuer’s jurisdiction” means the jurisdiction determined in accordance with the following rules:

(a) where the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of the province or territory of Canada in which the issuer has its registered or head office, or where permitted by the law of Canada, the law of another jurisdiction specified by the issuer;

(b) where the issuer is the Crown in right of Canada, the law, other than the conflict of law rules, of the jurisdiction specified by the issuer;

(c) where the issuer is the Crown in right of another province of Canada, the law, other than the conflict of law rules, of that province or, where permitted by the law of that province, the law of another jurisdiction specified by the issuer;

(d) where the issuer is the Commissioner of a territory in Canada, the law, other than the conflict of law rules, of the territory or, where permitted by the law of that territory, the law of another jurisdiction specified by the issuer; and

(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 or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer.

**(2)** The validity of a security is governed by the following laws:

(a) where the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of Canada;

(b) where the issuer is Her Majesty in right of Canada, the law, other than the conflict of law rules, of Canada;

(c) where the issuer is Her Majesty in right of a province of Canada, the law, other than the conflict of law rules, of that province;

(d) where the issuer is the Commissioner of a territory of Canada, the law, other than the conflict of law rules, of the territory; and

(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.



- (3)** The law 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 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.

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

- (a) an issuer incorporated or otherwise organized under the law of the Province; and
- (b) Her Majesty in right of the Province.

**(5)** Whether a security is enforceable against an issuer notwithstanding a defence or defect described in Sections 57 to 59 is governed by the following laws:

- (a) where the issuer is incorporated under a law of Canada, the law, other than the conflict of law rules, of the province or territory of Canada in which the issuer has its registered or head office;
- (b) where the issuer is Her Majesty in right of Canada, the law, other than the conflict of law rules, of the issuer's jurisdiction;
- (c) where the issuer is Her Majesty in right of another province of Canada, the law, other than the conflict of law rules, of that province;
- (d) where the issuer is the Commissioner of a territory of Canada, the law, other than the conflict of law rules, of the territory; and
- (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.

**45 (1)** In this Section, “securities intermediary's jurisdiction” means the jurisdiction determined in accordance with the following rules:

- (a) where 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 purpose of the law of that jurisdiction, this Act or a provision of this Act, the jurisdiction expressly provided for is the securities intermediary's jurisdiction;
- (b) where 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) where 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) where 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; and

(e) where 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.

**(2)** 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 a duty to a person asserting 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.

**(3)** In determining a securities intermediary's jurisdiction, the following matters shall not be taken into account:

(a) the physical location of certificates representing financial assets;

(b) where 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; and

(c) the location of facilities for data processing or other record keeping concerning the securities account.

**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.

**47** Subject to the 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.

**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 sheriff.

**(2)** A certificated security for which the security certificate has been surrendered to the issuer may be seized by a sheriff serving a notice of seizure on the securities intermediary.

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

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

**51** The interest of a judgment debtor in one or more of the following may be seized by a sheriff 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; and
- (c) a security entitlement maintained in the name of a secured party.

**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.

**53 (1)** 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 another term.

**(2)** The evidentiary rules set out in this Section apply to a legal proceeding on a certificated security against the issuer of that security.

**(3)** Unless specifically denied in the pleadings, a signature on a security certificate or in a necessary endorsement must be admitted.

**(4)** A signature on a security is presumed to be genuine and authorized but, where 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.

**(5)** Where 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.

**(6)** Where 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.

**54 (1)** 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)** 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)** Notwithstanding subsections (1) and (2), 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 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 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; and
- (c) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

**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 III

#### ISSUE AND ISSUER

**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) 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 or order, to the extent that those terms do not conflict with the terms stated on the security certificate.

**(2)** A reference described in clause (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.

**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 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 where it is held by a purchaser for value 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.

**58** Except as otherwise provided in subsection 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.

**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.

**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.

**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 considered to have notice of a defect in the security's issue or of a 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 two 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.

**62** A restriction on the transfer of a security imposed by the issuer, other than a restriction contained in the memorandum of association or the articles of association of a company incorporated, continued or amalgamated under the *Companies Act* or in the constating provisions of any issuer incorporated or otherwise formed under or pursuant to any other Act of the Legislature, 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 received notice of the restriction by a person required to give that notice in order to make the restriction effective.

**63 (1)** Where a security certificate contains the signatures necessary to the security's issue or transfer but is incomplete in another respect,

- (a) a person may complete the security certificate by filling in the blanks in accordance with the person's authority; and
- (b) even where a blank is 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.

**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 an 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 other like act.

**65 (1)** A person signing a security certificate as authenticating trustee, registrar, transfer agent or other like person 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 a respect other than that set out in subsection (1).

**66** Except as such lien relates to securities that are not fully-paid, 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.

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

(2) Where an identical security not constituting an overissue is reasonably available for purchase, a person entitled to the issue of a security or a person entitled to enforce a security against an issuer notwithstanding 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 a security certificate the person holds.

(3) Where 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 notwithstanding 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 considered not to have occurred if appropriate action has cured the overissue.

## PART IV

TRANSFER OF CERTIFICATED  
AND UNCERTIFICATED SECURITIES

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



- 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.
- 72** An endorsement of a security certificate, where 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.
- 73** An endorsement of a security certificate, whether special or in blank, does not constitute a transfer of the security until the delivery of
- (a) the security certificate on which the endorsement appears; or
- (b) where the endorsement is on a separate document, both the security certificate and the document on which the endorsement appears.
- 74** Where 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.
- 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.
- 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.
- 77** Where an instruction has been originated by the appropriate person but is incomplete in another respect, a 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.
- 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.
- 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, where 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.

**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) where a 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, where 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.

**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.

**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.

**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.

**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 a loss resulting from a 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 a loss suffered by the guarantor resulting from any breach of the warranties of the guarantor.

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

**(2)** Notwithstanding subsection (1), where 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)** Where 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 V

### REGISTRATION

**86 (1)** Where 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) an applicable law relating to the collection of taxes had been complied with;

(e) the transfer does not violate a restriction on transfer imposed by statute or by the issuer in accordance with Section 62 or, in the case of an issuer incorporated, continued or amalgamated under the *Companies Act*, the transfer does not violate any restriction on transfer contained in the issuer's memorandum of association or articles of association, or in the case of an issuer, incorporated or otherwise formed under or pursuant to any other Act of the Legislature, the transfer does not violate any restriction contained in the issuer's constating provisions;

(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)** Where, 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 reg-

istration, or to that person's principal, for a loss resulting from unreasonable delay in registration or the failure or refusal to register the transfer.

**87 (1)** 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 sixty 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 a 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.

**(2)** 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) where the endorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to act;

(c) where the endorsement is made or the instruction is originated by a fiduciary or successor referred to in subclause (iv) or (v) of the definition of “appropriate person” in clause 2(1)(b), appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary or successor referred to in subclause (iv) or (v) of the definition of “appropriate person” in clause 2(1)(b), reasonable assurance that all who are required to sign have done so; and

(e) where 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).

**(3)** An issuer may elect to require reasonable assurance beyond that specified in this Section.

(4) For the purpose of the definition of “guarantee” in subsection (2), an issuer may adopt standards with respect to responsibility so long as those standards are not manifestly unreasonable.

**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.

**89 (1)** Where, 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; and
- (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 clause (2)(c) may not exceed thirty 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.

**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 judgement to protect the issuer and a 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.

**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; and

(b) payments or distributions that the person did not receive as a result of the wrongful registration.

**(3)** Where the provision of a security under subsection (2) would result in an over-issue, 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 another applicable law of Canada or of a 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.

**92 (1)** Where 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) makes a request for that issue 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 judgement to protect the issuer from any loss that the issuer may suffer by issuing a new certificate; and

(c) satisfies other reasonable requirements imposed by the issuer.

**(2)** Where, 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 clause (1)(b); and

(c) may recover the new security certificate from a person to whom it was issued or from a person, other than a protected purchaser, taking under that person.

**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.

**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 VI

### SECURITY ENTITLEMENTS

**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)** Where 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 shall 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.

**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.

**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 where

(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 purpose 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)** Where 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 a 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.

**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 shall not grant a security interest in a financial asset it is obligated to maintain under subsection (1).

- (4)** A securities intermediary satisfies the duty imposed under subsection (1) where
- (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.

**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.

**100 (1)** A securities intermediary shall exercise rights with respect to a financial asset where 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.

**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)** Where 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 payments or distributions that the person did not receive as a result of the wrongful transfer.

**(3)** Where 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.

- 102 (1)** A securities intermediary shall act at the direction of an entitlement holder to
- (a) change a security entitlement into another available form of holding for which the entitlement holder is eligible; or
  - (b) 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.

**103 (1)** Where 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 an action that is prohibited by another statute, regulation or rule.

**(4)** To the extent that specific standards for the performance of 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.

**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)** Where 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 an 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; and

(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 securities entitlement is carried is maintained, if the purchaser obtained control under clause 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 clause 25(1)(b), or

(iii) where the purchaser obtained control through another person under clause 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.

**105 (1)** Except as otherwise provided in subsections (2) and (3), where 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)** Where 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 VII

## CONSEQUENTIAL AMENDMENTS

**106 Subsection 2(1) of Chapter 81 of the Revised Statutes, 1989, the *Companies Act*, as amended by Chapter 15 of the Acts of 1990 and Chapter 34 of the Acts of 2007, is further amended by adding immediately after clause (nb) the following clauses:**

(nba) “security” means, collectively, any security, as such term is defined in the *Securities Transfer Act*, and any debenture;

(nbb) “security certificate” means a certificate evidencing a security;

**107 Section 33 of Chapter 81 is repealed and the following Section substituted:**

33 Except as otherwise provided in this Act, the transfer or transmission of a security shall be governed by the *Securities Transfer Act*.

**108 Section 34 of Chapter 81 is repealed.**

**109 Section 37 of Chapter 81 is repealed.**

**110 Section 38 of Chapter 81 is repealed.**

**111 Section 41 of Chapter 81 is repealed and the following Section substituted:**

41 (1) A company whose memorandum of association or articles of association restrict the right to transfer its securities shall, and any other company may, treat a person referred to in clause (a), (b) or (c) as a security holder entitled to exercise all of the rights of the security holder that the person represents if that person furnishes evidence as described in Section 87 of the *Securities Transfer Act* to the company that the person is

(a) the executor, administrator, heir or legal representative of the heirs, of the estate of a deceased security holder;

(b) a guardian, trustee or broker representing a registered security holder who is a minor, an incompetent person or a missing person;

(c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

(2) Where a person upon whom the ownership of a security devolves by operation of law, other than a person referred to in clause (a) of subsection (1), furnishes proof of the person's authority to exercise rights or privileges in respect of a security of the company that is not registered in the person's name, the company shall treat the persons as entitled to exercise those rights and privileges.

(3) Notwithstanding subsection (2), where the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled subject to any applicable law of Canada or a

province of Canada relating to the collection of taxes, to become a registered holder or to designate a registered holder, if the legal representative deposits with the corporation or its transfer agent

(a) any security certificate that was owned by the deceased holder; and

(b) reasonable proof of the governing laws, the deceased holder's interest in the security and the right of the legal representative or the person the legal representative designates to become the registered holder.

(4) Deposit of the documents required by subsection (2) or (3) empowers a company or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in clause (a) of subsection (1) or to such person as that person may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of those securities.

(5) When a security is issued to several persons as joint holders, upon satisfactory proof of the death of one joint holder, the company may treat the surviving joint holders as owners of the security.

**112 Subsection 47(3) of Chapter 81 is repealed and the following subsection substituted:**

(3) The bearer of a share warrant shall, subject to the memorandum of association or articles of association of the company, be entitled, on surrendering it for cancellation, to have the bearer's name entered as a member in the register of members.

**113 Section 132 of Chapter 81 is repealed and the following Section substituted:**

132 (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company, in this Section referred to as "the transferor company", to another company, whether a company within the meaning of this Act or not, in this Section referred to as "the transferee company", has within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine tenths in value of the shares affected, the transferee company may, at any time within four months after the expiration of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire the shares of such dissenting shareholder, and where such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(2) Where a notice has been given by the transferee company under this Section and the court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, on the expiration of one month from the date on which the notice has been given, or, where an application to the court by the dissenting shareholder is then pending, after that application has been disposed of, pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares by virtue

of this Section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(3) Any sums received by the transferor company under this Section must be paid into a separate bank account, and any such sums and any other consideration so received must be held by that company on trust for the several persons entitled to the shares in respect of which the sums or other consideration were respectively received.

(4) Concurrently with sending the notice referred to in subsection (1) to any dissenting shareholder, the transferee company shall send or deliver to the transferor company a copy of the transferee company's notice, which constitutes a demand under subsection 88(1) of the *Securities Transfer Act* that the transferee company not register a transfer with respect to each share held by a dissenting shareholder.

**114 Chapter 4 of the Acts of 1994, the *Credit Union Act*, is amended by adding immediately after Section 38 the following Section:**

38A The transfer or transmission of a share or other security of a credit union is governed by the *Securities Transfer Act*.

**115 Section 2 of Chapter 13 of the Acts of 1995-96, the *Personal Property Security Act*, as amended by Chapter 13 of the Acts of 2003, is further amended by**

**(a) adding “(1)” immediately after the Section number;**

**(b) striking out clause (b) and substituting the following clause:**

(b) “account” means a monetary obligation not evidenced by chattel paper, a security or an instrument, whether or not the obligation has been earned by performance, but does not include investment property;

**(c) adding immediately after clause (c) the following clause:**

(ca) “broker” means a broker as defined in the *Securities Transfer Act*;

**(d) adding immediately after clause (e) the following clause:**

(ea) “certificated security” means a certificated security as defined in the *Securities Transfer Act*;

**(e) adding immediately after clause (f) the following clauses:**

(fa) “clearing house” means an organization through which trades in options or standardized futures are cleared and settled;

(fb) “clearing house option” means an option, other than an option on futures, issued by a clearing house to its participants;

**(f) adding immediately after clause (o) the following clauses:**

(oa) “entitlement holder” means an entitlement holder as defined in the *Securities Transfer Act*;

(ob) “entitlement order” means an entitlement order as defined in the *Securities Transfer Act*;

**(g) adding immediately after clause (p) the following clause:**

(pa) “financial asset” means a financial asset as defined in the *Securities Transfer Act*;

**(h) adding immediately after clause (t) the following clauses:**

(ta) “futures account” means an account maintained by a futures intermediary in which a futures contract is carried for a futures customer;

(tb) “futures contract” means a standardized future or an option on futures, other than a clearing house option, that is

(i) traded on or subject to the rules of a futures exchange recognized or otherwise regulated by the Nova Scotia Securities Commission or by a securities regulatory authority of another province of Canada, or

(ii) traded on a foreign futures exchange and carried on the books of a futures intermediary for a futures customer;

(tc) “futures customer” means a person for which a futures intermediary carries a futures contract on its books;

(td) “futures exchange” means an association or organization operated to provide the facilities necessary for the trading of standardized futures or options on futures;

(te) “futures intermediary” means a person that

(i) is registered as a dealer permitted to trade in futures contracts, whether as principal or agent, under the securities laws or commodity futures laws of a province of Canada, or

(ii) is a clearing house recognized or otherwise regulated by the Nova Scotia Securities Commission or by a securities regulatory authority of another province of Canada;

**(i) striking out “a security” in the third and fourth lines of clause (u) and substituting “investment property”;**

**(j) striking out “a security” in the first and second lines of subclause (v)(iv) and substituting “investment property”;**

**(k) striking out “a security” in the second line of clause (w) and substituting “investment property”;**

**(l) adding immediately after clause (x) the following clause:**

(xa) “investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, futures contract or futures account;

**(m) adding immediately after clause (ab) the following clauses:**

(aba) “option” means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement at or by a time established by the agreement:

(i) receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option,



(ii) purchase a specified quantity of the underlying interest of the option,

(iii) sell a specified quantity of the underlying interest of the option;

(abb) “option on futures” means an option the underlying interest of which is a standardized future;

**(n) striking out “a security” in the second line of clause (ad) and substituting “investment property”;**

**(o) striking out clause (ag) and substituting the following clause:**

(ag) “proceeds” means

(i) identifiable or traceable personal property that is derived directly or indirectly from a dealing with collateral or proceeds of collateral and in which the debtor acquires an interest,

(ii) an insurance or other payment that represents indemnity or compensation for loss of or damage to collateral or proceeds of collateral, or a right to that payment,

(iii) a payment made in total or partial discharge or redemption of chattel paper, an instrument, an intangible or investment property, and

(iv) rights arising out of, or property collected on, or distributed on account of, collateral that is investment property;

**(p) adding “, other than investment property,” immediately after “collateral” wherever it appears in clause (ai);**

**(q) adding immediately after clause (ao) the following clauses:**

(aoa) “securities account” means a securities account as defined in the *Securities Transfer Act*;

(aob) “securities intermediary” means a securities intermediary as defined in the *Securities Transfer Act*;

**(r) striking out clause (ap) and substituting the following clause:**

(ap) “security” means a security as defined in the *Securities Transfer Act*;

**(s) adding immediately after clause (aq) the following clauses:**

(aqa) “security certificate” means a security certificate as defined in the *Securities Transfer Act*;

(aqb) “security entitlement” means a security entitlement as defined in the *Securities Transfer Act*;

**(t) striking out clause (as);**

**(u) adding immediately after clause (at) the following clause:**

(ata) “standardized future” means an agreement traded on a futures exchange under standardized conditions contained in the by-laws, rules or regulations of the futures exchange, and cleared and settled by a clearing house, to do one or more of the following at a price established by or determinable by ref-

erence to the agreement and at or by a time established by or determinable by reference to the agreement:

- (i) make or take delivery of the underlying interest of the agreement, or
- (ii) settle the obligation in cash instead of delivery of the underlying interest;

**(v) adding immediately after clause (au) the following clause:**

(aua) “uncertificated security” means an uncertificated security as defined in the *Securities Transfer Act*;

**and**

**(w) adding the following subsection:**

(2) For the purpose of this Act,

(a) a secured party has control of a certificated security if the secured party has control in the manner provided under Section 23 of the *Securities Transfer Act*;

(b) a secured party has control of an uncertificated security if the secured party has control in the manner provided under Section 24 of the *Securities Transfer Act*;

(c) a secured party has control of a security entitlement if the secured party has control in the manner provided under Section 25 or 26 of the *Securities Transfer Act*;

(d) a secured party has control of a futures contract if

(i) the secured party is the futures intermediary with which the futures contract is carried, or

(ii) the futures customer, the secured party and the futures intermediary have agreed that the futures intermediary will apply a value distributed on account of the futures contract as directed by the secured party without further consent by the futures customer; and

(e) a secured party having control of all security entitlements or futures contracts carried in a securities account or futures account has control over the securities account or futures account.

**116 Subsection 3(4) of Chapter 13 is repealed.**

**117 Section 5 of Chapter 13 is amended by**

**(a) striking out “contract of annuity or” in the second line of clause (b);**

**(b) adding immediately after clause (b) the following clause:**

(ba) a transfer of an interest in a claim in or under a contract of annuity other than a contract of annuity held by a securities intermediary for another person in a securities account;

**and**

(c) **striking out “a security” in the fourth line of clause (f) and substituting “an investment property”.**

**118 (1) Clause 6(1)(b) of Chapter 13 is amended by striking out “a security,” in the second and third lines.**

**(2) Subsection 6(2) of Chapter 13 is repealed.**

**119 (1) Subsection 8(1) of Chapter 13 is amended by adding “, Section 8A and Section 11” immediately after “Section” in the first line.**

**(2) Clause 8(2)(c) of Chapter 13 is amended by striking out “a security,” in the second and third lines.**

**(3) Clause 8(4)(b) of Chapter 13 is amended by striking out “a security,” in the second line.**

**120 Chapter 13 is further amended by adding immediately after Section 8 the following Sections:**

8A (1) The validity of a security interest in investment property is governed by the law at the time the security interest attaches

(a) of the jurisdiction where the certificate is located, if the collateral is a certificated security;

(b) of the issuer's jurisdiction, if the collateral is an uncertificated security;

(c) of the securities intermediary's jurisdiction, if the collateral is a security entitlement or a securities account; and

(d) of the futures intermediary's jurisdiction, if the collateral is a futures contract or a futures account.

(2) Except as otherwise provided in subsection (5), perfection, the effect of perfection or non-perfection and the priority of a security interest in investment property is governed by the law of

(a) the jurisdiction in which the certificate is located, if the collateral is a certificated security;

(b) the issuer's jurisdiction, if the collateral is an uncertificated security;

(c) the securities intermediary's jurisdiction, if the collateral is a security entitlement or a securities account; or

(d) the futures intermediary's jurisdiction, if the collateral is a futures contract or a futures account.

(3) For the purpose of this Section,

- (a) the location of a debtor is determined by subsection 8(1);
  - (b) the issuer's jurisdiction is determined under subsection 44(1) of the *Securities Transfer Act*; and
  - (c) the securities intermediary's jurisdiction is determined under subsection 45(1) of the *Securities Transfer Act*.
- (4) For the purpose of this Section, the following rules determine a futures intermediary's jurisdiction:
- (a) where an agreement between the futures intermediary and futures customer governing the futures account expressly provides that a particular jurisdiction is the futures intermediary's jurisdiction the jurisdiction expressly provided for in the agreement is the futures intermediary's jurisdiction;
  - (b) where clause (a) does not apply and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
  - (c) where neither clause (a) nor (b) applies and an agreement between the futures intermediary and futures customer governing the futures account expressly provides that the futures account is maintained at an office in a particular jurisdiction, that jurisdiction is the futures intermediary's jurisdiction;
  - (d) where none of the preceding clauses apply, the futures intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the futures customer's account is located; and
  - (e) where none of the preceding clauses applies, the futures intermediary's jurisdiction is the jurisdiction in which the chief executive office of the futures intermediary is located.
- (5) The law of the jurisdiction in which the debtor is located governs
- (a) perfection of a security interest in investment property by registration;
  - (b) perfection of a security interest in investment property granted by a broker or securities intermediary if the secured party relies on attachment of the security interest as perfection; and
  - (c) perfection of a security interest in a futures contract or futures account granted by a futures intermediary if the secured party relies on attachment of the security interest as perfection.
- (6) A security interest perfected under the law of the jurisdiction designated in subsection (5) remains perfected until the earliest of
- (a) sixty days after the day the debtor relocates to another jurisdiction;

(b) fifteen days after the day the secured party knows the debtor has relocated to another jurisdiction; and

(c) the day that perfection ceases under the previously applicable law.

(7) A security interest in investment property that is perfected under the law of the issuer's jurisdiction, the securities intermediary's jurisdiction or the futures intermediary's jurisdiction, as applicable, remains perfected until the earliest of

(a) sixty days after a change of the applicable jurisdiction to another jurisdiction;

(b) fifteen days after the day the secured party knows of the change of the applicable jurisdiction to another jurisdiction; and

(c) the day that perfection ceases under the previously applicable law.

8B For the purpose of Section 8A, a reference to the law of a jurisdiction means the internal law of that jurisdiction, excluding the conflict of law rules.

**121 (1) Subsection 9(1) of Chapter 13 is amended by striking out “7 and 8” in the first line and substituting “7, 8 and 8A”.**

**(2) Subsection 9(2) of Chapter 13 is amended by striking out “7 and 8” in the first line and substituting “7, 8 and 8A”.**

**122 Subsection 11(1) of Chapter 13 is repealed and the following subsection substituted:**

(1) Subject to Section 13A, a security interest is enforceable against a third party only if

(a) the collateral is

(i) not a certificated security and is in the possession of the secured party or another party on the secured party's behalf,

(ii) a certificated security in registered form and the security certificate has been delivered to the secured party under Section 68 of the *Securities Transfer Act* under the debtor's security agreement, or

(iii) investment property and the secured party has control under subsection 2(2) in accordance with the debtor's security agreement; or

(b) the debtor has signed a security agreement that contains

(i) a description of the collateral by item or kind or by reference to one or more of the following:

(A) “goods”,

(B) “chattel paper”,

(C) “investment property”,

- (D) “document of title”,
- (E) “instrument”,
- (F) “money”, and
- (G) or “intangible”,

(ii) a description of collateral that is a security entitlement, securities account or futures account if it describes the collateral by those terms or as an “investment property” or if it describes the underlying financial asset or futures contract,

(iii) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property, or

(iv) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or except one or more of the following:

- (A) “goods”,
- (B) “chattel paper”,
- (C) “investment property”,
- (D) “document of title”,
- (E) “instrument”,
- (F) “money”, and
- (G) or “intangible”.

**123 Section 13 of Chapter 13 is repealed and the following Sections substituted:**

13 (1) A security interest, including a security interest in the nature of a floating charge, attaches when

- (a) value is given;
- (b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party; and
- (c) except for the purpose of enforcing rights as between the parties to the security agreement, the security interest becomes enforceable within the meaning of Section 11.

(2) Notwithstanding subsection (1), where the parties have specifically agreed to postpone the time of attachment, the security interest attaches at the agreed time.

(3) For the purpose of clause (1)(b) and without limiting other rights which the debtor has in the goods, a lessee under a lease for a term of more than one year or a consignee under a commercial consignment has rights in the goods when the lessee or consignee obtains possession of them under the lease or consignment.

- (4) For the purpose of clause (1)(b), a debtor has no rights in
  - (a) crops, until they become growing crops;

- (b) the young of animals, until they are conceived;
  - (c) minerals, until they are extracted; and
  - (d) trees, other than crops, until they are severed.
- (5) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.
- (6) The attachment of a security interest in a futures account is also attachment of a security interest in the futures contracts carried in the futures account.

13A (1) A security interest in favour of a securities intermediary attaches to a person's security entitlement if

- (a) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
  - (b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.
- (2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.
- (3) A security interest in favour of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if
- (a) the security or other financial asset is
    - (i) in the ordinary course of business transferred by delivery with any necessary endorsement or assignment, and
    - (ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
  - (b) the agreement calls for delivery against payment.
- (4) The security interest described in subsection (3) secures the obligation to make payment for the delivery.

**124 (1) Subsection 18(1) of Chapter 13 is amended by adding “and Section 18A” immediately after “Section” in the first line.**

**(2) Subsection 18(2) of Chapter 13 is repealed and the following subsection substituted:**

- (2) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession and, unless otherwise agreed, in the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against other persons.

**125 Chapter 13 is further amended by adding immediately after Section 18 the following Section:**

18A (1) Unless otherwise agreed by the parties and notwithstanding Section 18, a secured party having control under subsection 2(2) of investment property as collateral

(a) may hold as additional security proceeds received from the collateral;

(b) shall either apply money or funds received from the collateral to reduce the secured obligation or remit that money or those funds to the debtor; and

(c) may create a security interest in the collateral.

(2) Notwithstanding subsection (1) and Section 18, a secured party having control under subsection 2(2) of investment property as collateral may sell, transfer, use or otherwise deal with the collateral in the manner and to the extent provided in the security agreement.

**126 Chapter 13 is further amended by adding immediately after Section 20 the following Sections:**

20A (1) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(2) Perfection of a security interest in a futures account also perfects a security interest in the futures contracts carried in the futures account.

20B (1) A security interest arising in the delivery of a financial asset under subsection 13A is perfected when it attaches.

(2) A security interest in investment property created by a broker or securities intermediary is perfected when it attaches.

(3) A security interest in a futures contract or a futures account created by a futures intermediary is perfected when it attaches.

**127 (1) Clause 25(1)(d) of Chapter 13 is repealed.**

**(2) Section 25 of Chapter 13 is further amended by adding immediately after subsection (2) the following subsections:**

(3) Subject to Section 20, a secured party may perfect a security interest in a certificated security by taking delivery of the certificated security under Section 68 of the *Securities Transfer Act*.

(4) Subject to Section 20, a security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 68 of the *Securities Transfer Act*, and remains perfected by delivery until the debtor obtains possession of the security certificate.



**128 Chapter 13 is further amended by adding immediately after Section 25 the following Section:**

25A (1) Subject to Section 20, a security interest in investment property may be perfected by control of the collateral under subsection 2(2).

(2) Subject to Section 20, a security interest in investment property is perfected by control under subsection 2(2) from the time the secured party obtains control and remains perfected by control until

- (a) the secured party does not have control; and
- (b) one of the following occurs:
  - (i) where the collateral is a certificated security, the debtor has or acquires possession of the security certificate,
  - (ii) where the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner, or
  - (iii) where the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**129 Subsection 27(1) of Chapter 13 is repealed and the following subsection substituted:**

(1) Where a security interest in an instrument or a certificated security is perfected under Section 25 and the secured party delivers the instrument or certificated security to the debtor for the purpose of

- (a) ultimate sale or exchange;
- (b) presentation, collection or renewal; or
- (c) registration of a transfer,

the security interest remains perfected notwithstanding Section 11 for the first fifteen days after the collateral comes under the control of the debtor.

**130 Section 29 of Chapter 13 is amended by adding immediately after subsection (2) the following subsection:**

(2A) The limitation of the amount secured by a security interest as provided in subsection (2) does not apply if the collateral is investment property.

**131 Chapter 13 is further amended by adding immediately after Section 31 the following Section:**

31A (1) A purchaser of a security, other than a secured party, who

- (a) gives value;
- (b) does not know that the transaction constitutes a breach of a security agreement granting a security interest in the security to a secured party that does not have control of the security; and

(c) obtains control of the security,  
acquires the security free from the security interest.

(2) A purchaser referred to in subsection (1) is not required to determine whether a security interest has been granted in the security or whether the transaction constitutes a breach of a security agreement.

(3) An action based on a security agreement creating a security interest in a financial asset, however framed, may not be brought against a person who acquires a security entitlement under Section 95 of the *Securities Transfer Act* for value and did not know that there has been a breach of the security agreement.

(4) A person who acquires a security entitlement under Section 95 of the *Securities Transfer Act* is not required to determine whether a security interest has been granted in a financial asset or whether there has been a breach of the security agreement.

(5) Where an action based on a security agreement creating a security interest in a financial asset could not be brought against an entitlement holder under subsection (3), it may not be asserted against a person who purchases a security entitlement, or an interest in it, from the entitlement holder.

**132 (1) Subsection 32(3) of Chapter 13 is amended by**

**(a) striking out “or a security” in the first line;**

**(b) striking out “or security” in the second and third lines; and**

**(c) striking out “or security” in the first and second lines of clause (a), the first line of clause (b) and the first and second lines of clause (c).**

**(2) Subsection 32(5) of Chapter 13 is amended by striking out “or a security” in the second line.**

**133 Chapter 13 is further amended by adding immediately after Section 32 the following Section:**

32A (1) This Act does not limit the rights that a protected purchaser of a security has under the *Securities Transfer Act*.

(2) The interest of a protected purchaser of a security under the *Securities Transfer Act* takes priority over an earlier security interest, even if perfected, to the extent provided in that Act.

(3) This Act does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under the *Securities Transfer Act*.

**134 Chapter 13 is further amended by adding immediately after Section 36 the following Section:**

36A (1) The rules in this Section govern priority among conflicting security interests in the same investment property.

(2) A security interest of a secured party having control of investment property under subsection 2(2) has priority over a security interest of a secured party that does not have control of the investment property.

(3) A security interest in a certificated security in registered form that is perfected by taking delivery under subsection 25(3) and not by control under Section 25A has priority over a conflicting security interest perfected by a method other than control.

(4) Conflicting security interests of secured parties each of which has control under subsection 2(2) rank according to priority in time of

- (a) where the collateral is a security, obtaining control;
- (b) where the collateral is a security entitlement carried in a securities account,
  - (i) the secured party's becoming the person for which the securities account is maintained, if the secured party obtained control under clause 25(1)(a) of the *Securities Transfer Act*,
  - (ii) the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account, if the secured party obtained control under clause 25(1)(b) of the *Securities Transfer Act*, or
  - (iii) where the secured party obtained control through another person under clause 25(1)(c) of the *Securities Transfer Act*, when the other person obtained control; or
- (c) where the collateral is a futures contract carried with a futures intermediary, the satisfaction of the requirement for control specified in subclause 2(2)(d)(ii) with respect to futures contracts carried or to be carried with the futures intermediary.

(5) Notwithstanding subsection (4), a security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(6) Notwithstanding subsection (4), a security interest held by a futures intermediary in a futures contract or a futures account maintained with the futures intermediary has priority over a conflicting security interest held by another secured party.

(7) Conflicting security interests granted by a broker, securities intermediary or futures intermediary which are perfected without control under subsection 2(2) rank equally.

(8) In all other cases, priority among conflicting security interests in investment property is governed by Section 36.

**135 Section 51 of Chapter 13 is amended by adding immediately after subsection (10) the following subsection:**

(11) Where there is no outstanding secured obligation, and the secured party is not committed to make advances, incur obligations or otherwise give value, a secured party having control of investment property under clause 25(1)(b) of the *Securities Transfer Act* or subclause 2(2)(d)(ii) of this Act shall, within ten days after receipt of a written demand by the debtor, send to the securities intermediary or futures intermediary with which the security entitlement or futures contract is maintained a written record that releases the securities intermediary or futures intermediary from further obligation to comply with entitlement orders or directions originated by the secured party.

**136 (1) Clause 57(2)(c) of Chapter 13 is amended by**

**(a) adding “or control” immediately after “possession” in the first line; and**

**(b) striking out “Section 18” in the second line and substituting “Sections 18 and 18A”.**

**(2) Clause 57(3)(c) of Chapter 13 is amended by striking out “Section 18” and substituting “Sections 18 and 18A”.**

**(3) Subsection 57(4) of Chapter 13 is amended by**

**(a) adding “, 18A” immediately after “18” in the first line; and**

**(b) adding “or 18A” immediately after “18” in the second line.**

**137 Chapter 13 is further amended by adding immediately after Section 75 the following Section:**

75A (1) The *Securities Transfer Act*, including amendments made to this Act by Sections 115 to 137 of the *Securities Transfer Act*, does not affect an action or proceeding commenced before the coming into force of the *Securities Transfer Act*.

(2) No further action is required to continue perfection of a security interest in a security if

(a) the security interest in the security was a perfected security interest immediately before the coming into force of the *Securities Transfer Act*; and

(b) the action by which the security interest was perfected would suffice to perfect the security interest under this Act.

(3) A security interest in a security remains perfected for a period of four months after the coming into force of Sections 115 to 137 of the *Securities Transfer Act* and continues to be perfected after that four-month period where appropriate action to perfect the security interest under this Act is taken within that period if

(a) the security interest in the security was a perfected security interest immediately before the coming into force of this Section; and

(b) the action by which the security interest was perfected would not suffice to perfect the security interest under this Act.

(4) A financing statement or financing change statement may be registered under this Act within the four-month period referred to in subsection (3) to continue that perfection, or after that four-month period to perfect the security interest, if

(a) the security interest was a perfected security interest immediately before the coming into force of this Section; and

(b) the security interest can be perfected by registration under this Act.

## PART VIII

### COMMENCEMENT

**138** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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