

**CANADIAN SECURITIES ADMINISTRATORS'
UNIFORM SECURITIES TRANSFER ACT TASK FORCE**

INVITATION FOR COMMENTS

NOTICE

The Canadian Securities Administrators' (CSA) Uniform Securities Transfer Act Task Force (Task Force) is pleased to release for public comment a consultative draft of a proposed provincial *Uniform Securities Transfer Act* (USTA).

The USTA project is distinct from the CSA's Uniform Securities Legislation (USL) project. The proposed USTA is not securities regulatory law.

The USTA is commercial property-transfer law, governing the transfer and holding of securities and interests in securities (sometimes called securities settlement rules). The USTA requires conforming amendments to the common-law provincial *Personal Property Security Acts* (PPSAs) that govern the use of securities as loan collateral, commonly referred to as pledges. It also removes securities settlement rules currently contained in provincial *Business Corporations Acts* (BCAs).

Current Canadian law in this area is out of date. It fails to deal adequately with modern securities market practices, particularly the holding and trading of securities through multiple tiers of intermediaries. Implementation of the USTA will provide a sound legal foundation for existing practices and support the continuing evolution of market practices in the future. It is essential that Canadian legislation in this area be uniform within Canada and harmonized with existing similar legislation in the United States.

Securities market participants and Canadian financial services industries as a whole urgently need modern uniform legislation like the USTA to improve the efficiency and legal soundness of the Canadian securities settlement system. The Canadian securities settlement system handles an enormous quantity and value of transactions on a daily basis. Issuers, investors and financial institutions rely heavily on the system. It is vital to the continued growth and evolution of the Canadian capital markets – and to their competitiveness with international markets – that the system be supported by a modern legal foundation that produces predictable results, especially in situations involving cross-border transactions.

The CSA Task Force is leading this project at the request of the CSA Chairs and the Uniform Law Conference of Canada (ULCC). The CSA Task Force's mandate is twofold:

1. To develop a consultative draft USTA, including consequential changes to PPSAs and BCAs, that is as uniform and harmonious as possible with Revised Article 8

(Rev8) of the Uniform Commercial Code (UCC) in the United States and corresponding provisions of UCC Revised Article 9.

2. To promote the uniform implementation of the USTA in each province and territory. This assumes uniformity in the common law provinces and territories without amendment and as close-to-uniformity as possible in Québec having regard to Québec's unique Civil Code requirements. The Task Force also intends to urge the Government of Canada to amend its legislation in this area to avoid duplication at the federal level and legal uncertainty in Canada.

The material being released with the consultative draft USTA includes proposed conforming amendments to Alberta and Ontario PPSAs and BCAs, detailed Draft Comments on the USTA, tables of concordance, and a Consultation Paper. We highlight the following information:

- a) In response to input from certain interested stakeholders on an earlier draft of the USTA, the Task Force prepared Comments accompanying each definition and section of the USTA, based largely on the UCC Official Comment. Material in the Comments and Consultation Paper that is derived from the Rev8 Prefatory Note and UCC Official Comment is copyright by the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws. The material has been reproduced for these consultation purposes under a limited license from the Permanent Editorial Board for the UCC (which reserves all rights to the UCC material). For any additional requests to duplicate UCC material, please visit the ALI website at www.ali.org. The Comments are a work in progress. The ALI has indicated to the Task Force a willingness to consider a further license going beyond the consultation process. The Task Force hopes that, if the USTA is implemented, Comments similar to these may be recognized as an interpretive aid to the USTA. Interpretive aid provisions have been used before in provincial legislation to sanction official comments or explanatory material in relation to international conventions that are ratified by Canada and implemented by the provinces.

We are particularly interested in receiving comments on the usefulness of the Comments as an interpretive aid, and on the contents of the Comments. See the Comment on proposed section 2 of the USTA.

- b) The proposed conforming amendments to Alberta and Ontario PPSAs, which are critical to the policy objectives of the USTA, have been prepared in consultation with the ULCC PPSA Working Group. The Working Group recently prepared a report entitled *Report on Reform of the Law of Secured Transactions* (PPSA Report) that addresses the proposed conforming PPSA amendments, which will be tabled at the ULCC's annual meeting in August 2003, being held in Fredericton, New Brunswick. The PPSA Report assesses the changes with the goal of achieving a workable interface between the proposed USTA and the PPSAs. A few issues that remain outstanding are identified in the proposed amendments, but most of the amendments are supported by the Working Group. We are very grateful for the significant input and time devoted by members of the PPSA Working Group to this project and we are confident that the outstanding issues will be resolved during the comment period.

c) Previous drafts of the USTA were prepared by Alberta government legislative counsel, together with the Task Force, and with some input from British Columbia and Ontario legislative counsel. The Task Force's objective has been to ensure that, from a purely drafting perspective, the consultative draft USTA is not merely a "model Act" but is implementable in its current form. This consultative draft, although largely based on those previous drafts, includes a number of changes made by the Task Force and is not formal draft legislation of government legislative counsel. **At this time, the governments of the CSA jurisdictions have made no decision to proceed with the USTA and conforming PPSA and BCA amendments.**

d) The Task Force is posting this Notice, the consultative draft USTA and related material in PDF format on the web-site of the Ontario Securities Commission (OSC) at www.osc.gov.on.ca. The Notice is also being posted on the web-site of the Alberta Securities Commission at www.albertasecurities.com. Other members of the CSA are expected to post on their respective web-sites this Notice, together with the consultative draft USTA and related material or may, alternatively, post only this Notice inviting readers to review this material on the OSC web-site. Staff of the Commission des valeurs mobilières du Québec (CVMQ) are planning to prepare a French language version of all or a portion of the released material, including the consultative draft USTA. The CVMQ material would be a modified version of the material released today, primarily to account for the differences in laws and legal structure among the common law and civil law regimes. In the interim, the CVMQ is considering publishing in its bulletin a French language version of this Notice to invite readers to review the material on the OSC's web-site.

Invitation for comments

We invite you to participate in this project by reviewing the consultative draft USTA and related materials and providing your comments (in both paper and electronic (Word) form) to the CSA Task Force. The comment period will run until December 15, 2003.

Confidentiality of submissions received cannot be maintained.

The Task Force welcomes comments on any aspect of the draft USTA and related material. **We specifically seek comments on the issues summarized in the Consultation Paper at pages 98-100.**

Kindly address your comments to:

Maxime Paré, Chair, CSA USTA Task Force
 Senior Legal Counsel, Market Regulation
 Capital Markets
 Ontario Securities Commission
 20 Queen Street West
 Suite 1900,
 Toronto, Ontario, M5H 3S8
 Phone: (416) 593-3650
 Fax: (416) 593-8240
 e-mail: mpare@osc.gov.on.ca

August 1, 2003.

The USTA Task Force:

Maxime Paré, Chair, CSA USTA Task Force
Senior Legal Counsel, Market Regulation
Capital Markets
Ontario Securities Commission
Phone: (416) 593-3650
Fax: (416) 593-8240
e-mail: mpare@osc.gov.on.ca

Eric Spink, Consultant,
Ontario Securities Commission
Phone: (780) 435-8711
Fax: (780) 435-2377
e-mail: spinklaw@shaw.ca

Daniel Laurion
Directeur général-Exploitation
Commission des valeurs mobilières du Québec
Phone: (514) 940-2199 ext. 4401
Fax: (514) 864-7854
e-mail: daniel.laurion@cvmq.com

Patricia Leeson, Legal Counsel
Legal and Policy
Alberta Securities Commission
Phone: (403) 297 5222
Fax: (403) 297 6156
e-mail: patricia.leeson@seccom.ab.ca