

**Uniform Law
Conference of Canada**

***Uniform Securities
Transfer Act***

UNIFORM SECURITIES TRANSFER ACT

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PART 1

Interpretation, Communications, Application and Other General Provisions

Interpretation

1(1) In this Act:

“**adverse claim**” means a claim made by a claimant that:

- (a) the claimant has a property interest in a financial asset, and
- (b) it is a violation of the rights of that claimant for another person to hold, transfer or deal with the financial asset;

“**appropriate person**” means:

- (a) with respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;
- (b) with respect to an instruction, the registered owner of an uncertificated security;
- (c) with respect to an entitlement order, the entitlement holder;
- (d) in the case of a person referred to in paragraphs (a) to (c) 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 decedent;
- (e) in the case of a person referred to in paragraphs (a) to (c) 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 financial asset;

“**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;

“**broker**” means a person defined as a dealer under the [*Securities Act*];

“**certificated security**” means a security that is represented by a certificate;

“**clearing agency**” means a person that carries on a business or activity as a clearing agency or clearing house within the meaning of the [*Securities Act*] or the securities regulatory law of another province or territory in Canada:

- (a) who is recognized or otherwise regulated as a clearing agency or clearing house by the [*Province’s Securities Commission*] or by a securities regulatory authority of another province or territory in Canada; and
- (b) whose clearing and settlement system is designated under Part I of the *Payment Clearing and Settlement Act* (Canada) or who is a securities and derivatives clearing house for the purposes of section 13.1 of that Act;

“**collusion**” means acting in concert, acting by conspiratorial arrangement or acting by agreement for the purpose of violating a person’s rights in respect of a financial asset;

“**commodity contract**” means a commodity contract as defined in the [*Personal Property Security Act*];

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“**corporation**” means any body corporate with share capital whether or not it is incorporated under the laws of [*the Province*];

“**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;

“**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 paragraph 106(1)(b) or (c);

“**entitlement order**” means a notification communicated to a securities intermediary directing the transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;

“**fiduciary**” means any person acting in a fiduciary capacity and includes a personal representative of a deceased person;

“**financial asset**” means, except as otherwise provided for in sections 14 to 20:

- (a) a security;
- (b) an obligation of a person that:
 - (i) is, or is of a type, dealt in or traded on financial markets, or
 - (ii) is recognized in any area in which it is issued or dealt in as a medium for investment;
- (c) a share, participation or other interest in a person, or in property or an enterprise of a person, that:
 - (i) is, or is of a type, dealt in or traded on financial markets, or
 - (ii) is recognized in any area in which it is issued or dealt in as a medium for investment;
- (d) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Act;
- (e) a credit balance in a securities account, unless the securities intermediary has expressly agreed with the person for whom the account is maintained that it is not to be treated as a financial asset under this Act;

“**genuine**” means free of forgery or counterfeiting;

“**government or agency of it**” means Her Majesty in right of Canada or in right of [*the Province*] or another province, an agency of Her Majesty in right of Canada or in right of [*the Province*] or another province, a territory or municipality in Canada, the government of a foreign country or any political subdivision of it and any agency of it;

“**instruction**” means a notification communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed;

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“issuer”:

- (a) with respect to a registration of a transfer, means a person on whose behalf transfer books are maintained;
- (b) 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 the like, to evidence:
 - (A) a share, participation or other interest in the person’s property or in an enterprise, or
 - (B) the person’s duty to perform an obligation represented by the 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 person who becomes responsible for, or in place of, another person described as an issuer in this paragraph;

“overissue” means the issue of securities in excess of the amount that the issuer is authorized to issue;

“person” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, business trust, corporation, a natural person in that person’s capacity as trustee, executor, administrator or other representative and a government or agency of it;

“protected purchaser” means a purchaser of a certificated security or an uncertificated security, or of an interest in the security, who:

- (a) gives value;
- (b) does not have notice of any adverse claim to the security; and
- (c) obtains control of the security;

“purchase” means a taking by sale, discount, negotiation, mortgage, hypothec, pledge, security interest, issue or re-issue, gift or any other voluntary transaction that creates an interest in property;

“purchaser” means a person who takes by purchase;

“registered form” means, in respect of a certificated security, a form in which:

- (a) the security certificate specifies a person entitled to the security, and
- (b) 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 so states;

“representative” means any person empowered to act for another including an agent, an officer of a corporation or association, a trustee, executor or administrator of an estate;

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“secured party” means a secured party as defined in the [*Personal Property Security Act*]; “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;

“securities intermediary” means:

- (a) a clearing agency; or
- (b) 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;

“security” means, except as otherwise provided for in sections 14 to 20, an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer:

- (a) 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;
- (b) 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
- (c) that:
 - (i) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or
 - (ii) is a medium for investment and by its terms expressly provides that it is a security for the purposes of this Act;

“security certificate” means a certificate representing a security;

“security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 6;

“security interest” means a security interest as defined in the [*Personal Property Security Act*];

“unauthorized” means, when used with reference to a signature or an endorsement, a signature or an endorsement that is made without actual, implied or apparent authority or that is forged;

“uncertificated security” means a security that is not represented by a certificate.

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

Uniform interpretation

2 This Act shall be interpreted with regard to the need to promote uniformity in its application.

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Control

3(1) A purchaser has control of a certificated security for the purposes of this Act if the purchaser has control in the manner provided for under section 30.

(2) A purchaser has control of an uncertificated security for the purposes of this Act if the purchaser has control in the manner provided for under section 31.

(3) A purchaser has control of a security entitlement for the purposes of this Act if the purchaser has control in the manner provided for under section 32 or 33.

Delivery

4 Delivery of a certificated security or an uncertificated security occurs when the delivery takes place in the manner provided for under section 79.

Financial asset, etc.

5(1) A reference in this Act to a financial asset is, as the context of the provision requires, a reference to either the interest itself or the means by which a person's claim to the financial asset is evidenced and, without restricting the generality of the foregoing, includes a certificated security, an uncertificated security, a security certificate or a security entitlement.

(2) A reference in this Act to a security certificate is a reference to a physical certificate only, and no such certificate converted, displayed, reproduced, recorded, stored or transmitted in electronic form is a valid representation of a certificated security.

Conspicuous

6 For the purposes of this Act, a notification, statement or communication is conspicuous when it is so written or otherwise produced that the person against whom the notification, statement or communication is to operate ought reasonably to have noticed it.

Validity of security

7 A security is valid if it is issued in accordance with the applicable law and the constitutional provisions governing the issuer or validated under this Act.

Guarantor as an issuer

8 With respect to an obligation on or defence to a security, a guarantor is, for the purposes of this Act, an issuer to the extent of the guarantor's guarantee, whether or not the guarantor's obligation is noted on a security certificate.

Value

9 A person gives value for rights if the person gives any consideration that is sufficient to support a simple contract and includes an antecedent debt or liability.

Communication and service

10 For the purposes of this Act, information is communicated if it is provided

(a) by a written or printed form, or

(b) by any electronic form agreed to by the person providing the information and the person receiving the information.

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Notification and knowledge

11(1) For the purposes of this Act, a person knows or has knowledge of a fact when

- (a) information comes to the person's attention under circumstances in which a reasonable person would take cognizance of it, or
 - (b) the person has received a notice or notification of it.
- (2) A person notifies or gives a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.
- (3) A person receives a notice or notification when
- (a) it comes to the person's attention,
 - (b) in the case of a contract being entered into, the notice or notification is duly delivered to the place of business through which the contract was made, or
 - (c) it is duly delivered to any other place held out by that person as the place for receipt of those communications.
- (4) Notice, knowledge or a notice or notification received by a person is effective for a particular transaction from the time when it is brought to the attention of the person conducting that transaction, and in any event from the time when it would have been brought to that person's attention if the person had exercised due diligence.
- (5) A person exercises due diligence if the person maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with those routines.
- (6) Due diligence does not require a person acting for another person to communicate information unless
- (a) that communication is part of that person's regular duties, or
 - (b) that person has reason to know of the transaction and that the transaction would be materially affected by the information.

Applies to Crown

12(1) Subject to subsections (2) to (4), this Act applies to the Crown.

(2) [Nothing in this Act shall be construed as permitting a court in any proceeding to order the seizure of Crown property or grant an injunction or make any other order for specific performance against the Crown except to the extent permitted under [the *Proceedings Against The Crown Act*.]]

(3) [Sections 66, 68, 72, 73, 74, 76 and Part 5 do not apply to the Crown as an issuer in respect of a security issued before this Act came into force, except to the extent provided under [other law].]

(4) [Section 78 does not apply to the Crown as an issuer of a security.]

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Obligation of good faith, etc.

13(1) Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.

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

(3) The effect of provisions of this Act may be varied by agreement, except as otherwise provided in this Act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) Except insofar as they are inconsistent with the express provisions of this Act, the principles of law and equity, including the law merchant, the law relating to the capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake and other validating or invalidating rules of law, supplement this Act and continue to apply.

PART 2

General Matters Concerning Securities and Financial Assets

Division 1

Rules for Determining Whether Certain Obligations and Interests are Securities or Financial Assets

Share of corporation, etc.

14 A share or similar equity interest issued by a corporation, business trust, or similar entity is a security for the purposes of this Act.

Mutual fund security

15(1) A mutual fund security is a security for the purposes of this Act.

(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 equity interests it issues, and all or substantially all of those equity interests are redeemable on the demand of a holder or owner thereof.

Interests in partnerships, etc.

16(1) An interest in a partnership or limited liability company is not a security for the purposes of this Act unless

(a) that interest is dealt in or traded on securities exchanges or in securities markets,

(b) the terms of that interest expressly provide that the interest is a security for the purposes of this Act, or

(c) that interest is a mutual fund security within the meaning of section 15.

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

Bills of exchange and promissory notes

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

Depository bills and depository notes

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

Clearing agency options, etc.

19 An option or similar obligation, other than a commodity contract, issued by a clearing agency to its participants is not a security, but is a financial asset for the purposes of this Act.

Commodity contracts

20 A commodity contract is not a security or a financial asset for the purposes of this Act.

Division 2
Acquisition of Security or Financial
Assets or Interest in Them

Acquisition of security

21 A person acquires a security, or an interest in a security, under this Act, if the person

- (a) is a purchaser to whom a security is delivered pursuant to section 79, or
- (b) acquires a security entitlement to the security pursuant to section 106.

Acquisition of financial asset

22 A person acquires a financial asset, other than a security, or an interest therein, under this Act, if the person acquires a security entitlement to the financial asset pursuant to section 106.

Rights

23 A person who acquires a security entitlement to a financial asset has the rights set out in Part 6 but is a purchaser of any security, security entitlement or other financial asset held by a securities intermediary only to the extent provided in section 108.

Operation of Act re other laws

24 Unless the context of another statute, law, regulation, rule or agreement provides otherwise, a person who is required by that other 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 financial asset as set out in section 21 or 22.

Division 3
Notice of Adverse Claims

Notice of adverse claim

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

Notice of adverse claims re representative

- 26(1)** Having knowledge that a financial asset, or an interest in a financial asset, is or has been transferred in a transaction by a representative does not impose any duty of inquiry into the rightfulness of the transaction and is not notice of an adverse claim.
- (2) 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 interest in a financial asset, in a transaction, and
 - (b) the transaction is, or the proceeds of the transaction are being used for the individual benefit of the representative or otherwise in breach of a duty owed by the representative.

Effect of delay

- 27** An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or that sets a date on or after which a security certificate is to be presented or surrendered for redemption or exchange does not by itself constitute notice of an adverse claim except in the case of a transfer that takes place more than
- (a) one year after a date set for presentation or surrender for redemption or exchange, or
 - (b) 6 months after a date set for payment of money against presentation or surrender of the security certificate, if money was available for payment on that date.

Certificated security re notice of adverse claim

- 28(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.

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

Financing statement

29 The registration of a financing statement under the [*Personal Property Security Act*] is not notice of an adverse claim to a financial asset.

Division 4

Control

When purchaser has control of certificated security

30(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 certificate is endorsed to the purchaser or in blank by an effective endorsement, or
- (b) the certificate is registered in the name of the purchaser at the time of the original issue or registration of transfer by the issuer.

Purchaser's control of uncertificated security

31(1) A purchaser has control of an uncertificated security if

- (a) the uncertificated security is delivered to the purchaser, or
- (b) the issuer has agreed that the issuer will comply with instructions that are originated by the purchaser without the further consent of the registered owner.

(2) A purchaser to whom subsection (1) applies in relation to an uncertificated security has control of the uncertificated security even if the registered owner retains the right

- (a) to make substitutions for the uncertificated security,
- (b) to originate instructions to the issuer, or
- (c) to otherwise deal with the uncertificated security.

Purchaser's control of security entitlement

32(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 acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

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(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.

Security entitlement; securities intermediary's control

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

Entering into agreements, etc. re uncertificated security

34(1) An issuer may not, in the case of an uncertificated security, enter into an agreement of the kind referred to in paragraph 31(1)(b) without the consent of the registered owner.

(2) An issuer that has entered into an agreement of the kind referred to in paragraph 31(1)(b) is not required to confirm the existence of the agreement to another party 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 paragraph 31(1)(b) even if the registered owner so requests.

Entering into agreements, etc. re security entitlement

35(1) A securities intermediary may not, in the case of a security entitlement, enter into an agreement of the kind referred to in paragraph 32(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 paragraph 32(1)(b) is not required to confirm the existence of the agreement to another party unless requested to do so by the entitlement holder.

(3) A securities intermediary is not required to enter into an agreement of the kind referred to in paragraph 32(1)(b) even if the entitlement holder so requests.

Division 5

Endorsements, Instructions and Entitlement Orders

Effectiveness of endorsement, etc.

36 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 has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including,
 - (i) in the case of an instruction referred to in subsection 31(1), the person who has control of the uncertificated security, or
 - (ii) in the case of an entitlement order referred to in subsection 32(1), 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.

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Endorsement, etc. made by representative

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

(a) the representative has failed to comply with a controlling instrument or with the law of the jurisdiction governing the representative's rights and duties, including any law requiring the representative to obtain court approval of the transaction, or

(b) the representative's action in making the endorsement, instruction or entitlement order or using the proceeds of the transaction is otherwise a breach of duty owed by the representative.

Endorsement, etc. remains effective

38 An endorsement, instruction or entitlement order made by a person as a representative is effective notwithstanding that the person is no longer serving in that capacity as a representative if

(a) the security is registered in the name of or specially endorsed to that person described as a representative, or

(b) the securities account is maintained in the name of that person described as a representative.

Date of effectiveness, re endorsement, etc.

39(1) The effectiveness of an endorsement, instruction or entitlement order is determined as of the date that the endorsement, instruction or entitlement order is made.

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

Division 6

Warranties

Warranties; direct holding; transfer of certificated security

40(1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser that

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

(b) the transferor does not know of any fact that might impair the validity of the security,

(c) there is no adverse claim to the security,

(d) the transfer does not violate any restriction on transfer,

(e) if the transfer is by endorsement, the endorsement is made by an appropriate person, or if the endorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person, and

(f) the transfer is otherwise effective and rightful.

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

Warranties; direct holding; transfer of uncertificated security

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

Warranty to issuer; endorsement of security certificate

42 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.

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Warranty to issuer; instruction re uncertificated security

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

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

Warranty to issuer; presentation of security certificate

44(1) 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.

(2) Notwithstanding subsection (1), a person who is a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

Warranty; agent delivering certificated security

45 If a person acts as agent of another person in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

Warranty; redelivery of security certificate, etc.

46 A secured party who redelivers a security certificate received or who, after payment and on order of the debtor, delivers the security certificate to another person makes only the warranties of an agent under section 45.

Warranty; broker

47(1) Except as otherwise provided in section 45, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in sections 40 to 44.

(2) A broker

- (a) that delivers a security certificate to the broker's customer makes to that customer the warranties set out in section 40, or
- (b) that causes the broker's customer to be registered as the owner of an uncertificated security makes to that customer the warranties set out in section 41.

(3) A broker has the rights and privileges of a purchaser provided for under sections 40 to 46 if the broker

- (a) delivers a security certificate to a customer pursuant to subsection (2)(a), or
- (b) causes a customer to be registered as an owner of an uncertificated security pursuant to subsection (2)(b).

(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.

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Warranties; indirect holding; entitlement order

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

- (a) the entitlement order is made by an appropriate person, or if the entitlement order is made by an agent, the agent has actual authority to act on behalf of the appropriate person, and
- (b) there is no adverse claim to the security entitlement.

Warranty; delivery of security certificate, etc.

49(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 40.

(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 41.

Warranty; delivery, etc. by securities intermediary

50(1) If a securities intermediary delivers a security certificate to its entitlement holder, the securities intermediary makes to the entitlement holder the warranties set out in section 40.

(2) If a securities intermediary causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties set out in section 41.

Division 7

Application and Conflict of Laws

Applicable law re issuer

51(1) For the purposes of subsection (3), “issuer’s jurisdiction” means

- (a) if the issuer of a security is incorporated under a law of Canada, the province or territory in Canada in which the issuer has its registered or head office,
- (b) in any other case, the jurisdiction under which the issuer of a security is incorporated or otherwise organized, or
- (c) if the issuer of a security is permitted by the law of the jurisdiction under which the issuer is incorporated or otherwise organized to specify another jurisdiction for the purposes of subsection (3), that other jurisdiction specified by the issuer.

(2) Despite subsection (1), if the issuer of the security is Her Majesty in right of Canada or in right of [*the Province*] or another province or territory in Canada, “issuer’s jurisdiction” means the jurisdiction specified by that issuer for the purposes of subsection (3).

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- (3) Subject to subsection (4), the law, other than the rules governing the conflicts of laws, of the issuer's jurisdiction governs
- (a) the validity of a security,
 - (b) the rights and duties of the issuer with respect to the registration of transfer;
 - (c) the effectiveness of the registration of transfer by the issuer;
 - (d) whether the issuer owes any duties to a person making an adverse claim to a security;
 - (e) whether an adverse claim can be asserted against a person
 - (i) to whom the transfer of a certificated security or uncertificated security is registered, or
 - (ii) who obtains control of an uncertificated security.
- (4) If the issuer of a security is incorporated under a law of Canada, the law governing the matter in paragraph (3)(a) is the law of Canada.
- (5) An issuer organized under the law of [*the Province*] may specify the law of another jurisdiction as the law governing the matters referred to in paragraphs (3)(b) to (e).

Applicable law re securities intermediary

52(1) For the purpose of this section, “securities intermediary’s jurisdiction” means the jurisdiction determined in accordance with the following:

- (a) if an agreement between a securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary’s jurisdiction for purposes of [*the Convention on the Law Applicable to Certain Rights in Respect of Securities Held With an Intermediary,*] this provision, this Division, this Part, this Act, or the law of that jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction;
- (b) if clause (a) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction;
- (c) if neither clause (a) nor (b) applies and an agreement between a securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary’s jurisdiction;
- (d) if none of the clauses (a), (b) or (c) apply, the securities intermediary’s jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder’s account is located;
- (e) if none of the clauses (a), (b), (c) or (d) apply, the securities intermediary’s jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

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(2) In determining a securities intermediary's jurisdiction the following matters are not to be taken into account:

- (a) the physical location of certificates representing financial assets;
- (b) the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement;
- (c) the location of facilities for data processing or other record keeping concerning the account.

(3) The law, other than the rules governing the conflict of laws, of the securities intermediary's jurisdiction governs

- (a) acquisition of a security entitlement from the securities intermediary;
- (b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;
- (c) whether the securities intermediary owes any duty to a person making an adverse claim to a security entitlement;
- (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.

(4) [To the extent applicable, this section is subject to the provisions of the *Act Respecting the Convention on the Law Applicable to Certain Rights in Respect of Securities Held With an Intermediary*.]

Jurisdiction re security certificate

53 The law, other than the rules governing the conflict of laws, 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.

Clearing agency rules prevail

54 A rule adopted by a clearing agency governing rights and obligations among the clearing agency and the participants in the clearing agency is effective even if the rule conflicts with this Act or the [*Personal Property Security Act*] and affects another party who does not consent to the rule.

Division 8

Seizure

Civil enforcement

55 Subject to any necessary modifications for the purposes of permitting the operation of sections 56 to 60, the laws governing the civil enforcement of judgements apply to proceedings under sections 56 to 60.

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Creditor's legal process; certificated security

56(1) Except as otherwise provided for in subsection (2) and in section 59, the interest of a judgment debtor in a certificated security may be seized only by actual seizure of the security certificate by an enforcement officer.

(2) A certificated security for which the security certificate has been surrendered to the issuer may be seized by an enforcement officer giving a notice of seizure in the prescribed form to the issuer at the issuer's chief executive office.

Creditor's legal process; uncertificated security

57 Except as otherwise provided for in section 59, the interest of a judgment debtor in an uncertificated security may be seized only by an enforcement officer giving a notice of seizure in the prescribed form to the issuer at the issuer's chief executive office.

Creditor's legal process; security entitlement

58 Except as otherwise provided for in section 59, the interest of a judgment debtor in a security entitlement may be seized only by an enforcement officer giving a notice of seizure in the prescribed form to the securities intermediary with whom the judgment debtor's securities account is maintained.

Creditor's legal process; secured party

59 The interest of a judgment debtor in any of the following may be seized by an enforcement officer giving a notice of seizure in the prescribed form to the secured party:

- (a) a certificated security for which the security certificate is in the possession of a secured party;
- (b) an uncertificated security registered in the name of a secured party;
- (c) a security entitlement maintained in the name of a secured party.

Assistance by court re creditor

60 A creditor whose debtor is the owner of a certificated security, an uncertificated security or a security entitlement is entitled to aid from a court of competent jurisdiction

- (a) by any proceedings in the nature of injunction or otherwise, in seizing the certificated security, uncertificated security or security entitlement, or
- (b) in satisfying the claim by any means allowed at law or in equity in regard to property that cannot readily be seized by other legal process.

Division 9

Enforceability of Contract and Rules Of Evidence

Statute of Frauds inapplicable

61 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 party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

Rules of evidence re action on certificated security

62(1) The evidentiary rules set out in this section apply to a legal action on a certificated security against the issuer of that security.

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

(3) If the effectiveness of a signature is put in issue, the burden of establishing the effectiveness of the signature is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

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

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

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

Division 10

**Intermediaries' Liability and Intermediaries
as Purchasers for Value**

Not liable to adverse claimant

63(1) Subject to subsection (3), a securities intermediary that has transferred a financial asset pursuant to an effective entitlement order is not liable to a person having an adverse claim to, or a security interest in, the financial asset.

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

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

- (a) took the action after having been served with an injunction, restraining order or other legal process issued by a court of competent jurisdiction enjoining the securities intermediary, broker or other agent or bailee, as the case may be, from taking action 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 making the adverse claim or the person who has the security interest;
- (c) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

Securities intermediary purchaser for value

64(1) A securities intermediary that receives a financial asset and establishes a securities entitlement to the financial asset in favour of an entitlement holder is a purchaser for value of the financial asset.

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

PART 3
Issue and Issuer

Terms of a security, re defence or defect

65(1) Even against a purchaser for value and without notice, the terms of a certificated security include

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

(2) A reference under paragraph (1)(b) does not of itself charge a purchaser for value with notice 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 document or in a statute, ordinance, rule, regulation, order or the like pursuant to which the security is issued.

Validity of security re defect

66(1) This section applies if an issuer asserts that a security is not valid.

(2) Except as otherwise provided for in this section, a security is valid in the hands of a purchaser for value and without notice of a particular defect, even though the security was issued with a defect that goes to its validity.

(3) A security is not valid in the hands of a purchaser who takes by original issue if the defect involves a violation of the constitutional provisions governing the issuer.

(4) Subsection (2) applies to an issuer that is a government or agency of it only if

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

Lack of genuineness of certificated security

67 Except as otherwise provided in section 73, lack of genuineness of a certificated security is a complete defence, even against a purchaser for value and without notice.

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Other defences

68 All other defences of the issuer of a security that are not referred to in sections 65 to 67, 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.

Security held by securities intermediary

69 If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defence that the issuer could not assert if the entitlement holder held the security directly.

When issued securities

70 Nothing in sections 65 to 69 is to be construed to affect the right of a party to a “when, as and if issued” or a “when distributed” contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement under which the security is to be issued or distributed.

Staleness as notice of defence or defect

71(1) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of any defect in the security’s issue or defence of the issuer:

(a) if:

(i) the act or event requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them, on presentation or surrender of the security certificate,

(ii) the money or security is available on the date set for payment or exchange, and

(iii) the purchaser takes the security more than one year after that date,

or:

(b) if:

(i) the act or event is not one to which paragraph (a) applies, and

(ii) the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

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

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Effect of issuer's restriction on transfer

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

- (a) the security is a certificated security and the restriction is noted conspicuously on the security certificate, or
- (b) the security is an uncertificated security and the registered owner has been notified of the restriction.

Effect of unauthorized signature on security certificate

73 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 certificates, or
- (b) an employee of the issuer, or of any persons referred to in clause (a), entrusted with responsible handling of the security certificate.

Completion of security certificate

74(1) If a security certificate contains the signatures necessary to the security's issue or transfer but is incomplete in any other respect,

- (a) any person may complete the security certificate by filling in the blanks as authorized, and
- (b) notwithstanding that any of the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took the security certificate for value and without notice of the incorrectness.

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

Rights and duties of issuer re registered owners

75(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 notifications,
- (c) to receive any interest, dividend or other payments in respect of the security, and
- (d) to otherwise exercise all the rights and powers of an owner.

(2) Nothing in this Act is to be construed so as to affect the liability of the registered owner of a security for a call, assessment or the like.

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Effect of signature of authenticating trustee, etc.

76(1) A person signing a security certificate as authenticating trustee, registrar, transfer agent or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect in respect of that security, that

- (a) the security certificate is genuine,
 - (b) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer, and
 - (c) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.
- (2) Unless otherwise agreed, a person signing a security certificate under subsection (1) does not assume responsibility for the validity of the security in any other respect than that set out in subsection (1).

Issuer's lien

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

Overissue

78(1) Except as otherwise provided for in subsections (2) and (3), the provisions of this Act that validate a security or compel a security's issue or reissue do not apply to the extent that the validation, issue or reissue would result in an overissue.

(2) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and, in the case of a certificated security, to deliver the certificated security, or in the case of an uncertificated security, to register the uncertificated security, against the surrender of any security certificate that the person holds.

(3) If a security is not reasonably available for purchase, a person entitled to the issue or validation may recover from the issuer the amount of the price that the person or the last purchaser for value paid for the security with interest from the date of the person's demand.

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

PART 4
Transfer of Certificated and
Uncertificated Securities

Division 1
Delivery and Rights of Purchaser

Delivery of security

79(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, only if the security certificate is in registered form and 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 registration of transfer, or
 - (b) another person, other than a securities intermediary, either
 - (i) becomes the registered owner of the uncertificated security on behalf of the purchaser, or
 - (ii) having previously become the registered owner, acknowledges that the person holds the uncertificated security for the purchaser.

Rights of purchaser

80(1) Except as otherwise provided for in subsections (2) and (3), a purchaser of a certificated security or an uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

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

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

Protected purchaser

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

Division 2
Endorsements and Instructions

Endorsement

82(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 a security is to be transferred or who has power to transfer the security.

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

Endorsement of part of a security certificate

83 An endorsement purporting to be an endorsement of only part of a security certificate representing units that are intended by the issuer to be separately transferable is effective to the extent of the endorsement.

When endorsement constitutes delivery

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

(a) until the delivery of the security certificate on which the endorsement appears, or

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

Endorsement missing

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

Notice of adverse claim re endorsement

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

Obligations of endorser

87 Unless otherwise agreed, a person making an endorsement assumes only the obligations provided for under sections 40 and 42 and does not assume an obligation that the security will be honoured by the issuer.

Completion of instruction

88 If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete the instruction as authorized and the issuer may rely on the instruction as completed, even though it has been completed incorrectly.

Obligation of person initiating an instruction

89 Unless otherwise agreed, a person initiating an instruction assumes only the obligations provided for under sections 41 and 43 and does not assume an obligation that the security will be honoured by the issuer.

Division 3
Signature Guarantees and Other Requisites
for Registration of Transfer

Guarantee; signature of endorser of security certificate

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

Guarantee; signature of originator of instruction

91(1) A person who guarantees a signature of the originator of an instruction warrants that, at the time of signing,

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

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

Special guarantee of signature of originator

92 A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under section 91 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.

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Rightfulness of transfer

93(1) A guarantor under section 90 or 91 or a special guarantor under section 92 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 90 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 92 and also warrants the rightfulness of the transfer in all respects.

Guarantee; condition to transfer

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

Liability of guarantor, endorser and originator

95(1) The warranties under sections 90 to 94 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 loss resulting from any breach of those warranties.

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

Purchaser's right to requisites for registration of transfer

96(1) Unless otherwise agreed, the transferor of a security must on demand supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security.

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

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

PART 5 Registration

Duty of issuer to register transfer

97(1) If a certificated security in registered form is presented to an issuer with a request to register a transfer of the certificated security or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer must register the transfer as requested if

- (a) under the terms of the security, the person seeking the registration of transfer 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,

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- (d) any applicable law relating to the collection of taxes had been complied with,
 - (e) the transfer does not violate any restriction on transfer imposed by statute or by the issuer in accordance with section 72,
 - (f) in the case of a demand made under section 99 that the issuer not register a transfer,
 - (i) the demand has not become effective pursuant to section 99, or
 - (ii) the demand has become effective pursuant to section 99, but legal process has not been obtained or an indemnity bond has not been filed with the issuer in accordance with section 101,
- and
- (g) the transfer is rightful or is to a protected purchaser.
- (2) If, under subsection (1), an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration, or to that person's principal, for loss resulting from unreasonable delay in registration or the failure or refusal to register the transfer.

Assurance; effectiveness of endorsement or instruction

98(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 certificate issued by or under the direction or supervision of the court or an officer of the court and dated within 60 days before the date of presentation for transfer, or
 - (ii) in any case, other than one referred to in subparagraph (i),
 - (A) a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible,
- or
- (B) in the absence of a document or certificate referred to in clause (A), other evidence that the issuer reasonably considers appropriate;
- (b) **“guarantee of the signature”** means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible.
- (2) For the purposes of subparagraph (1)(b), an issuer may adopt any standards with respect to responsibility if those standards are not manifestly unreasonable.
- (3) 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 an endorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

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- (b) if the endorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;
 - (c) if the endorsement is made or the instruction is originated by a fiduciary referred to in paragraph (d) or (e) of the definition of “appropriate person” in subsection 1(1), appropriate evidence of appointment or incumbency;
 - (d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;
 - (e) if the endorsement is made or the instruction is originated by a person not referred to in clauses (a) to (d), assurance appropriate to the case corresponding as nearly as may be to those required by clauses (a) to (d).
- (4) An issuer may elect to require reasonable assurance beyond that specified in this section.

Demand that issuer not register transfer

99(1) A person who is an 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 to the issuer a notification setting out the following:

- (a) the identity of the registered owner;
 - (b) the issue of which the security is a part;
 - (c) an address of the person making the demand to which communications may be sent.
- (2) A demand made under subsection (1) is effective only if it is received by the issuer at a time and in a manner that affords the issuer a reasonable opportunity to act on the demand.

Duty of issuer re demand

100(1) If, after a demand made under section 99 has become 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 must promptly notify the following persons that the registration of transfer has been requested:

- (a) the person who initiated the demand at the address provided in the demand;
 - (b) the person who presented the security for the registration of transfer or initiated the instruction requesting the registration of transfer.
- (2) A notification provided by an issuer under subsection (1) must state the following:
- (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;
 - (c) that the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond referred to in section 101.

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(3) The period of time that may be provided for under subsection (2)(c) may not exceed 30 days from the date of the communication of the notification, but the issuer is entitled to specify a shorter period of time if the shorter period of time being specified is not manifestly unreasonable.

Liability of issuer re demand

101(1) An issuer is not liable to a person who initiated a demand under section 99 that the issuer not register a transfer for any loss that the person suffers as a result of the registration of a transfer pursuant to an effective endorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's notification given under section 100, 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) file with the issuer an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved from any loss that those persons may suffer by refusing to register the transfer.

(2) Nothing in section 99 or 100 or subsection (1) relieves an issuer from liability for registering a transfer pursuant to an endorsement or instruction that was not effective.

Wrongful registration

102(1) Except as otherwise provided for in section 104, 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
 - (i) pursuant to an ineffective endorsement or instruction,
 - (ii) after a demand that the issuer not register a transfer became effective under section 99 and the issuer did not comply with section 100,
 - (iii) after the issuer had been served with an injunction, restraining order or other legal process referred to in section 101 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) by an issuer acting in collusion with the wrongdoer.

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

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

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(3) If the provision of a security under subsection (2) would result in an overissue, the issuer's liability to provide the person with a like security is governed by section 78.

(4) Except as otherwise provided in subsection (1) or in any applicable law of Canada or of any province or territory 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 registration was made pursuant to an effective endorsement or instruction.

Replacement of lost, destroyed or wrongfully taken security certificate

103(1) If an owner of a certificated security, whether in registered form or bearer form, claims that the security certificate has been lost, destroyed or wrongfully taken, the issuer must issue a new certificate if the owner

- (a) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser,
- (b) files with the issuer a sufficient indemnity bond, and
- (c) satisfies any other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original security certificate presents the original certificate for the registration of transfer, the issuer must register the transfer unless the registration would result in an overissue in which case the issuer's liability is governed by section 78.

(3) In addition to any rights on the indemnity bond, the issuer may recover the new certificate from a person to whom it was issued or any person taking under that person other than a protected purchaser.

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

104 An owner may not assert against the issuer a claim for registering the transfer under section 102 or a claim to a new security certificate under section 103 where

- (a) a security certificate has been lost, apparently destroyed or wrongfully taken and the owner fails to notify 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 notification of the loss, apparent destruction or wrongful taking of the security certificate.

Authenticating trustee, transfer agent, etc

105 A person acting as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of a transfer of its 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 security or uncertificated security with regard to the particular function performed as the issuer has in regard to that function.

PART 6
Security Entitlements

Acquisition of security entitlement from securities intermediary

106(1) Except as otherwise provided for in subsections (3) and (4), a person acquires a security entitlement if a securities intermediary

- (a) indicates by book entry that a financial asset has been credited to the person's securities account,
 - (b) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account, or
 - (c) becomes obligated under another statute, law, regulation or rule to credit a financial asset to the person's securities account.
- (2) If a condition of subsection (1) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.
- (3) A person is to be treated as holding a financial asset directly rather than as having a security entitlement with respect to the financial asset if a securities intermediary holds the financial asset for that person and the financial asset
- (a) is registered in the name of, payable to the order of or specifically endorsed to that person, and
 - (b) has not been endorsed to the securities intermediary or in blank.
- (4) The issuance of a security is not in itself the establishment of a security entitlement.

Assertion of adverse claim against entitlement holders

107 An action based on an adverse claim to a financial asset, however framed, may not be asserted against a person who acquires a security entitlement under section 106 for value and without notice of the adverse claim.

Property interest of entitlement holder re asset held by securities intermediary

108(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 for in section 116.
- (2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a pro rata 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.

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(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 110 to 113.

(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 an interest in it, only if

(a) bankruptcy or insolvency proceedings have been initiated by or against the securities intermediary,

(b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset,

(c) the securities intermediary violated its obligations under section 109 by transferring the financial asset, or interest in it, to the purchaser, and

(d) the purchaser is not protected under subsection (7).

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

(6) If the trustee or other liquidator elects not to pursue the right provided for 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) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), however framed, may not be asserted against any purchaser of a financial asset, or interest in it, who

(a) gives value,

(b) obtains control, and

(c) does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 109.

Duty of securities intermediary re financial asset

109(1) A securities intermediary must promptly obtain and thereafter 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 by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

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- (4) A securities intermediary satisfies the duty imposed under subsection (1) if
 - (a) the securities intermediary acts with respect to the duty as agreed on by the entitlement holder and the securities intermediary, or
 - (b) in the absence of an agreement referred to in clause (a), the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.
- (5) This section does not apply to a clearing agency that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

Duty of securities intermediary re payments and distributions

110(1) A securities intermediary must take action to obtain a payment or distribution made by the issuer of a financial asset.

- (2) A securities intermediary satisfies the duty imposed under subsection (1), if
 - (a) the securities intermediary acts with respect to the duty as agreed on 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.
- (3) 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.

Duty of securities intermediary to exercise rights

111(1) A securities intermediary must exercise rights with respect to a financial asset if directed to do so by an entitlement holder.

- (2) A securities intermediary satisfies the duty imposed under subsection (1) if
 - (a) the securities intermediary acts with respect to the duty as agreed on by the entitlement holder and the securities intermediary, or
 - (b) in the absence of an agreement referred to in paragraph (a), the securities intermediary either
 - (i) places the entitlement holder in a position to exercise the rights directly, or
 - (ii) exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Duty of securities intermediary to comply with entitlement order

112(1) A securities intermediary must 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.

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

Duty of securities intermediary re entitlement holder's position

113(1) A securities intermediary must act at the direction of an entitlement holder

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

Other statutes, etc. re securities intermediary

114(1) If the substance of a duty that is imposed on a securities intermediary under sections 109 to 113 is the subject of another statute, regulation or rule, the compliance with the requirements of that other statute, regulation or rule by the securities intermediary satisfies the duties imposed under sections 109 to 113.

- (2) To the extent that specific standards for the performance of the 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 must perform its duties under this Act and the entitlement holder must exercise its rights under this Act in a commercially reasonable manner.

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(3) The obligation of a securities intermediary to perform the duties imposed under sections 109 to 113 is subject to

- (a) the rights of the securities intermediary arising out of a security interest 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.

(4) Nothing in sections 109 to 113 is to be construed so as to require a securities intermediary to take any action that is prohibited by another statute, regulation or rule.

Rights of purchaser re security entitlement

115(1) In a case not covered by the priority rules provided for under the [*Personal Property Security Act*] or the rules set out in subsection (3), an action based on an adverse claim to a financial asset or a security entitlement, however framed, may not be asserted against a person who purchases a security entitlement, or an interest in it, from an entitlement holder if that purchaser

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

(2) If an adverse claim could not have been asserted against an entitlement holder under section 107, the adverse claim may not be asserted against a person who purchases a security entitlement, or an interest in it, from the entitlement holder.

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

- (a) a purchaser for value of a security entitlement, or an interest in it, who obtains control has priority over a purchaser of a security entitlement, or an interest in it, who does not obtain control;
- (b) except as otherwise provided in clause (c), 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 paragraph 32(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 paragraph 32(1)(b); or
 - (iii) if the purchaser obtained control through another person under paragraph 32(1)(c), the time on which priority would be based under this subsection if the other person were the purchaser;
- (c) a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

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Priority re security interests and entitlement holders

116(1) Except as otherwise provided for in subsections (2) and (3), the claims of entitlement holders, other than a creditor of a securities intermediary, have priority over the claim of the creditor, if the securities intermediary does not have sufficient interests in a particular financial asset to satisfy both

- (a) the securities intermediary's obligations to entitlement holders who have security entitlements to that financial asset, and
- (b) the securities intermediary's obligation to the creditor who has a security interest in that financial asset.

(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) The claim of a creditor of a clearing agency has priority over the claims of entitlement holders, if the clearing agency does not have sufficient financial assets to satisfy both

- (a) the clearing agency's obligations to entitlement holders who have security entitlements with respect to a financial asset, and
- (b) the clearing agency's obligation to the creditor who has a security interest in that financial asset.

Part 7 Transitional Provisions, Consequential Amendments and Coming into Force

Existing actions

117 This Act does not affect an action or proceeding that was commenced before this Act came into force.

Amends [BCA]

118(1) The [*Business Corporations Act*] is amended by this section.

(2)

(3)

Amends [PPSA]

119(1) The [*Personal Property Security Act*] is amended by this section.

(2)

(3)

Amends [Miscellaneous Statutes]

120(1) The [_____ Act] is amended by this section.

(2)

(3)

Coming into force

121 This Act comes into force on Proclamation.