

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

UNIFORM SECURITIES TRANSFER ACT

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This *Uniform Securities Transfer Act* (USTA) includes a Comment to each definition and section, prepared by the Canadian Securities Administrators (CSA) USTA Task Force (Task Force). Some of the material in those Comments is quoted from the Uniform Commercial Code (UCC) Official Comments and Prefatory Note to Revised Article 8 (Rev8). Such quoted material is copyright by the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL). Reproduced with the permission of the Permanent Editorial Board for the UCC. All rights reserved. For any additional requests to duplicate UCC material, please visit the American Law Institute website at www.ali.org. The Comments refer often to current provisions of, or proposed conforming amendments to, the Alberta and Ontario Personal Property Security Acts (respectively, APPSA and OPPSA, and collectively PPSAs) and Alberta and Ontario Business Corporation Acts (respectively, ABCA and OBCA, and collectively BCAs), as well as current provisions of the *Canada Business Corporations Act* (CBCA).

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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;

COMMENT

Source: UCC Rev 8-102(a)(1)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(a); CBCA s. 48(2); all of which are based on, and similar to, (1962) UCC 8-301(1).

Explanation: This definition is intended to be substantively uniform with the corresponding definition in Rev 8-102(a)(1), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

[The application of this definition and related USTA provisions to security interests will be slightly different in Canada than under the UCC. It is proposed that Canadian PPSAs continue to include cut-off rules that are not included in Revised Article 9 of the UCC (Rev 9). See for example proposed OPPSA s. 28(6)-(10) and APPSA s. 30(9)-(13). The PPSA cut-off rules provide an extra degree of certainty for buyers in relation to security interests, but do not affect the operation of the USTA adverse claim cut-off rules.]

“The definition of the term ‘adverse claim’ has two components. First, the term refers only to property interests. Second, the term means not merely that a person has a property interest in a financial asset but that it is a violation of the claimant’s property interest for the other person to hold or transfer the security or other financial asset.”

“The term adverse claim is not, of course, limited to ownership rights, but extends to other property interests established by other law. A security interest, for example, [may] be an adverse claim with respect to a transferee from the debtor [depending upon whether the transferee takes free of the security interest under the relevant PPSA or equivalent legislation].”

“The definition of adverse claim in the prior version of [UCC] Article 8 [and Canadian law] might have been read to suggest that any wrongful action concerning a security, even a simple breach of contract, gave rise to an adverse claim. Insofar as such cases as *Fallon v. Wall Street Clearing Corp.*, 586 N.Y.S.2d 953, 182 A.D.2d 245, (1992) and *Pentech Intl. v. Wall St. Clearing Co.*, 983 F.2d 441 (2d Cir. 1993), were based on that view, they are rejected by the new definition which explicitly limits the term adverse claim to property interests. [Canadian cases have not interpreted the previous definition of ‘adverse claim’ quite so broadly but have said, for example, that a person who claims an option to acquire a security may have an adverse claim. See *Iverson v. Westfair Foods Ltd*, [1996] 7 W.W.R. 520, appeal dismissed 1998 ABCA 337, application for leave to appeal to S.C.C. dismissed [1998] S.C.C.A. No. 634, and *Travel West (1987) Inc. v. Langdon Towers Apartment Ltd.* 2002 SKCA 51.] Suppose, for example, that A contracts to sell or deliver securities to B, but fails to do so and instead sells or pledges the securities to C. B, the promisee, has an action against A for breach of contract, but absent unusual circumstances the action for breach would not give rise to a property interest in the securities. Accordingly, B does not have an adverse claim. An adverse claim might, however, be based upon principles of equitable remedies that give rise to property claims. It would, for example, cover a right established by other law to rescind a transaction in which securities were transferred. Suppose, for example, that A holds securities and is induced by B's fraud to transfer them to B. Under the law of contract or restitution, A may have a right to rescind the transfer, which gives A a property claim to the securities. If so, A has an adverse claim to the securities in B's hands. By contrast, if B had committed no fraud, but had merely committed a breach of contract in connection with the transfer from A to B, A may have only a right to damages for breach, not a right to rescind. In that case, A would not have an adverse claim to the securities in B's hands.”

Definitional cross references: “financial asset” s. 1(1)
“security interest” s. 1(1)

“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;

COMMENT

Source: UCC Rev 8-107(a)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 64(1); CBCA s. 65(1); all of which are based on, and similar to, (1962) UCC 8-308(3). Previous Canadian law deals only with who is an "appropriate person" for purposes of endorsing a security certificate. The USTA also addresses who is an "appropriate person" with respect to (1) an "instruction" relating to an uncertificated security, and (2) an "entitlement order" relating to a security entitlement.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-107(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

"1. This section [together with sections 36-39, define] two concepts, 'appropriate person' and 'effective.' Effectiveness is a broader concept than appropriate person. For example, if a security or securities account is registered in the name of Mary Roe, Mary Roe is the 'appropriate person,' but an [endorsement], instruction, or entitlement order made by John Doe is 'effective' if, under agency or other law, Mary Roe is precluded from denying Doe's authority. Treating these two concepts separately facilitates [more precise wording of the USTA rules] that state the legal effect of an [endorsement], instruction, or entitlement order. For example, a securities intermediary is protected against liability if

it acts on an effective entitlement order, but has a duty to comply with an entitlement order only if it is originated by an appropriate person. See [s. 63 and s. 112].”

“One important application of the ‘effectiveness’ concept is in the direct holding system rules on the rights of purchasers. A purchaser of a certificated security in registered form can qualify as a protected purchaser who takes free from adverse claims under [s. 81] only if the purchaser obtains ‘control.’ [Paragraph 30(2)(a)] provides that a purchaser of a certificated security in registered form obtains control if there has been an ‘effective’ [endorsement].”

“2. [The definition] provides that the term ‘appropriate person’ covers two categories: (1) the person who is actually designated as the person entitled to the security or security entitlement, and (2) the successor or legal representative of that person if that person has died or otherwise lacks capacity. Other law determines who has power to transfer a security on behalf of a person who lacks capacity. For example, if securities are registered in the name of more than one person and one of the designated persons dies, whether the survivor is the appropriate person depends on the form of tenancy. If the two were registered joint tenants with right of survivorship, the survivor would have that power under other law and thus would be the ‘appropriate person.’ If securities are registered in the name of an individual and the individual dies, the law of decedents' estates determines who has power to transfer the decedent's securities. That would ordinarily be the executor or administrator, but if [the applicable statute permitted, for example,] a widow to transfer a decedent's securities without administration proceedings, she would be the appropriate person. [The USTA] does not contain a list of such representatives, because any list is likely to become outdated by developments in other law.”

[See also sections 36-39 and the Comments to those provisions.]

Definitional cross references:	
“endorsement”	s. 1(1)
“entitlement order”	s. 1(1)
“fiduciary”	s. 1(1)
“financial asset”	s. 1(1)
“instruction”	s. 1(1)
“representative”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“security entitlement”	s. 1(1)

“uncertificated security” s. 1(1)

“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](#);

COMMENT

Source: UCC Rev 8 102(a)(2)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(6); CBCA s. 48(6); all of which are based on, and similar to (1962) UCC 8-102(1)(d).

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(2), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The definition of ‘bearer form’ has remained substantially unchanged since [its Canadian introduction in the 1975 CBCA]. The requirement that the certificate be payable to bearer by its terms rather than by an [endorsement] has the effect of preventing instruments governed by other law, such as chattel paper, [or bills or notes subject to the *Bills of Exchange Act*], from being inadvertently swept into the [USTA] definition of security merely by virtue of blank [endorsements]. Although the other elements of the definition of security in [s. 1(1)] probably suffice for that purpose in any event, the language used in [previous law] has been retained.”

Definitional cross references:

“endorsement”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)

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

COMMENT

Source: UCC Rev 8-102(a)(3)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(d); CBCA s. 48(2); all of which are based on, and similar to, (1962) UCC 8-303.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(3), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“Broker is defined by reference to the [definition of dealer in provincial] securities laws....The definition covers both those who act as agents (‘brokers’ in securities parlance) and those who act as principals (‘dealers’ in securities parlance). Since the definition refers to persons ‘defined’ as [a dealer under provincial securities laws], rather than to persons required to ‘register’ as [a dealer under provincial securities laws], it covers not only registered [dealers] but also those exempt from the registration requirement....The only substantive rules that turn on the defined term broker are one...section on warranties, [s.47], [the provisions on intermediaries’ liabilities in s. 63,] and the [proposed] special perfection rule in [OPPSA/APPSA s. 19.2(2)] for security interests granted by brokers....”

Definitional cross references: “person” s. 1(1)
“security interest” s. 1(1)

“certificated security” means a [security](#) that is represented by a certificate;

COMMENT

Source: UCC Rev 8-102(a)(4)

Comparison with previous law: This term is not defined in the OBCA, ABCA or CBCA. The term ‘security certificate’ is defined in OBCA s. 53(1); ABCA s. 47(2)(n); and CBCA s. 48(2).

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(4), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The term ‘certificated security’ means a security that is represented by a security certificate.” [Section 5(2) provides that the reference to a security certificate is a reference to a physical certificate only and not to any form of electronic media.]

Definitional cross references: “security” s. 1(1)
“security certificate” s. 1(1) and s. 5(2)

“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;

COMMENT

Source: UCC Rev 8-102(a)(5)

Comparison with previous law: See OBCA s. 53(1).

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(5), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The definition of [clearing agency] limits its application to entities that are subject to a rigorous regulatory framework. Accordingly, the definition includes only [a clearing agency recognized or otherwise regulated by a provincial securities regulator that is also (i) regulated by the Bank of Canada under the federal *Payment Clearing and Settlement Act* or (ii) a “securities and derivatives clearing house” for the purposes of section 13.1 of that Act].”

Definitional cross references: “person” s. 1(1)

“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](#);

COMMENT

Source: New.

Comparison with previous law: There is no comparable provision in previous law.

Explanation: This definition is intended to produce substantive uniformity between USTA provisions and Rev 8 provisions that use the term “collusion”. These are subsection 63(3), subparagraph 102(1)(b)(iv) and paragraph 108(7)(c) of the USTA and UCC Rev 8-115(2), 8-404(a)(4) and 8-503(e). UCC Rev8 does not define “collusion” although it is discussed in the UCC Official Comments, particularly the Official Comment to Rev 8-115. The [USTA] definition is intended to address any possible uncertainty that might arise from the statement of “Legislative Intent” by the New York Legislature that accompanied the enactment of Revised Article 8 in L. 1997, c. 566, s. 1. That statement discusses the intended meaning of “collusion”, referring to “...actual knowledge that the securities intermediary has violated or is violating an entitlement holder’s property interest...” and “...actual knowledge of an intermediary’s wrongdoing.” It was suggested (see H. Darmstader, “Three Article 8 Cases” 2002, 57 Bus. Law. 1741 at 1747-50) that the New York statement could be interpreted to suggest that mere knowledge constitutes collusion. Since the statement of Legislative Intent is not completely clear on this important point, this definition is intended to make clear that mere knowledge is not necessarily collusion; that collusion requires active participation in the wrongdoing of the transferor; and that knowledge that the transfer is wrongful is a necessary but not necessarily conclusive condition of the collusion test. This definition is intended to be consistent with the statement of Legislative Intent and with the UCC Official Comments regarding collusion.

Definitional cross references: “financial asset” s. 1(1)
“person” s. 1(1)

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

COMMENT

Source: UCC Rev 9-102(a)(15)

Comparison with previous law: Commodity contracts are not specifically addressed in existing Canadian commercial law.

Explanation: This definition cross-references the new definition of “commodity contract” proposed for the PPSAs (see proposed OPPSA s. 1(1); APPSA s. 1(1)(h.2)). The purpose of the definition, together with sections 19 and 20, is to make clear that a commodity contract is not a security or a financial asset for the purposes of the USTA.

Definitional cross references: None.

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

COMMENT

Source: New.

Comparison with previous law: See the definitions of “body corporate” and “corporation” in OBCA s. 1(1); ABCA s. 1(i) and s. 1(l); CBCA s. 2(1).

Explanation: This term includes any body corporate with share capital, wherever or however incorporated.

Definitional cross references: None.

“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;

COMMENT

Source: UCC Rev 8-102(a)(11)

Comparison with previous law: See OBCA s. 73(1); ABCA s. 64(3); CBCA s. 65(3); all of which are based on, and similar to (1962) UCC 8-308(1).

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(11), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[‘Endorsement’] is defined as a signature made on a security certificate or separate document for purposes of transferring or redeeming the security. The definition is adapted from the language of [(1962) UCC 8-308(1) and the definition of [endorsement] in UCC 3-204(a)]. The definition of [endorsement] does not include the requirement that the signature be made by an appropriate person or be authorized. Those questions are treated in the separate substantive provision on whether the [endorsement] is effective, rather than in the definition of [endorsement]. See [sections 36-39].”

Definitional cross references: “security” s. 1(1)
“security certificate” s. 1(1)

“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);

COMMENT

Source: UCC Rev 8-102(a)(7)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(7), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“This term designates those who hold financial assets through intermediaries in the indirect holding system. Because many of the rules of [USTA Part 6] impose duties on securities intermediaries in [favour] of entitlement holders, the definition of entitlement holder is, in most cases, limited to the person specifically designated as such on the records of the intermediary. The last [phrase] of the definition covers the relatively unusual cases where a person may acquire a security entitlement under [s. 106(1)(b) or (c)] even though the person may not be specifically designated as an entitlement holder on the records of the securities intermediary.”

“A person may have an interest in a security entitlement, and may even have the right to give entitlement orders to the securities intermediary with respect to it, even though the person is not the entitlement holder. For example, a person who holds securities through a securities account in its own name may have given discretionary trading authority to another person, such as an investment adviser. Similarly, the control provisions in [sections 30-35] and the related provisions [proposed for the PPSA] are designed to facilitate transactions in which a person who holds securities through a securities account uses them as collateral in an arrangement where the securities intermediary has agreed that if the secured party so directs the intermediary will dispose of the positions. In such arrangements, the debtor remains the entitlement holder but has agreed that the secured party can initiate entitlement orders.”

“Moreover, an entitlement holder may be acting for another person as a nominee, agent, trustee, or in another capacity. Unless the entitlement holder is itself acting as a securities intermediary for the other person, in which case the other person would be an entitlement holder with respect to the securities entitlement, the relationship between an entitlement holder and another person for whose benefit the entitlement holder holds a securities entitlement is governed by other law.”

Definitional cross references:

“person”	s. 1(1)
“secured party”	s. 1(1)
“securities intermediary”	s. 1(1)

“security entitlement” s. 1(1)

“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](#);

COMMENT

Source: UCC Rev 8-102(a)(8)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(8), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“This term is defined as a notification communicated to a securities intermediary directing transfer or redemption of the financial asset to which an entitlement holder has a security entitlement. The term is used in the rules for the indirect holding system in a fashion analogous to the use of the terms [‘endorsement’] and [‘instruction’] in the rules for the direct holding system. If a person directly holds a certificated security in registered form and wishes to transfer it, the means of transfer is an [endorsement]. If a person directly holds an uncertificated security and wishes to transfer it, the means of transfer is an instruction. If a person holds a security entitlement, the means of disposition is an entitlement order. An entitlement order includes a direction under [s. 113] to the securities intermediary to transfer a financial asset to the account of the entitlement holder at another financial intermediary or to cause the financial asset to be transferred to the entitlement holder in the direct holding system (e.g. the delivery of a [security] certificate registered in the name of the former entitlement holder. As noted in [the Comment to the definition of ‘entitlement holder’], an entitlement order need not be initiated by the entitlement holder in order to be effective, so long as the entitlement holder has authorized the other party to initiate entitlement orders. See [s. 36(b)].”

Definitional cross references: “communicated”	s. 10
“entitlement holder”	s. 1(1)
“financial asset”	s. 1(1)
“notification”	s. 11
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)

“fiduciary” means any person acting in a fiduciary capacity and includes a personal [representative](#) of a deceased person;

COMMENT

Source: CBCA s. 48(2).

Comparison with previous law: See OBCA s. 48(1); ABCA s. 47(2)(f); CBCA s. 48(2).

Explanation: This term is used but not defined in Rev8. A definition was included in the 1971 *Dickerson Report* proposals for the CBCA, apparently because it seemed desirable to define the term as used in a number of provisions in (1962) UCC Article 8, which provisions were essentially copied in the CBCA. The definition has worked since 1975 and seems more useful now that the UCC and USTA define “representative”, an overlapping term used in the (1962) UCC and existing Canadian law. The language of the CBCA definition was modernized in 2001 and is used here.

Definitional cross references: “representative” s. 1(1)

“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;

COMMENT

Source: UCC Rev 8-102(a)(9)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(9), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The definition of ‘financial asset,’ in conjunction with the definition of ‘securities account’ in [s. 1(1)], sets the scope of the indirect holding system rules of [Part 6 of the USTA]. The Part [6] rules apply not only to securities held through intermediaries, but also to other financial assets held through intermediaries. The term financial asset is defined to include not only securities but also a broader category of obligations, shares, participations, and interests.”

“Having separate definitions of security and financial asset makes it possible to separate the question of the proper scope of the traditional [direct transfer] rules from the question of the proper scope of the new

indirect holding system rules. Some forms of financial assets should be covered by the indirect holding system rules of Part [6], but not by the rules of Parts [3, 4, and 5]. The term financial asset is used to cover such property. Because the term security entitlement is defined in terms of financial assets rather than securities, the rules concerning security entitlements set out in Part [6 of the USTA and in the proposed amendments to PPSAs] apply to the broader class of financial assets.”

“The fact that something does or could fall within the definition of financial asset does not, without more, trigger [USTA] coverage. The indirect holding system rules of [the USTA] apply only if the financial asset is in fact held in a securities account, so that the interest of the person who holds the financial asset through the securities account is a security entitlement. Thus, questions of the scope of the indirect holding system rules cannot be framed as ‘Is such-and-such a ‘financial asset’ under [the USTA]?’ Rather, one must analyze whether the relationship between an institution and a person on whose behalf the institution holds an asset falls within the scope of the term securities account as defined in [s. 1(1)]. That question turns in large measure on whether it makes sense to apply the Part [6] rules to the relationship.”

[The USTA definition includes paragraph (e), which is not found in the Rev8 definition. There are some differences between the U.S. and Canadian regulatory requirements governing the handling of free credit balances by intermediaries. In practice, credit balances in a securities account are often held in the form of units or shares in a money market mutual fund or a similar financial asset. After the implementation of the USTA, it may be expected that control agreements and account agreements will normally specify that all property credited to the account will be treated as a financial asset. In order to provide clarity and certainty from the outset, paragraph (e) provides that a credit balance in a securities account is a financial asset. This accords with the general practice and expectations of the parties, but they are free to agree otherwise if they wish.]

Definitional cross references: “person” s. 1(1)
“securities account” s. 1(1)
“securities intermediary” s. 1(1)
“security” s. 1(1)

“genuine” means free of forgery or counterfeiting;

COMMENT

Source: UCC 1-201(b)(19)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(h); CBCA s. 48(2); all of which are based on, and similar to, the UCC Article 1 definition.

Explanation: This definition is unchanged.

Definitional cross references: None.

“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;

COMMENT

Source: New

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with transfers of securities.

Explanation: This term is used in s. 66(3), which deals with the validation of securities issued by a government, and in the definition of “person” in s. 1(1).

Definitional cross references: None.

“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;

COMMENT

Source: UCC Rev 8-102(a)(12)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the transfer of uncertificated securities.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(12), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

"[The term 'instruction'] is defined as a notification communicated to the issuer of an uncertificated security directing that transfer be registered or that the security be redeemed. Instructions are the analog for uncertificated securities of [endorsements] of certificated securities." [Sections 36-39 specify who may initiate an effective instruction.]

Definitional cross references: "communicated"	s. 10
"issuer"	s. 1(1)
"notification"	s. 11
"security"	s. 1(1)
"uncertificated security"	s. 1(1)

"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;

COMMENT

Source: UCC Rev 8-201(a) and (c)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(k); CBCA s. 48(2); all of which are based on, and similar to, (1962) UCC 8-201(1). See also OBCA s. 62(2), which is based on, and similar to, (1962) UCC 8-201(3). There is no provision comparable to OBCA s. 62(2) in the ABCA or CBCA.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-201(a) and (c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The definition of ‘issuer’ in this section functions primarily to describe the persons whose defenses may be cut off under the rules in Part [3]. In large measure it simply tracks the language of the definition of security in [s. 1(1)].”

“[Paragraph (a)] narrows the definition of ‘issuer’ for purposes of [USTA Part 5] (registration of transfer). It is supplemented by [s. 105].” [The equivalent of Rev 8-201(b) is found in s. 8.]

Definitional cross references:

“person”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

“overissue” means the issue of securities in excess of the amount that the [issuer](#) is authorized to issue;

COMMENT

Source: UCC Rev 8-210(a)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(1); CBCA s. 48(2); all of which are based on, and similar to, (1962) UCC 8-104(2).

Explanation: This definition is intended to be broader than the corresponding definitional provisions of Rev 8-210(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“Deeply embedded in corporation law is the conception that ‘corporate power’ to issue securities stems from the statute, either general or special, under which the corporation is organized. [Historically, certain Canadian corporation statutes required] that the charter or articles of incorporation state, at least as to capital shares, maximum limits in terms of number of shares or total dollar capital. [Some] special incorporation statutes are similarly drawn and sometimes similarly limit the face amount of authorized debt securities. The theory is that issue of securities in excess of the authorized amounts is prohibited. See, for example, *McWilliams v. Geddes & Moss Undertaking Co.*, 169 So. 894 (1936, La.); *Crawford v. Twin City Oil Co.*, 216 Ala. 216, 113 So. 61 (1927); *New York and New Haven R.R. Co. v. Schuyler*, 34 N.Y. 30 (1865). This conception persists despite modern corporation [statutes that allow for an authorized unlimited number of shares to be issued. Articles of incorporation generally permit the issuance of additional shares without much difficulty.]”

[The overissue provisions (see s. 78) rarely apply. We are not aware that the overissue provisions in existing Canadian law have ever been judicially considered. The purpose of these provisions is merely to provide clarity and certainty if such rare events do arise. One potential application of the overissue provisions is the situation contemplated by existing OBCA s. 56(8) and (10), where an issuer is obligated, but fails to, disclose a transfer restriction. In that situation, the transfer restriction is not enforceable against an innocent purchaser without notice (see s. 72 and s. 97) but, if the issuer is not authorized to register the transfer because it would result in the violation of some constraint, s. 78 provides the

appropriate solution. The USTA definition is broader than the Rev8 definition in that it is not limited to corporations. Since it is possible that overissue could arise in a non-corporate context (i.e. with trust or partnership units), the USTA definition is expanded to provide clarity and certainty in that broader context. The overissue provisions do not apply to the Crown as an issuer. See s. 12(4).]

Definitional cross references: “issuer” s. 1(1)
“security” s. 1(1)

“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](#);

COMMENT

Source: OBCA s. 1(1)

Comparison with previous law: See OBCA s. 1(1); ABCA s. 1(x); CBCA s. 2(1); UCC 1-201(b)(27).

Explanation: This inclusive definition is expanded from current OBCA s. 1(1). It is intended to make clear that the term is all-inclusive. See s. 12 dealing with the application of the USTA to the Crown, which is included in this definition through the reference to “government or agency of it”.

Definitional cross references: “corporation” s. 1(1)
“government or agency of it” s. 1(1)
“representative” s. 1(1)

“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;

COMMENT

Source: UCC Rev 8-303(a)

Comparison with previous law: See definition of “good faith purchaser” in OBCA s. 53(1); definitions of “bona fide purchaser” in ABCA s. 47(2)(c) and CBCA s. 48(2); all of which are based on, and similar to, the definition of “bona fide purchaser” in (1962) UCC 8-302.

Explanation: This definition is intended to be substantively uniform with the corresponding provision of Rev 8-303(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. [This definition] lists the requirements that a purchaser must meet to qualify as a ‘protected purchaser.’ [Section 81] provides that a protected purchaser takes its interest free from adverse claims. ‘Purchaser’ is defined broadly in [s. 1(1)]. A secured party as well as an outright buyer can qualify as a protected purchaser. Also, ‘purchase’ includes taking by issue, so a person to whom a security is originally issued can qualify as a protected purchaser.”

“2. To qualify as a protected purchaser, a purchaser must give value, take without notice of any adverse claim, and obtain control. Value is used in the broad sense defined in [s. 9]. See also [s. 64] (securities intermediary as purchaser for value). Adverse claim is defined in [s. 1(1)]. [Sections 25-29] specify whether a purchaser has notice of an adverse claim. Control is defined in [sections 30-33]. To qualify as a protected purchaser there must be a time at which all of the requirements are satisfied. Thus if a purchaser obtains notice of an adverse claim before giving value or satisfying the requirements for control, the purchaser cannot be a protected purchaser. See also [s. 85].”

“The requirement that a protected purchaser obtain control expresses the point that to qualify for the adverse claim cut-off rule a purchaser must take through a transaction that is implemented by the appropriate mechanism. By contrast, the rules in Part [3] provide that any purchaser for value of a security without notice of a [defence] may take free of the issuer’s [defence] based on that [defence]. See [sections 65-70].”

“3. The requirements for control differ depending on the form of the security. For securities represented by bearer certificates, a purchaser obtains control by delivery. See [s. 30(1) and s. 79(1)]. For securities represented by certificates in registered form, the requirements for control are: (1) delivery as defined in [s. 79(1)], plus (2) either an effective [endorsement] or registration of transfer by the issuer. See [s. 30(2)]. Thus, a person who takes through a forged [endorsement] does not qualify as a protected purchaser by virtue of the delivery alone. If, however, the purchaser presents the certificate to the issuer for registration of transfer, and the issuer registers transfer over the forged [endorsement], the purchaser can qualify as a protected purchaser of the new certificate. If the issuer registers transfer on a forged [endorsement], the true owner will be able to recover from the issuer for wrongful registration, see [s. 102], unless the owner's delay in notifying the issuer of a loss or theft of the certificate results in preclusion under [s. 104].”

“For uncertificated securities, a purchaser can obtain control either by delivery, see [s. 31(1)(a) and s. 79(2)], or by obtaining an agreement pursuant to which the issuer agrees to act on instructions from the purchaser without further consent from the registered owner, see [s. 31(1)(b)]....A secured lender who obtains a control agreement under [s. 31(1)(b)] can qualify as a protected purchaser of an uncertificated security.”

“4. [Section 81] states directly the rules determining whether one takes free from adverse claims without using the phrase ‘good faith.’ Whether a person who takes under suspicious circumstances is disqualified is determined by [sections 25-29] on notice of adverse claims. The term ‘protected purchaser,’ which replaces the term ‘bona fide purchaser’ used in the prior version of [UCC] Article 8 [and some existing Canadian legislation], is derived from the term ‘protected holder’ used in the Convention on International Bills and Notes prepared by the United Nations Commission on International Trade Law (‘UNCITRAL’).”

Definitional cross references:	
“adverse claim”	s. 1(1)
“certificated security”	s. 1(1)
“control”	s. 3
“notice of an adverse claim”	sections 25-29
“purchaser”	s. 1(1)
“secured party”	s. 1(1)
“uncertificated security”	s. 1(1)
“value”	sections 9 and 64.

“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;

COMMENT

Source: UCC 1-201(b)(29)

Comparison with previous law: See the definitions of “purchaser” in OBCA s. 53(1); ABCA s. 47(2)(m); CBCA s. 48(2); all of which are based on, and similar to the definition of “purchase” in (1962) UCC 1-201.

Explanation: This definition is intended to be substantively similar to the corresponding definition in UCC 1-201(b)(29). Together with the definition of “purchaser”, it essentially uses modernized uniform language to re-state existing law. It tracks the UCC where it adds taking by “discount” and “security interest” to existing Canadian definitions. It maintains the existing slight differences between the Canadian and U.S. law where it includes taking by “hypothec” and excludes taking by “lien”.

Definitional cross references: “security interest” s. 1(1)

“purchaser” means a [person](#) who takes by [purchase](#);

COMMENT

Source: UCC 1-201(b)(30)

Comparison with previous law: See the definitions of “purchaser” in OBCA s. 53(1); ABCA s. 47(2)(m); CBCA s. 48(2); all of which are based on, and similar to the definition of “purchase” in (1962) UCC 1-201.

Explanation: This definition is intended to be substantively similar to the corresponding definition in UCC 1-201(b)(30). Together with the definition of “purchase”, it essentially uses modernized uniform language to re-state existing law.

Definitional cross references: “person” s. 1(1)

“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;

COMMENT

Source: UCC Rev 8-102(a)(13)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(4); CBCA s. 48(4); all of which are based on, and similar to, (1962) UCC 8-102(1)(c).

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102 (a)(13), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The definition of ‘registered form’ is substantially the same as in [previous law]. Like the definition of bearer form, it serves primarily to distinguish [USTA] securities from instruments governed by other law, such as [the *Bills of Exchange Act*].”

Definitional cross references: “certificated security” s. 1(1)

“issuer”

“person”

“security”

“security certificate”

“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;

COMMENT

Source: UCC 1-201(b)(33)

Comparison with previous law: OBCA s. 1(1) and CBCA 2(1) define “personal representative”. This term is used in CBCA s. 51(2) and (8), but in the corresponding provisions in OBCA s. 67(2) and (8), the undefined term “legal representative” is used. The ABCA does not define any of these terms, although the term “legal representative” is used in ABCA s. 50(2) and (8). It is anticipated that those provisions will remain in corporate statutes. There have never been equivalent provisions in UCC Article 8.

Explanation: This definition is intended to be substantively uniform with the corresponding definition in UCC 1-201(b)(33), which was introduced in 1994. This term is used in the USTA definitions of “appropriate person”, “fiduciary” and “person”, and in s. 26(1), s. 26(2), s. 37 and s. 38.

Definitional cross references: “corporation” s. 1(1)
“person” s. 1(1)

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

COMMENT

Source: New.

Comparison with previous law: New.

Explanation: This definition cross-references the definition in the PPSA. The term “secured party” is used in sections 46 and 58. It complements the USTA definition of “security interest”, which also cross-references the definition in the PPSA.

Definitional cross references: “security interest” s. 1(1)

“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;

COMMENT

Source: UCC Rev 8-501(a)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This definition is intended to be substantively uniform with the corresponding definition in Rev 8-501(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[The rules of USTA Part 6] apply to security entitlements, and [s. 106(1)] provides that a person has a security entitlement when a financial asset has been credited to a ‘securities account.’ Thus, the term ‘securities account’ specifies the type of arrangements between institutions and their customers that are covered by Part [6]. A securities account is a consensual arrangement in which the intermediary undertakes to treat the customer as entitled to exercise the rights that comprise the financial asset. The consensual aspect is covered by the requirement that the account be established pursuant to agreement. [The term ‘agreement’ is defined in UCC 1-201(b)(3) to mean ‘the bargain of the parties in fact as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade....’ and a similarly broad meaning is intended here in the Canadian context.] There is no requirement that a formal or written agreement be signed.”

“As the securities business is presently conducted, several significant relationships clearly fall within the definition of a securities account, including the relationship between a [clearing agency] and its participants, a broker and customers who leave securities with the broker, and a bank [or trust company] acting as securities custodian and its custodial customers. Given the enormous variety of arrangements concerning securities that exist today, and the certainty that new arrangements will evolve in the future, it is not possible to specify all of the arrangements to which the term does and does not apply.”

“Whether an arrangement between a firm and another person concerning a security or other financial asset

is a ‘securities account’ under [the USTA] depends on whether the firm has undertaken to treat the other person as entitled to exercise the rights that comprise the security or other financial asset. [Basic principles of Canadian statutory interpretation dictate that the USTA] provisions should be construed and applied to promote their underlying purposes and policies. Thus, the question whether a given arrangement is a securities account should be decided not by dictionary analysis of the words of the definition taken out of context, but by considering whether it promotes the objectives of [the USTA] to include the arrangement within the term securities account.”

“The effect of concluding that an arrangement is a securities account is that the rules of Part [6] apply. Accordingly, the definition of ‘securities account’ must be interpreted in light of the substantive provisions in Part [6], which describe the core features of the type of relationship for which the commercial law rules of [the USTA] concerning security entitlements were designed. There are many arrangements between institutions and other persons concerning securities or other financial assets which do not fall within the definition of ‘securities account’ because the institutions have not undertaken to treat the other persons as entitled to exercise the ordinary rights of an entitlement holder specified in the Part [6] rules. For example, the term securities account does not cover the relationship between a bank and its depositors or the relationship between a trustee and the beneficiary of an ordinary trust, because those are not relationships in which the holder of a financial asset has undertaken to treat the other as entitled to exercise the rights that comprise the financial asset in the fashion contemplated by the Part [6] rules.”

“In short, the primary factor in deciding whether an arrangement is a securities account is whether application of the Part [6] rules is consistent with the expectations of the parties to the relationship. Relationships not governed by Part [6] may be governed by other parts of [the USTA] if the relationship gives rise to a new security, or may be governed by other law entirely.”

Definitional cross references: “financial asset” s. 1(1)
“person” s. 1(1)

“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;

COMMENT

Source: UCC Rev 8-102(a)(14)

Comparison with previous law: There is no comparable definition in existing Canadian law dealing with the indirect holding system.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)14, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“A ‘securities intermediary’ is a person that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity. The most common examples of securities intermediaries would be [clearing agencies] holding securities for their participants, banks [or trust companies] acting as securities custodians, and brokers holding securities on behalf of their customers. [Clearing agencies] are listed separately as a category of securities intermediary in [paragraph (a)] even though in most circumstances they would fall within the general definition in [paragraph (b)]. [Clearing agencies such as The Canadian Depository for Securities Limited (CDS) also perform the trade comparison, clearance, and netting function in securities settlement, in addition to acting as the depository. The definition is intended to make clear that, because CDS is a clearing agency, it is] a securities intermediary under [the USTA], regardless of whether it is at any particular time or in any particular aspect of its operations holding securities on behalf of its participants.”

“The terms securities intermediary and broker have different meanings. Broker means a person engaged in the business of buying and selling securities, as agent for others or as principal. Securities intermediary means a person maintaining securities accounts for others. A stockbroker, in the colloquial sense, may or may not be acting as a securities intermediary.”

“The definition of securities intermediary includes the requirement that the person in question is ‘acting in the capacity’ of maintaining securities accounts for others. This is to take account of the fact that a particular entity, such as a bank [or trust company], may act in many different capacities in securities transactions. A bank [or trust company] may act as a transfer agent for issuers, as a securities custodian for institutional investors and private investors, as a dealer in government securities, as a lender taking

securities as collateral, and as a provider of general payment and collection services that might be used in connection with securities transactions. A bank [or trust company] that maintains securities accounts for its customers would be a securities intermediary with respect to those accounts; but if it takes a pledge of securities from a borrower to secure a loan, it is not thereby acting as a securities intermediary with respect to the pledged securities, since it holds them for its own account rather than for a customer. In other circumstances, those two functions might be combined. For example, [the bank or trust company may] maintain securities accounts for customers and also provide the customers with margin credit to purchase or carry the securities, in much the same way that brokers provide margin loans to their customers.”

Definitional cross references: “broker”	s. 1(1)
“clearing agency”	s. 1(1)
“person”	s. 1(1)
“securities account”	s. 1(1)

“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;

COMMENT

Source: UCC Rev 8-102(a)(15)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(n); CBCA s. 48(2). The ABCA and CBCA definitions are based on, and similar to, (1962) 8-102(1)(a) which contemplate that a security must be an “instrument”. The OBCA definition contemplates uncertificated securities but is not uniform with any version of the UCC definition. Many existing Canadian definitions include securities in order form. This aspect of the definition was introduced in the 1975 CBCA on the basis of a recommendation in the 1971 *Dickerson Report*. It is not included in the USTA definition because we are unaware that there have ever been order form instruments that otherwise meet the definition of ‘security’.]

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(15), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The definition of ‘security’ has three components. First, there is the [paragraph (a)] test that the interest or obligation be fully transferable, in the sense that the issuer either maintains transfer books or the obligation or interest is represented by a certificate in bearer or registered form. Second, there is the [paragraph (b)] test that the interest or obligation be divisible, that is, one of a class or series, as distinguished from individual obligations of the sort governed by ordinary contract law or by [the *Bills of Exchange Act*]. Third, there is the [paragraph (c)] functional test, which generally turns on whether the interest or obligation is, or is of a type, dealt in or traded on securities markets or securities exchanges. There is, however, an ‘opt-in’ provision in [paragraph (c) which permits the issuer of any interest or obligation that is ‘a medium of investment’ to specify that it is a security [for the purposes of the USTA].”

“The divisibility test of [paragraph (b)] applies to the security—that is, the underlying intangible interest—not the means by which that interest is evidenced. Thus, securities issued in book-entry only form meet the divisibility test because the underlying intangible interest is divisible via the mechanism of the indirect holding system. This is so even though the [clearing agency] is the only eligible direct holder of the security.”

“The third component, the functional test in [paragraph (c)], provides flexibility while ensuring that the [USTA] rules do not apply to interests or obligations in circumstances so unconnected with the securities markets that parties are unlikely to have thought of the possibility that [the USTA] might apply. [Subparagraph (c)(i)] covers interests or obligations that either are dealt in or traded on securities exchanges or securities markets, or are of a type dealt in or traded on securities exchanges or securities

markets. The 'is dealt in or traded on' phrase eliminates problems in the characterization of new forms of securities which are to be traded in the markets, even though no similar type has previously been dealt in or traded in the markets. [Subparagraph (c)(ii)] covers the broader category of media for investment, but it applies only if the terms of the interest or obligation specify that it is [a security for the purposes of the USTA]. This opt-in provision allows for deliberate expansion of the scope of [the USTA].”

“[Sections 14-20 contain] additional rules on the treatment of particular interests as securities or financial assets.”

Definitional cross references: “bearer form” s. 1(1)
“issuer” s. 1(1)
“registered form” s. 1(1)
“security certificate” s. 1(1)

“security certificate” means a certificate representing a [security](#);

COMMENT

Source: UCC Rev 8-102(a)(16)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(n); CBCA s. 48(2).

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(16), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The term ‘security’ refers to the underlying asset, e.g., 1000 shares of common stock of Acme, Inc. The term ‘security certificate’ refers to the paper certificates that have traditionally been used to embody the underlying intangible interest.” [Section 5(2) provides that the reference to a security certificate is a reference to a physical certificate only and not to any form of electronic media.]

Definitional cross references: “security” s. 1(1)

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

COMMENT

Source: UCC Rev 8-102(a)(17)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(17), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“‘Security entitlement’ means the rights and property interest of a person who holds securities or other financial assets through a securities intermediary. A security entitlement is both a package of personal rights against the securities intermediary and an interest in the property held by the securities intermediary. A security entitlement is not, however, a specific property interest in any financial asset held by the securities intermediary or by the [clearing agency] through which the securities intermediary holds the financial asset. See [s. 23 and s. 108]. The formal definition of security entitlement [in s. 1(1) is a cross-reference to the rules of Part 6]. In a sense, then, the entirety of Part [6] is the definition of security entitlement. The Part [6] rules specify the rights and property interest that comprise a security entitlement.”

Definitional cross references: “entitlement holder” s. 1(1)
“financial asset” s. 1(1)

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

COMMENT

Source: New.

Comparison with previous law: New.

Explanation: This definition cross-references the definition in the PPSA. The term ‘security interest’ is important because it has been added to the Rev8 and USTA definitions of ‘purchase’, which formerly referred only to a ‘pledge’. Although security interests may have been captured by the term ‘pledge’ or otherwise in the previous definition, this definition removes any uncertainty.

Definitional cross references: None.

“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;

COMMENT

Source: CBCA s. 48(2)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 44(2)(q); CBCA s. 48(2); all of which are based on, and similar to (1962) UCC 1-201(43).

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of UCC 1-201(b)(41). The current version of UCC 1-201(b)(41) no longer refers to an endorsement, only to an ‘unauthorized signature’. That change to the Article 1 definition was intended to resolve ambiguity about its application to UCC Articles 3 and 4. No such ambiguity arises in the context of the USTA so it preserves the reference to an endorsement.

Definitional cross references: “endorsement” s. 1(1)

“uncertificated security” means a [security](#) that is not represented by a certificate.

COMMENT

Source: UCC Rev 8-102(a)(18)

Comparison with previous law: See OBCA s. 53(1). There is no comparable provision in the ABCA or CBCA.

Explanation: This definition is intended to be substantively uniform with the corresponding provisions of Rev 8-102(a)(18), as described in the UCC official comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The term ‘uncertificated security’ means a security that is not represented by a security certificate. For uncertificated securities, there is no need to draw any distinction between the underlying asset and the means by which a direct holder's interest in that asset is evidenced. Compare ‘certificated security’ and ‘security certificate.’”

Definitional cross references: “security” s. 1(1)

- (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.

COMMENT

Source: UCC Rev 8-102(d)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the transfer of securities.

Explanation: This provision makes clear what would otherwise be implicit. The USTA uses formal, precise characterizations for a specific purpose—to provide clear and certain property-transfer rules. Other statutes, law, regulations and rules generally need not use such characterizations for their purposes. For example, the definition of “security” in the *Securities Act* is crafted to ensure that it captures any interest or investment that should trigger the protective requirements of that *Act*, which may include things such as

undivided interests in land that are clearly outside the scope of the USTA definition. Similarly, the USTA characterization of a transaction should not determine the characterization of that transaction for purposes of the *Securities Act*.

Definitional cross references: “person” s. 1(1)

Uniform interpretation

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

COMMENT

Source: New.

Comparison with previous law: New.

Explanation: This provision is intended to make clear that the USTA should be interpreted to make uniform the law among the various jurisdictions that enact it. Such uniformity is a fundamental purpose and policy of the USTA. Similar provisions are found in Article 7 of the United Nations Convention on Contracts for the International Sale of Goods, which has been implemented in many provinces through *International Sale of Goods Acts*, and in Article 13 of the Hague Convention On The Law Applicable To Certain Rights In Respect Of Securities Held With An Intermediary, which is not yet implemented.

Definitional cross references: None.

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](#).

COMMENT

Source: UCC Rev 8-102(b)

Comparison with previous law: This definitional provision cross-references the particular descriptions of control in sections 30-33. See the comparison with previous law there.

Explanation: This reflects a drafting adjustment—no substantive difference from Rev8 is intended.

Definitional cross references:

“certificated security”	s. 1(1)
“purchaser”	s. 1(1)
“security entitlement”	s. 1(1)
“uncertificated security”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-102(b)

Comparison with previous law: This definitional provision cross-references the particular descriptions of delivery in s. 79. See the comparison with previous law there.

Explanation: This reflects a drafting adjustment—no substantive difference from Rev8 is intended.

Definitional cross references:

“certificated security”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: Subsection (1) is based on UCC Rev 8-102(a)(9)(iii); subsection (2) is new.

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: Subsection (1) is intended to be substantively uniform with the corresponding provision of Rev 8-102(a)(9)(iii), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 5 provides that the] term financial asset [refers] both to the underlying asset and the particular means by which ownership of that asset is evidenced. Thus, with respect to a certificated security, the term financial asset may, as context requires, refer either to the interest or obligation of the issuer or to the security certificate representing that interest or obligation. Similarly, if a person holds a security or other financial asset through a securities account, the term financial asset may, as context requires, refer either to the underlying asset or to the person's security entitlement.”

Subsection (2) states that a security certificate must be a physical certificate. This excludes the [*Electronic Transactions/Commerce Act*], which otherwise applies to the USTA.

Definitional cross references: “certificated security”	s. 1(1)
“financial asset”	s. 1(1)
“security certificate”	s. 1(1)
“security entitlement”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC 1-201(b)(10) and OBCA s. 53(1).

Comparison with previous law: See the definition of “noted conspicuously” and “appearing conspicuously” in OBCA s. 53(1). There are no equivalent provisions in the ABCA or CBCA.

Explanation: The OBCA and UCC provisions mean the same. The USTA uses modernized language but no substantive change is intended.

Definitional cross references: “communicated” s. 10
“notice” s. 11

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.

COMMENT

Source: CBCA s. 48(2)

Comparison with previous law: See OBCA s. 53(1); ABCA s. 47(2)(r); CBCA s. 48(2). There is no comparable provision in the UCC. This appears to have been added during the development of the original CBCA. It is not mentioned in the 1971 *Dickerson Report*.

Explanation: The definition in existing law states what is implicit in the UCC—that defences going to the “validity” of a security are a particular subset of the larger universe of defences that may arise. The definition is narrow, which accords with the apparent intent and policy of the UCC. See J. Halpern, “Defining the ‘Validity’ of a ‘Security’ Under Article 8” 12 UCC L.J. 195 (1980). This definition applies to the choice of law provision in s. 51(3)(a), which refers questions concerning the validity of a security to

the issuer’s jurisdiction. Section 66 deals specifically with defences relating to validity, as distinct from other defences such as those referred to in sections 67 and 68. This provision uses modernized language but no substantive change from the existing definition is intended. The phrase “constitutional provisions governing the issuer” is intended to capture all provisions governing the issuer’s capacity to issue a security such as a corporation’s articles and other constating documents and comparable provisions applicable to trusts, partnerships or other types of issuers.

Definitional cross references: “security” s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-201(b)

Comparison with previous law: See OBCA s. 62(1); ABCA s. 47(7); CBCA s. 48(7); all of which are based on, and similar to, (1962) UCC 8-201(2).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-201(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[This section] distinguishes the obligations of a guarantor as issuer from those of the principal obligor. However, it does not exempt the guarantor from the impact of [s. 68]. Whether or not the obligation of the guarantor is noted on the security is immaterial. Typically, guarantors are parent corporations, or stand in some similar relationship to the principal obligor. If that relationship existed at the time the security was originally issued the [guarantee] would probably have been noted on the security. However, if the relationship arose afterward, e.g., through a purchase of stock or properties, or through merger or consolidation, probably the notation would not have been made. Nonetheless, the holder of the security is entitled to the benefit of the obligation of the guarantor.”

Definitional cross references: “issuer” s. 1(1)

“security”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: Saskatchewan PPSA s. 2(1)(tt)

Comparison with previous law: There is no definition of “value” in existing Canadian legislation relating to securities transfers. There are minor variations in the definitions in PPSAs, all of which are based on the Model Uniform PPSA. The Saskatchewan version was chosen as representative; see also OPPSA s. 1(1) and APPSA s. 1(1)(ww).

Explanation: This definition tracks the wording of existing PPSAs. It is intended to be substantively uniform with the corresponding definition of value in UCC 1-204, which uses different language but appears to mean the same thing. Tracking the PPSA wording facilitates uniformity within Canada and better integration of the USTA and PPSA.

Definitional cross references: None.

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.

COMMENT

Source: UCC Rev 8-102(a)(6)

Comparison with previous law: There is no comparable provision in existing Canadian law relating to the transfer of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-102(a)(6), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The term ‘communicate’ assures that the [USTA] rules will be sufficiently flexible to adapt to changes in information technology. [Writing] always suffices as a communication, but the parties can agree that a different means of transmitting information is to be used. [The term ‘agreement’ is defined in UCC 1-201(b)(3) to mean ‘the bargain of the parties in fact as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade....’ and a similarly broad meaning is intended here in the Canadian context.] Thus, use of an information transmission method might be found to be authorized by agreement, even though the parties have not explicitly so specified in a formal agreement. The term communicate is used in [the s. 1(1) definitions of entitlement order and instruction, and in sections 99 and 100 (demand that issuer not register transfer)].”

Definitional cross references: None.

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.

COMMENT

Source: UCC 1-202

Comparison with previous law: There is no comparable provision in existing Canadian law relating to the transfer of securities. See OPPSA sections 68 and 69; APPSA sections 1(2) and 72.

Explanation: This provision uses different wording but is intended to be substantively uniform with the corresponding provisions of UCC 1-202 and with the existing PPSA provisions. The existing PPSA provisions are not uniform, but appear to mean the same thing as the UCC.

Faced with such a variety of models, this provision is intended to draw from all of them to express the same substantive result. This result is described in the UCC Official Comments [editing and additional material by the CSA Task Force shown in square brackets] as follows:

[The definition of when a person knows or has knowledge of a fact in subsection (1)(a) is based on existing PPSA provisions. It is intended to mean the same as the UCC version, which uses the words 'actual knowledge'. Subsection (2) is based on UCC 1-202(d).]

“[The term 'notifies' is used] when the essential fact is the proper dispatch of the notice, not its receipt....When the essential fact is the other party's receipt of the notice, that is stated. [Subsections (4)

through (6) make clear] that notice, knowledge, or a notification, although ‘received,’ for instance, by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.”

Definitional cross references: “communication” s. 10
“person” s. 1(1)

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.]

COMMENT

Source: New

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the transfer of securities. The PPSAs apply to the Crown (see OPPSA s. 3; APPSA s. 2). In the U.S., the UCC applies generally to governments and government agencies.

Explanation: This provision is intended to make clear that the USTA applies to the Crown’s commercial activities in securities markets.

Definitional cross references: None.

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.

COMMENT

Source: Subsection (1) is based on UCC 1-304; subsection (2) is based on UCC 1-201(b)(20); subsection (3) is based on UCC 1-302(a) and (b); subsection (4) is based on UCC 1-103(b), OPPSA s. 72 and APPSA s. 66(3).

Comparison with previous law: Subsections (1) and (3) have no comparable provisions in existing Canadian law relating to the transfer of securities. Subsection (2) is comparable to the definitions of “good faith” in OBCA s. 53(1); ABCA s. 47(2)(i); CBCA s. 48(2); all of which are based on, and similar to, (1962) UCC 1-201(19). Subsection (4) is similar to OPPSA s. 72 and APPSA s. 66(3), but there is no comparable provision in existing Canadian law relating strictly to the transfer of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of the UCC, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 13(1)] sets forth a basic principle running throughout [the USTA]. The principle is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties....[The concept is broader than any particular illustration] and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within [the USTA]. This section does

not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that the failure to perform or enforce, in good faith, a specific duty or obligation under the contract, constitutes a breach of that contract or makes unavailable, under the particular circumstances, a remedial right or power. This distinction makes it clear that the doctrine of good faith merely directs a court towards interpreting contracts within the commercial context in which they are created, performed, and enforced, and does not create a separate duty of fairness and reasonableness which can be independently breached.”

“Good faith is defined in [s. 13(2)] for purposes of the application of [s. 13(1)], which provides that ‘Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.’ The sole function of the good faith definition in [s. 13(2)] is to give content to the [s. 13(1)] obligation as it applies to contracts and duties that are governed by [the USTA]. The standard is one of ‘reasonable commercial standards of fair dealing.’ The reference to commercial standards makes clear that assessments of conduct are to be made in light of the commercial setting. The substantive rules of [the USTA] have been drafted to take account of the commercial circumstances of the securities holding and processing system. For example, [s. 63] provides that a securities intermediary acting on an effective entitlement order, or a broker or other agent acting as a conduit in a securities transaction, is not liable to an adverse claimant, unless the claimant obtained legal process or the intermediary acted in collusion with the wrongdoer. This, and other similar provisions, see [s. 102 and s. 108(7)], do not depend on notice of adverse claims, because it would impair rather than advance the interest of investors in having a sound and efficient securities clearance and settlement system to require intermediaries to investigate the propriety of the transactions they are processing. The good faith obligation does not supplant the standards of conduct established in provisions of this kind.”

“In [the USTA], the definition of good faith is not germane to the question whether a purchaser takes free from adverse claims. The rules on such questions as whether a purchaser who takes in suspicious circumstances is disqualified from protected purchaser status are treated not as an aspect of good faith but directly in the rules of [sections 25-29] on notice of adverse claims.”

“Subsection [(3)] states affirmatively...that freedom of contract is a principle of the [USTA]: ‘the effect’ of its provisions may be varied by ‘agreement’. [The term ‘agreement’ is defined in UCC 1-201(b)(3) to mean ‘the bargain of the parties in fact as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade...’ and a similarly broad meaning is intended here in the Canadian context.] The meaning of the statute itself must be found in its text,

including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. [Private parties cannot change the meaning of terms used in the USTA, but] an agreement can change the legal consequences which would otherwise flow from the provisions of the [USTA]. ‘Agreement’ here includes the effect given to course of dealing, usage of trade and course of performance...; the effect of an agreement on the rights of third parties is left to specific provisions [of the USTA] and to supplementary principles applicable under [s. 13(4)]....” [UCC 1-302(c) says that the presence of ‘unless otherwise agreed,’ or similar words, in certain provisions does not imply that the effect of other provisions may not be varied by agreement under that section. That same intent is implicit in the USTA.]

“This principle of freedom of contract is subject to specific exceptions found elsewhere in [the USTA] and to the general exception [in s. 13(3)]....Under the exception for ‘the obligations of good faith, diligence, reasonableness and care prescribed by [this Act],’ provisions of the [Act] prescribing such obligations are not to be disclaimed. However, [this provision] also recognizes the prevailing practice of having agreements set forth the standards by which due diligence is measured and explicitly provides that, in the absence of a showing that the standards manifestly are unreasonable, the agreement controls. [UCC 1-303 expressly incorporates into agreements the prior course of dealing and usages of trade, which is sufficiently consistent with modern common-law principles of contractual interpretation that such express codification seems unnecessary in the USTA.]

[The operation of s. 13 is particularly relevant to the core duties imposed by the USTA upon securities intermediaries in relation to security entitlements, including the duty to:

- “obtain and thereafter maintain a financial asset” in s. 109(1);
- “obtain a payment or distribution made by the issuer” in s. 110(1);
- “exercise rights with respect to a financial asset if directed to do so by an entitlement holder” in s. 111(1);
- “comply with an entitlement order” in s. 112(1); and
- “act at the direction of an entitlement holder” in s. 113(1).]

[These duties may be satisfied if the intermediary acts “as agreed on by the entitlement holder and the securities intermediary” or, in the absence of such agreement, if the intermediary “exercises due care in accordance with reasonable commercial standards” (see s. 109(4) and subsection (2) of each of s. 110-113). To the extent that these duties are the subject of another statute, regulation or rule (such as securities laws), then s. 114 provides that compliance with such other statute, regulation or rule satisfies the duty

imposed by the USTA.]

[The obligation of good faith provides an over-arching protection for entitlement holders by attaching to the core duties described above, and to the agreements regarding performance of those duties. So, for example, an intermediary could not enforce a standard clause in its account-opening agreement disclaiming all responsibility for performing the core duties, but the parties could validly agree that the intermediary will not be responsible for the custodial risk of holding foreign securities through foreign intermediaries. See para. 4 of the Comment to s. 109, and *Powers v. American Express Financial Advisors* (2000), 82 F. Supp. 2d 448 (D. Md.), *aff'd*, (2000), 43 U.C.C. Rep. Serv. 2d (West) 425 (4th Cir.).]

“While [s. 13(4)] indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by [the USTA], the principle has been stated in more detail and phrasing enlarged to make it clear that the ‘validating’, as well as the ‘invalidating’ causes referred to in [prior statutory provisions], are included here. ‘Validating’ as used here in conjunction with ‘invalidating’ is not intended as a narrow word confined to original validation, but extends to cover any factor which at any time or in any manner renders or helps to render valid any right or transaction....”

“The listing given in [s. 13(4)] is merely illustrative; no listing could be exhaustive. Nor is the fact that in some sections particular circumstances have led to express reference to other fields of law intended at any time to suggest the negation of the general application of the principles of this [subsection].”

[The overall purpose of s. 13 is to enable courts to apply the USTA within the appropriate commercial context of particular transactions. Because the USTA is intended to be flexible enough to accommodate future developments in commercial practice, some of its provisions are expressed in general terms. That generality may raise concerns about the potential for perverse interpretations of the USTA. However, such concerns typically overlook the fact that courts will not interpret the USTA in the abstract, but only within the commercial context of particular transactions, which makes perverse interpretations unlikely.]

Definitional cross references: None.

**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.

COMMENT

Source: UCC Rev 8-103(a)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-103(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 14-20 contain] rules that supplement the definitions of ‘financial asset’ and ‘security’ in [s. 1(1)]. The [s. 1(1)] definitions are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop. The rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products. No implication is made about the application of the [s. 1(1)] definitions to investment products not covered by this section.”

“[Section 14] establishes an unconditional rule that ordinary corporate stock is a security. That is so whether or not the particular issue is dealt in or traded on securities exchanges or in securities markets. Thus, shares of closely held corporations are [USTA] securities.” [This section also refers to equity interests issued by a business trust, which are commonplace in modern securities markets. The term “business trust” is generally understood in commercial practice and has been described as “... a trust for the carrying on of a business in which the interests of the beneficiaries are represented by transferable certificates ...” (Words & Phrases, Carswell, 1993, at 1-1086, citing Scott, The Law of Trusts (4th ed.,

1987 and *Trident Holdings Ltd. v. Danand Investments Ltd.* (1988), 39 B.L.R. 296 at 305, 307, 25 O.A.C. 378, 30 E.T.R. 67, 64 O.R. (2d) 65, 49 D.L.R. (4th) 1 (C.A.) the court per Morden J.A.). The reference to transferable *certificates* is outdated (and would today be replaced by securities) but the description is otherwise accurate.]

[UCC Rev 8-103(a) also refers to a joint stock company, which would be captured by the term “corporation” in s. 14. The words “stock” and “share” are synonymous.]

Definitional cross references: “corporation” s. 1(1)
“security” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-103(b)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-103(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 14-20 contain] rules that supplement the definitions of ‘financial asset’ and ‘security’ in [s.

1(1)]. The [s. 1(1)] definitions are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop. The rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products. No implication is made about the application of the [s. 1(1)] definitions to investment products not covered by this section.”

“[Section 15] establishes that the [USTA] term ‘security’ includes [shares, units or similar equity interests] offered to the public by [open-end mutual funds]. This clarification is prompted principally by the fact that the typical transaction in shares of open-end [mutual funds] is an issuance or redemption, rather than a transfer of shares from one person to another as is the case with ordinary corporate stock. For similar reasons, the definitions of [endorsement], instruction, and entitlement order in [s. 1(1)] refer to ‘redemptions’ as well as ‘transfers,’ to ensure that the [USTA] rules on such matters as signature guaranties, [sections 90-95], assurances, [sections 98 and 112], and effectiveness, [sections 36-39], apply to directions to redeem mutual fund shares. The exclusion of insurance products is needed because some insurance company [products, such as annuity contracts and what are commonly known as segregated funds, may resemble securities], but these are not traded under the usual [USTA] mechanics.”

[Securities issued by an entity that would have been an open-end mutual fund, but for the fact that it did not make a distribution to the public of its shares, units or similar equity interests, can still be USTA securities. See the definition of “security” in subsection 1(1) and section 14.]

Definitional cross references: “security” s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-103(c)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-103(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 14-20 contain] rules that supplement the definitions of ‘financial asset’ and ‘security’ in [s. 1(1)]. The [s. 1(1)] definitions are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop. The rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products. No implication is made about the application of the [s. 1(1)] definitions to investment products not covered by this section.”

“[Section 16] is designed to foreclose interpretive questions that might otherwise be raised by the application of the ‘of a type’ language of [paragraph (c) of the definition of ‘security’ in s. 1(1)] to partnership interests. [s. 16] establishes the general rule that partnership interests or shares of limited liability companies are not [USTA] securities unless they are in fact dealt in or traded on securities exchanges or in securities markets. The issuer, however, may explicitly ‘opt-in’ by specifying that the interests or shares are securities [for the purposes of the USTA]. Partnership interests or shares of limited liability companies are included in the broader term ‘financial asset.’ Thus, if they are held through a securities account, the indirect holding system rules of Part [6] apply, and the interest of a person who holds them through such an account is a security entitlement.”

[Limited liability companies are common in the U.S. but cannot be created under existing Canadian law. Nonetheless, a share in a limited liability company could become subject to Canadian law so this USTA provision eliminates any uncertainty about how such share should be characterized. This provision overrides s. 14 in relation to such a share.]

Definitional cross references: “financial asset”	s. 1(1)
“mutual fund security”	s. 15
“securities account”	s. 1(1)
“security”	s. 1(1)

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](#).

COMMENT

Source: OBCA s. 53(2)

Comparison with previous law: See OBCA s. 53(2). There are no comparable provisions in the ABCA or CBCA.

Explanation: This provision supplements the definitions of “financial asset” and “security” in s. 1(1). It makes clear that bills and notes under the *Bills of Exchange Act* are not securities, but are financial assets for the purposes of the USTA if they are held in a securities account. In effect, this provision states that the direct holding system rules in the USTA do not apply to bills and notes, so they will continue to be governed by the *Bills of Exchange Act*. However, the indirect holding system rules in USTA Part 6 do apply, provided the bill or note is held in a securities account.

There is a notable difference between Canadian and U.S. law on this point. In the UCC, a bill or note that meets the definition of “negotiable instrument” under UCC Article 3 and also meets the definition of “security certificate” under UCC Article 8 is governed by Article 8 and not Article 3. See UCC 8-103(d) and 3-102(a). In Canada, a security that also meets the definition of a bill or note is governed by the *Bills of Exchange Act*, which has some important implications (e.g. the liability of an endorser).

With respect to the indirect holding system, U.S. law and Canadian law will be the same in that a negotiable instrument such as a bill or note that is held in a securities account is a financial asset, so that the rules of USTA Part 6 will apply.

Definitional cross references: “financial asset”	s. 1(1)
“securities account”	s. 1(1)
“security”	s. 1(1)

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](#).

COMMENT

Source: New.

Comparison with previous law: See OBCA s. 53(2). There are no comparable provisions in the ABCA or CBCA.

Explanation: This provision supplements the definitions of “financial asset” and “security” in s. 1(1). It makes clear that depository bills and notes under the *Depository Bills and Notes Act* are not securities, but are financial assets for the purposes of the USTA if they are held in a securities account. In effect, this provision states that the direct holding system rules in the USTA do not apply to depository bills and notes, so the direct transfer of such instruments to CDS will continue to be governed by the *Depository Bills and Notes Act*. However, the indirect holding system rules in USTA Part 6 do apply, provided the depository bill or note is held in a securities account. Accordingly, certain provisions of the *Depository Bills and Notes Act*, including sections 8 and 9, will no longer serve any purpose.

There is a notable difference between Canadian and U.S. law on this point. In the UCC, a bill or note that meets the definition of “negotiable instrument” under UCC Article 3 and also meets the definition of “security certificate” under UCC Article 8 is governed by Article 8 and not Article 3. See UCC 8-103(d) and 3-102(a). In Canada, a security that also meets the definition of a depository bill or note is governed by the *Depository Bills and Notes Act*.

Definitional cross references: “financial asset”	s. 1(1)
“securities account”	s. 1(1)
“security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-103(e)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-103(e), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 14-20 contain] rules that supplement the definitions of ‘financial asset’ and ‘security’ in [s. 1(1)]. The [s. 1(1)] definitions are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop. The rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products. No implication is made about the application of the [s. 1(1)] definitions to investment products not covered by this section.”

“[Section 19] is included to clarify the treatment of investment products such as traded stock options, which are treated as financial assets but not securities. Thus, the indirect holding system rules of Part [6] apply, but the direct holding system rules of Parts [3, 4, and 5] do not.”

[Section 19 and the USTA definition of “security” in s. 1(1) correct a defect in the existing OBCA definition of security, which includes “any right to acquire such a share, participation, interest or obligation”. Certain rights to acquire a security (i.e. a right against an ordinary issuer) should be captured by the definition of “security” because those rights trade like other securities and are appropriately dealt with by the rules of USTA Parts 3, 4, and 5. However, different considerations apply to options issued and cleared through the Canadian Derivatives Clearing Corporation (CDCC). CDCC functions as a central counter-party to each options trade and each option is a contractual right against CDCC—not an interest or an obligation of a separate issuer.] “The rules of [USTA Parts 3, 4 and 5] do not well describe the

obligations and rights of [CDCC]. On the other hand, the rules of [Part 6, and the related PPSA rules] on security interests and priorities, do provide a workable legal framework for the commercial law analysis for the rights of the participants in the options market. Accordingly, publicly traded securities options [issued by a clearing agency] are included within the definition of “financial asset” but not “security”.”

Definitional cross references: “clearing agency”	s. 1(1)
“commodity contract”	s. 1(1)
“financial asset”	s. 1(1)
“security”	s. 1(1)

Commodity contracts

20 A [commodity contract](#) is not a [security](#) or a [financial asset](#) for the purposes of this Act.

COMMENT

Source: UCC Rev 8-103(f)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-103(f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 14-20 contain] rules that supplement the definitions of ‘financial asset’ and ‘security’ in [s. 1(1)]. The [s. 1(1)] definitions are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop. The rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products. No implication is made about the application of the [s. 1(1)] definitions to investment products not covered by this section.”

“[Section. 20] excludes commodity contracts from all of [the USTA]. However, the [proposed PPSA] rules on security interests in investment property do apply to security interests in commodity positions... ‘Commodity contract’ is defined in [the PPSA and the definition in the USTA is cross-referenced to the PPSA. It generally means a commodity futures contract, a commodity futures option or other similar contract that is traded (i) on or subject to the rules of a commodity futures exchange recognized or otherwise regulated by a securities regulatory authority in Canada, or (ii) on a foreign commodities futures exchange and is carried on the books of a ‘commodity intermediary’ for a ‘commodity customer’, which terms are also defined in the PPSAs—see OPPSA/APPSA s. 1(1)].”

Definitional cross references: “commodity contract” s. 1(1)
“financial asset” s. 1(1)
“security” s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-104(a)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-104(a) as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 21-24 list] the ways in which interests in securities and other financial assets are acquired under

[the USTA]. In that sense, [they describe] the scope of [the USTA]. [This section] describes the two ways that a person may acquire a security or interest therein under [the USTA]: (1) by delivery [s. 79], and (2) by acquiring a security entitlement [s. 106]. Each of these methods is described in detail in the relevant substantive provisions of [the USTA]. Part [4], beginning with the definition of ‘delivery’ in [s. 79], describes how interests in securities are acquired in the direct holding system. Part [6], beginning with the rules of [s. 106] on how security entitlements are acquired, describes how interests in securities are acquired in the indirect holding system.”

Definitional cross references: “person”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security entitlement”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-104(b)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-104(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 21-24 list] the ways in which interests in securities and other financial assets are acquired under [the USTA]. In that sense, [they describe] the scope of [the USTA]....”

“[Section. 22] specifies how a person may acquire an interest under [the USTA] in a financial asset other than a security. [The USTA] deals with financial assets other than securities only insofar as they are held

in the indirect holding system. For example, a bankers' acceptance falls within the definition of 'financial asset,' so if it is held through a securities account the entitlement holder's right to it is a security entitlement governed by Part [6]. The bankers' acceptance itself, however, is a [bill of exchange governed by the *Bills of Exchange Act* or, a depository bill governed by the *Depository Bills and Notes Act*], not by [the USTA]. Thus, the provisions of [Parts 3, 4, and 5 of the USTA] that deal with the rights of direct holders of securities are not applicable. [The *Bills of Exchange Act* or the *Depository Bills and Notes Act*], not [the USTA], specifies how one acquires a direct interest in a bankers' acceptance. If a bankers' acceptance is delivered to a [clearing agency] to be held for the account of the [clearing agency's] participants, the [clearing agency] becomes the holder of the bankers' acceptance under the [*Bills of Exchange Act* or the *Depository Bills and Notes Act*] rules specifying how [such] instruments are transferred. The rights of the [clearing agency's] participants, however, are governed by [Part 6 of the USTA].”

Definitional cross references: “financial asset”	s. 1(1)
“person”	s. 1(1)
“security”	s. 1(1)
“security entitlement”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-104(c)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-104(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 21-24 list] the ways in which interests in securities and other financial assets are acquired under [the USTA]. In that sense, [they describe] the scope of [the USTA]....”

“The distinction in usage in [the USTA] between the term ‘security’ (and its correlatives ‘security certificate’ and ‘uncertificated security’) on the one hand, and ‘security entitlement’ on the other, corresponds to the distinction between the direct and indirect holding systems. For example, with respect to certificated securities that can be held either directly or through intermediaries, obtaining possession of a security certificate and acquiring a security entitlement are both means of holding the underlying security. For many other purposes, there is no need to draw a distinction between the means of holding. For purposes of commercial law analysis, however, the form of holding may make a difference. Where an item of property can be held in different ways, the rules on how one deals with it, including how one transfers it or how one grants a security interest in it, differ depending on the form of holding.”

“Although a security entitlement is means of holding the underlying security or other financial asset, a person who has a security entitlement does not have any direct claim to a specific asset in the possession of the securities intermediary. [Section 23] provides explicitly that a person who acquires a security entitlement is a ‘purchaser’ of any security, security entitlement, or other financial asset held by the securities intermediary only in the sense that under [s. 108] a security entitlement is treated as a *sui generis* form of property interest.”

Definitional cross references:	
“financial asset”	s. 1(1)
“person”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-104(d)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-104(d), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Sections 21-24 list] the ways in which interests in securities and other financial assets are acquired under [the USTA]. In that sense, [they describe] the scope of [the USTA]....”

“[Section 24] is designed to ensure that parties will retain their expected legal rights and duties under [the USTA]. One of the major changes made by the [USTA] is that the rules for the indirect holding system are stated in terms of the ‘security entitlements’ held by investors, rather than speaking of them as holding direct interests in securities. [Section 24] is designed as a translation rule to eliminate problems of co-ordination of terminology, and facilitate the continued use of systems for the efficient handling of securities and financial assets through securities intermediaries and [clearing agencies]. The efficiencies of a securities intermediary or [clearing agency] are, in part, dependent on the ability to transfer securities credited to securities accounts in the intermediary or [clearing agency] to the account of an issuer, its agent, or other person by book entry in a manner that permits exchanges, redemptions, conversions, and other transactions (which may be governed by pre-existing or new agreements, constitutional documents, or other instruments) to occur and to avoid the need to withdraw from immobilization in an intermediary or [clearing agency] physical securities in order to deliver them for such purposes. Existing corporate charters, indentures and like documents may require the ‘presentation,’ ‘surrender,’ ‘delivery,’ or ‘transfer’ of securities or security certificates for purposes of exchange, redemption, conversion or other reason. Likewise, documents may use a wide variety of terminology to describe, in the context for example of a tender or exchange offer, the means of putting the offeror or the issuer or its agent in possession of the security. [Section 24] takes the place of provisions of prior law which could be used to reach the legal conclusion that book-entry transfers are equivalent to physical delivery to the person to whose account the book entry is credited.”

Definitional cross references: “financial asset”	s. 1(1)
“person”	s. 1(1)
“security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-105(a)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to transfers of securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-105(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. The rules specifying whether adverse claims can be asserted against persons who acquire securities or security entitlements, [s. 81, s. 107 and 115], provide that one is protected against an adverse claim only if one takes without notice of the claim. This section defines notice of an adverse claim.”

“The [definition of ‘notice’ in s. 11]—which provides that a person has notice of a fact if [‘information comes to the person’s attention under circumstances in which a reasonable person would take cognizance of it’] -- does not apply to the interpretation of ‘notice of adverse claims.’ The [s. 11] definition of ‘notice’

does, however, apply to usages of that term and its cognates in [the USTA] in contexts other than notice of adverse claims.”

“2. This section must be interpreted in light of the definition of ‘adverse claim’ in [s. 1(1), and the fact that it is proposed that Canadian PPSAs continue to include cut-off rules that are not included in UCC Rev 9, such as proposed OPPSA s. 28(6) and APPSA s. 30(9)]. ‘Adverse claim’ does not include all circumstances in which a third party has a property interest in securities, but only those situations where a security is transferred in violation of the claimant's property interest. Therefore, awareness that someone other than the transferor has a property interest is not notice of an adverse claim. The transferee must be aware that the transfer violates the other party's property interest. If A holds securities in which B has some form of property interest, and A transfers the securities to C, C may know that B has an interest, but infer that A is acting in accordance with A's obligations to B. The mere fact that C knew that B had a property interest does not mean that C had notice of an adverse claim. Whether C had notice of an adverse claim depends on whether C had sufficient awareness that A was acting in violation of B's property rights. The rule in [s. 26] is a particularization of this general principle.”

“3. [Section 25(a)] provides that a person has notice of an adverse claim if the person has knowledge of the adverse claim. Knowledge is defined in [s. 11 to include ‘when information comes to the person’s attention under circumstances in which a reasonable person would take cognizance of it’, which is intended to be substantively uniform with what the UCC describes as ‘actual knowledge’].”

“4. [Section 25(b)] provides that a person has notice of an adverse claim if the person is aware of a significant probability that an adverse claim exists and deliberately avoids information that might establish the existence of the adverse claim. This is intended to codify the ‘willful blindness’ test that has been applied in such cases. See *May v. Chapman*, 16 M. & W. 355, 153 Eng. Rep. 1225 (1847); *Goodman v. Simonds*, 61 U.S. 343; (1857) [*Sweeny v. Bank of Montreal* (1885), 12 S.C.R. 661, *aff’d* 12 App. Cas. 617; *Bank Leu AG v. Gaming Lottery Corp.* (2001), 29 B.L.R. (3d) 68 (Ont. S.C.J. [Commercial List]), *aff’d* [2003] O.J. No. 3213 (C.A.)].

“The first prong of the willful blindness test of [s. 25(b)] turns on whether the person is aware [of] facts sufficient to indicate that there is a significant probability that an adverse claim exists. The ‘awareness’ aspect necessarily turns on the actor's state of mind. Whether facts known to a person make the person aware of a ‘significant probability’ that an adverse claim exists turns on facts about the world and the conclusions that would be drawn from those facts, taking account of the experience and position of the

person in question. A particular set of facts might indicate a significant probability of an adverse claim to a professional with considerable experience in the usual methods and procedures by which securities transactions are conducted, even though the same facts would not indicate a significant probability of an adverse claim to a non-professional.”

“The second prong of the willful blindness test of [s. 25(b)] turns on whether the person ‘deliberately avoids information’ that would establish the existence of the adverse claim. The test is the character of the person's response to the information the person has. The question is whether the person deliberately failed to seek further information because of concern that suspicions would be confirmed.”

“Application of the ‘deliberate avoidance’ test to a transaction by an organization focuses on the knowledge and the actions of the individual or individuals conducting the transaction on behalf of the organization. Thus, an organization that purchases a security is not willfully blind to an adverse claim unless the officers or agents who conducted that purchase transaction are willfully blind to the adverse claim. Under the two prongs of the willful blindness test, the individual or individuals conducting a transaction must know of facts indicating a substantial probability that the adverse claim exists and deliberately fail to seek further information that might confirm or refute the indication. For this purpose, information known to individuals within an organization who are not conducting or aware of a transaction, but not forwarded to the individuals conducting the transaction, is not pertinent in determining whether the individuals conducting the transaction had knowledge of a substantial probability of the existence of the adverse claim. Cf. [Section 11(4)-(6)]. An organization may also ‘deliberately avoid information’ if it acts to preclude or inhibit transmission of pertinent information to those individuals responsible for the conduct of purchase transactions.”

[Section 25(a) and s. 25(b) are intended to set a subjective test, substantively uniform with the interpretation of the corresponding provisions of UCC Rev8-105 in *Decker v. Yorkton Securities, Inc.*, 106 Cal. App. 4th 1315, 131 Cal. Rptr. 2d 645, 2003 Cal. App. LEXIS 391, 2003 Cal. Daily Op. Service 2313, 2003 D.A.R. 2903 (Cal. App. 1st Dist. 2003).]

“5. [Section 25(c)] provides that a person has notice of an adverse claim if the person would have learned of the adverse claim by conducting an investigation that is required by other statute or regulation. This rule applies only if there is some other statute or regulation that explicitly requires persons dealing with securities to conduct some investigation. [In the U.S.] federal securities laws require that brokers and banks, in certain specified circumstances, check with a stolen securities registry to determine whether

securities offered for sale or pledge have been reported as stolen....” [In Canada, there are currently no statutory or regulatory requirements to investigate whether an adverse claim exists. The Official Comment to Rev8-105 notes that, in the U.S., failure to comply with the obligation imposed by U.S. federal securities laws was held to constitute notice of an adverse claim even prior to the enactment of Rev8-105, and s. 25(c) is intended to make clear that the same result would follow in Canada if a statute or regulation explicitly required some investigation.]

Definitional cross references: “adverse claim”	s. 1(1)
“knows”	s. 11
“person”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-105(b)

Comparison with previous law: See OBCA s. 70(2); ABCA s. 60(2); CBCA s. 61(2); all of which are based on, and similar to, (1962) UCC 8-304(2).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-105(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 26] provides explicitly for some situations involving purchase from one described or identifiable as a representative. Knowledge of the existence of the representative relation is not enough in itself to constitute ‘notice of an adverse claim’ that would disqualify the purchaser from protected purchaser status. A purchaser may take a security on the inference that the representative is acting properly. Knowledge that a security is being transferred to an individual account of the representative or that the proceeds of the transaction will be paid into that account is not sufficient to constitute ‘notice of an adverse claim,’ but knowledge that the proceeds will be applied to the personal indebtedness of the representative is. See *State Bank of Binghamton v. Bache*, 162 Misc. 128, 293 N.Y.S. 667 (1937).” [There appear to be no Canadian cases dealing with this provision in existing law. There is no substantive change from existing law.]

Definitional cross references: “adverse claim”	s. 1(1)
“financial asset”	s. 1(1)
“knows”	s. 11
“notice of an adverse claim”	sections 25-29
“person”	s. 1(1)
“representative”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-105(c)

Comparison with previous law: See OBCA s. 70(3); ABCA s. 61; CBCA s. 62; all of which are based

on, and similar to, (1962) UCC 8-305.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-105(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 27] specifies whether a purchaser of a ‘stale’ security is charged with notice of adverse claims, and therefore disqualified from protected purchaser status under [s. 81]. The fact of ‘staleness’ is viewed as notice of certain defects after the lapse of stated periods, but the maturity of the security does not operate automatically to affect holders' rights. The periods of time here stated are shorter than those appearing in the provisions of [the USTA] on staleness as notice of defects or defenses of an issuer ([s. 71]) since a purchaser who takes a security after funds or other securities are available for its redemption has more reason to suspect claims of ownership than issuer's defenses. An owner will normally turn in a security rather than transfer it at such a time. Of itself, a default never constitutes notice of a possible adverse claim. To provide otherwise would not tend to drive defaulted securities home and would serve only to disrupt current financial markets where many defaulted securities are actively traded. Unpaid or overdue coupons attached to a bond do not bring it within the operation of this subsection, though they may be relevant under the general test of notice of adverse claims in [s. 25].” [There appear to be no Canadian cases dealing with this provision in existing law. There is no substantive change from existing law.]

Definitional cross references: “adverse claim” s. 1(1)
“security certificate” s. 1(1)

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.

(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.

COMMENT

Source: UCC Rev 8-105(d)

Comparison with previous law: See OBCA s. 70(1); ABCA s. 60(1); CBCA s. 61(1); all of which are based on, and similar to, (1962) UCC 8-304(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-105(d), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 28] provides the owner of a certificated security with a means of protection while a security certificate is being sent in for redemption or exchange. The owner may endorse it ‘for collection’ or ‘for surrender,’ and this constitutes notice of the owner's claims, under [this section].” [There appear to be no Canadian cases dealing with this provision in existing law. There is no substantive change from existing law.]

Definitional cross references:

“certificated security”	s. 1(1)
“bearer form”	s. 1(1)
“endorsement”	s. 1(1)
“person”	s. 1(1)
“purchaser”	s. 1(1)
“registered form”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-105(e)

Comparison with previous law: There is no comparable provision in existing Canadian law relating strictly to the transfer of securities. See OPPSA s. 46(5) and APPSA s. 47, which provide that registration of a financing statement is not constructive notice or knowledge to third parties of its existence or contents.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-105(e). In Canada, provisions such as existing OPPSA s. 28(6) and (7), and APPSA s. 31(3), and proposed OPPSA s. 28(6)-(10) and APPSA s. 30(9)-(13) deal specifically with notice of security interests and cut-off rules applicable to security interests. The UCC does not contain comparable provisions, relying solely upon the Rev8 adverse claim cut-off rules to reach the same result. The PPSA cut-off rules provide an extra degree of certainty and do not detract from the operation of the USTA adverse claim cut-off rules. Although this provision may rarely be relied upon (as a result of the operation of the PPSA cut-off rules), it is stated to provide certainty on this issue and uniformity between the operation of the Rev8 and USTA adverse claim cut-off rules.

Definitional cross references: “financial asset” s. 1(1)
“security interest” s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-106(a) and (b)

Comparison with previous law: There is no comparable provision in existing Canadian law.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-106(a) and (b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The concept of ‘control’ plays a key role in various provisions dealing with the rights of purchasers, including secured parties. See [s. 81 (protected purchasers); s. 108(7) (purchasers from securities intermediaries); s. 115 (purchasers of security entitlements from entitlement holders); proposed OPPSA s. 22.1(1) and APPSA s. 24.1(1) (perfection of security interests); proposed OPPSA s. 28.1 and APPSA s. 35.1 (priorities among conflicting security interests)].”

“Obtaining ‘control’ means that the purchaser has taken whatever steps are necessary, given the manner in which the securities are held, to place itself in a position where it can have the securities sold, without further action by the owner.”

“[Section 30(1)] provides that a purchaser obtains ‘control’ with respect to a certificated security in bearer form by taking ‘delivery,’ as defined in [s. 79]. [Subsection (2)] provides that a purchaser obtains ‘control’ with respect to a certificated security in registered form by taking ‘delivery,’ as defined in [s. 79], provided that the security certificate has been [endorsed] to the purchaser or in blank. [Section 79] provides that delivery of a certificated security occurs when the purchaser obtains possession of the security certificate, or when an agent for the purchaser (other than a securities intermediary) either acquires possession or acknowledges that the agent holds for the purchaser.”

Definitional cross references: “bearer form”	s. 1(1)
“certificated security”	s. 1(1)
“delivery”	s. 4 and s. 79
“endorsement”	s. 1(1)
“purchaser”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-106(c) and (f)

Comparison with previous law: There is no comparable provision in existing Canadian law.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-106(c) and (f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The concept of ‘control’ plays a key role in various provisions dealing with the rights of purchasers, including secured parties. See [s. 81 (protected purchasers); s. 108(7) (purchasers from securities intermediaries); s. 115 (purchasers of security entitlements from entitlement holders); proposed OPPSA s. 22.1(1) and APPSA s. 24.1(1) (perfection of security interests); proposed OPPSA s. 28.1 and APPSA s. 35.1 (priorities among conflicting security interests)].”

“Obtaining ‘control’ means that the purchaser has taken whatever steps are necessary, given the manner in which the securities are held, to place itself in a position where it can have the securities sold, without further action by the owner.”

“[Section 31(1)] specifies the means by which a purchaser can obtain control over uncertificated securities which the transferor holds directly. Two mechanisms are possible.”

“Under subsection [(1)(a)], securities can be ‘delivered’ to a purchaser. [Section 79(2)] provides that

‘delivery’ of an uncertificated security occurs when the purchaser becomes the registered holder. So far as the issuer is concerned, the purchaser would then be entitled to exercise all rights of ownership. See [s. 75]. As between the parties to a purchase transaction, however, the rights of the purchaser are determined by their contract....Arrangements covered by this paragraph are analogous to arrangements in which bearer certificates are delivered to a secured party—so far as the issuer or any other parties are concerned, the secured party appears to be the outright owner, although it is in fact holding as collateral property that belongs to the debtor.”

“Under subsection [(1)(b)], a purchaser has control if the issuer has agreed to act on the instructions of the purchaser, even though the owner remains listed as the registered owner. The issuer, of course, would be acting wrongfully against the registered owner if it entered into such an agreement without the consent of the registered owner. [Section 34] makes this point explicit. The subsection [(1)(b)] provision makes it possible for issuers to offer a service akin to the registered pledge device of the 1978 version of [UCC] Article 8, without mandating that all issuers offer that service.” [See s. 34(3).]

“For a purchaser to have ‘control’ under [s. 31(1)(b)], it is essential that the issuer... actually be a party to the agreement. If a debtor gives a secured party a power of attorney authorizing the secured party to act in the name of the debtor, but the issuer...does not specifically agree to this arrangement, the secured party does not have ‘control’ within the meaning of [s. 31(1)(b)] because the issuer...is not a party to the agreement. The secured party does not have control under [s. 31(1)(a)] because, although the power of attorney might give the secured party authority to act on the debtor's behalf as an agent, the secured party has not actually become the registered owner....”

“The term ‘control’ is used in a particular defined sense. The requirements for obtaining control are set out in this section [and sections 30, 32 and 33]. The concept is not to be interpreted by reference to similar concepts in other bodies of law. In particular, the requirements for ‘possession’ derived from the common law of pledge are not to be used as a basis for interpreting subsection [(1)(b) or s. 32(1)(b)]. Those provisions are designed to supplant the concepts of ‘constructive possession’ and the like. A principal purpose of the ‘control’ concept is to eliminate the uncertainty and confusion that results from attempting to apply common law possession concepts to modern securities holding practices.”

“The key to the control concept is that the purchaser has the ability to have the securities sold or transferred without further action by the transferor. There is no requirement that the powers held by the purchaser be exclusive. For example, in a secured lending arrangement, if the secured party wishes, it can

allow the debtor to retain the right to make substitutions, to direct the disposition of the uncertificated security... or otherwise to give instructions.... [s. 31(2)] is included to make clear the general point stated in [s. 31(1)] that the test of control is whether the purchaser has obtained the requisite power, not whether the debtor has retained other powers. There is no implication that retention by the debtor of powers other than those mentioned in subsection [(2)] is inconsistent with the purchaser having control. Nor is there a requirement that the purchaser's powers be unconditional, provided that further consent of the entitlement holder is not a condition."

Definitional cross references: "delivery"	s. 4 and s. 79
"instruction"	s. 1(1)
"issuer"	s. 1(1)
"purchaser"	s. 1(1)
"secured party"	s. 1(1)
"security interest"	s. 1(1)
"uncertificated security"	s. 1(1)

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.

(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.

COMMENT

Source: UCC Rev 8-106(d) and (f)

Comparison with previous law: There is no comparable provision in existing Canadian law.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-106(d) and (f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The concept of ‘control’ plays a key role in various provisions dealing with the rights of purchasers, including secured parties. See [s. 81 (protected purchasers); s. 108(7) (purchasers from securities intermediaries); s. 115 (purchasers of security entitlements from entitlement holders); proposed OPPSA s. 22.1(1) and APPSA s. 24.1(1) (perfection of security interests); proposed OPPSA s. 28.1 and APPSA s. 35.1 (priorities among conflicting security interests)].”

“Obtaining ‘control’ means that the purchaser has taken whatever steps are necessary, given the manner in which the securities are held, to place itself in a position where it can have the securities sold, without further action by the owner.”

“[Section 32(1)] specifies the means by which a purchaser can obtain control of a security entitlement. Three mechanisms are possible, analogous to those provided in [s. 31(1)] for uncertificated securities. Under subsection [(1)(a)], a purchaser has control if it is the entitlement holder. This subsection would apply whether the purchaser holds through the same intermediary that the debtor used, or has the securities position transferred to its own intermediary. Subsection [(1)(b)] provides that a purchaser has control if the securities intermediary has agreed to act on entitlement orders originated by the purchaser if no further consent by the entitlement holder is required. Under subsection [(1)(b)], control may be achieved even though the original entitlement holder remains as the entitlement holder. Finally, a purchaser may obtain control under subsection [(1)(c)] if another person has control and the person acknowledges that it has control on the purchaser’s behalf. Control under subsection [(1)(c)] parallels the delivery of certificated securities and uncertificated securities under [s. 79]. Of course, the acknowledging person cannot be the debtor.”

“This section specifies only the minimum requirements that such an arrangement must meet to confer ‘control’; the details of the arrangement can be specified by agreement. The arrangement might cover all

of the positions in a particular account or subaccount, or only specified positions. There is no requirement that the control party's right to give entitlement orders be exclusive. The arrangement might provide that only the control party can give entitlement orders, or that either the entitlement holder or the control party can give entitlement orders. See [s. 35].”

“The following examples illustrate the application of [s. 32(1)]:”

“Example 1. Debtor grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds through an account with Able & Co. Alpha Bank also has an account with Able. Debtor instructs Able to transfer the shares to Alpha Bank, and Able does so by crediting the shares to Alpha’s account. Alpha has control of the 1000 shares under subsection [(1)(a)]. Although Debtor may have become the beneficial owner of the new securities entitlement, as between Debtor and Alpha, Able has agreed to act on Alpha’s entitlement orders because, as between Able and Alpha, Alpha has become the entitlement holder. See [s. 111].”

“Example 2. Debtor grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds through an account with Able & Co. Alpha does not have an account with Able. Alpha uses Beta as its securities custodian. Debtor instructs Able to transfer the shares to Beta, for the account of Alpha, and Able does so. Alpha has control of the 1000 shares under subsection [(1)(a)]. As in Example 1, although Debtor may have become the beneficial owner of the new securities entitlement, as between Debtor and Alpha, Beta has agreed to act on Alpha’s entitlement orders because, as between Beta and Alpha, Alpha has become the entitlement holder.”

“Example 3. Debtor grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds through an account with Able & Co. Debtor, Able, and Alpha enter into an agreement under which Debtor will continue to receive dividends and distributions, and will continue to have the right to direct dispositions, but Alpha also has the right to direct dispositions. Alpha has control of the 1000 shares under subsection [(1)(b)].”

“Example 4. Able & Co., a securities dealer, grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Able holds through an account with [Clearing Agency]. Able causes [Clearing Agency] to transfer the shares into Alpha's account at [Clearing Agency]. Alpha has control of the 1000 shares under subsection [(1)(a)].”

“Example 5. Able & Co., a securities dealer, grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Able holds through an account with [Clearing Agency]. Alpha does not have an account with [Clearing Agency]. It holds its securities through Beta Bank, which does have an account with [Clearing Agency]. Able causes [Clearing Agency] to transfer the shares into Beta's account at [Clearing Agency]. Beta credits the position to Alpha's account with Beta. Alpha has control of the 1000 shares under subsection [(1)(a)].”

“Example 6. Able & Co. a securities dealer, grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Able holds through an account with [Clearing Agency]. Able causes [Clearing Agency] to transfer the shares into a pledge account, pursuant to an agreement under which Able will continue to receive dividends, distributions, and the like, but Alpha has the right to direct dispositions. As in Example 3, Alpha has control of the 1000 shares under subsection [(1)(b)].”

“Example 7. Able & Co. a securities dealer, grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Able holds through an account with [Clearing Agency]. Able, Alpha, and [Clearing Agency] enter into an agreement under which [Clearing Agency] will act on instructions from Alpha with respect to the XYZ Co. stock carried in Able's account, but Able will continue to receive dividends, distributions, and the like, and will also have the right to direct dispositions. As in Example 3, Alpha has control of the 1000 shares under subsection [(1)(b)].”

“Example 8. Able & Co. a securities dealer, holds a wide range of securities through its account at [Clearing Agency]. Able enters into an arrangement with Alpha Bank pursuant to which Alpha provides financing to Able secured by securities identified as the collateral on lists provided by Able to Alpha on a daily or other periodic basis. Able, Alpha, and [Clearing Agency] enter into an agreement under which [Clearing Agency] agrees that if at any time Alpha directs [Clearing Agency] to do so, [Clearing Agency] will transfer any securities from Able's account at Alpha's instructions. Because [Clearing Agency] has agreed to act on Alpha's instructions with respect to any securities carried in Able's account, at the moment that Alpha's security interest attaches to securities listed by Able, Alpha obtains control of those securities under subsection [(1)(b)]. There is no requirement that [Clearing Agency] be informed of which securities Able has pledged to Alpha.”

“Example 9. Debtor grants Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds through an account with Able & Co. Beta Bank agrees with Alpha to act as Alpha's collateral agent with respect to the security entitlement. Debtor, Able, and Beta

enter into an agreement under which Debtor will continue to receive dividends and distributions, and will continue to have the right to direct dispositions, but Beta also has the right to direct dispositions. Because Able has agreed that it will comply with entitlement orders originated by Beta without further consent by Debtor, Beta has control of the security entitlement (see Example 3). Because Beta has control on behalf of Alpha, Alpha also has control under subsection [(1)(c)]. It is not necessary for Able to enter into an agreement directly with Alpha or for Able to be aware of Beta’s agency relationship with Alpha.”

“For a purchaser to have ‘control’ under [s. 32(1)(b)], it is essential that the...securities intermediary...actually be a party to the agreement. If a debtor gives a secured party a power of attorney authorizing the secured party to act in the name of the debtor, but the...securities intermediary does not specifically agree to this arrangement, the secured party does not have ‘control’ within the meaning of [s. 32(1)(b)] because the...securities intermediary is not a party to the agreement. The secured party does not have control under [s. 32(1)(a)] because, although the power of attorney might give the secured party authority to act on the debtor's behalf as an agent, the secured party has not actually become the...entitlement holder.”

“The term ‘control’ is used in a particular defined sense. The requirements for obtaining control are set out in this section [and sections 30, 31 and 33]. The concept is not to be interpreted by reference to similar concepts in other bodies of law. In particular, the requirements for ‘possession’ derived from the common law of pledge are not to be used as a basis for interpreting subsection [(1)(b) or s. 31(1)(b)]. Those provisions are designed to supplant the concepts of ‘constructive possession’ and the like. A principal purpose of the ‘control’ concept is to eliminate the uncertainty and confusion that results from attempting to apply common law possession concepts to modern securities holding practices.”

“The key to the control concept is that the purchaser has the ability to have the securities sold or transferred without further action by the transferor. There is no requirement that the powers held by the purchaser be exclusive. For example, in a secured lending arrangement, if the secured party wishes, it can allow the debtor to retain the right to make substitutions, to direct the disposition of the...security entitlement, or otherwise to give...entitlement orders. (As explained in [the Comment to the definition of ‘entitlement order’ in s. 1(1)], an entitlement order includes a direction under [s. 113] to the securities intermediary to transfer a financial asset to the account of the entitlement holder at another financial intermediary or to cause the financial asset to be transferred to the entitlement holder in the direct holding system (e.g. by delivery of a [security certificate] registered in the name of the former entitlement holder).) [s. 32(2)] is included to make clear the general point stated in [s. 32(1)] that the test of control is whether

the purchaser has obtained the requisite power, not whether the debtor has retained other powers. There is no implication that retention by the debtor of powers other than those mentioned in subsection [(2)] is inconsistent with the purchaser having control. Nor is there a requirement that the purchaser's powers be unconditional, provided that further consent of the entitlement holder is not a condition."

"Example 10. Debtor grants to Alpha Bank and to Beta Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds through an account with Able & Co. By agreement among the parties, Alpha's security interest is senior and Beta's is junior. Able agrees to act on the entitlement orders of either Alpha or Beta. Alpha and Beta each has control under subsection [(1)(b)]. Moreover, Beta has control notwithstanding a term of Able's agreement to the effect that Able's obligation to act on Beta's entitlement orders is conditioned on Alpha's consent. The crucial distinction is that Able's agreement to act on Beta's entitlement orders is not conditioned on Debtor's further consent."

"Example 11. Debtor grants to Alpha Bank a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds through an account with Able & Co. Able agrees to act on the entitlement orders of Alpha, but Alpha's right to give entitlement orders to the securities intermediary is conditioned on the Debtor's default. Alternatively, Alpha's right to give entitlement orders is conditioned upon Alpha's statement to Able that Debtor is in default. Because Able's agreement to act on Alpha's entitlement orders is not conditioned on Debtor's further consent, Alpha has control of the securities entitlement under either alternative."

"In many situations, it will be better practice for both the securities intermediary and the purchaser to insist that any conditions relating in any way to the entitlement holder be effective only as between the purchaser and the entitlement holder. That practice would avoid the risk that the securities intermediary could be caught between conflicting assertions of the entitlement holder and the purchaser as to whether the conditions in fact have been met. Nonetheless, the existence of unfulfilled conditions effective against the intermediary would not preclude the purchaser from having control."

Definitional cross references: "entitlement holder"	s. 1(1)
"person"	s. 1(1)
"purchaser"	s. 1(1)
"secured party"	s. 1(1)
"securities intermediary"	s. 1(1)
"security entitlement"	s. 1(1)

“security interest” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-106(e)

Comparison with previous law: There is no comparable provision in existing Canadian law.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-106(e), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The concept of ‘control’ plays a key role in various provisions dealing with the rights of purchasers, including secured parties. See [s. 81 (protected purchasers); s. 108(7) (purchasers from securities intermediaries); s. 115 (purchasers of security entitlements from entitlement holders); proposed OPPSA s. 22.1(1) and APPSA s. 24.1(1) (perfection of security interests); proposed OPPSA s. 28.1 and APPSA s. 35.1 (priorities among conflicting security interests)].”

“Obtaining ‘control’ means that the purchaser has taken whatever steps are necessary, given the manner in which the securities are held, to place itself in a position where it can have the securities sold, without further action by the owner.”

“[Section 33] provides that if an interest in a security entitlement is granted by an entitlement holder to the securities intermediary through which the security entitlement is maintained, the securities intermediary has control. A common transaction covered by this provision is a margin loan from a broker to its customer.” [This section does not apply where financing is provided by a separate entity. In that situation, the customer, creditor and intermediary must agree that the intermediary will act upon the creditor’s instructions without the further consent of the customer, which gives the creditor control under s. 32(1)(b).]

Definitional cross references: “entitlement holder”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-106(g)

Comparison with previous law: There is no comparable provision in existing Canadian law.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-106(g). It explicitly states that an issuer of an uncertificated security must have the consent of the registered owner before entering into a control agreement; that the issuer need not confirm the existence of such an agreement to another party unless requested to do so by the registered owner; and that an issuer is not required to enter into a control agreement even if the registered owner so requests. Section 35 states parallel rules applicable to securities intermediaries.

Definitional cross references: “issuer”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-106(g)

Comparison with previous law: There is no comparable provision in existing Canadian law.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-106(g). It explicitly states that securities intermediary must have the consent of the entitlement holder before entering into a control agreement; that the securities intermediary need not confirm that existence of such an agreement to another party unless requested to do so by the entitlement holder; and that a securities intermediary is not required to enter into a control agreement even if the entitlement holder so requests. Section 34 states parallel rules applicable to issuers of uncertificated securities.

Definitional cross references: “entitlement holder” s. 1(1)
“securities intermediary” s. 1(1)

**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.

COMMENT

Source: UCC Rev 8-107(b)

Comparison with previous law: Section 36(c) is, to a limited extent, similar to previous OBCA s. 76(1); ABCA s. 67; CBCA s. 68; all of which are based on, and similar to, (1962) UCC 8-311(a).

Previous law was unnecessarily complex and confusing. The previous definition of “appropriate person” included a trustee or fiduciary even though that person was no longer serving in that capacity and an endorsement by that person was, arguably, unauthorized. Previous law stated that an issuer who registered the transfer of a security upon an unauthorized endorsement was liable for improper registration but the owner of a security might be precluded from asserting the ineffectiveness of an unauthorized endorsement (see OBCA s. 76; ABCA s. 67; CBCA s. 68).

The USTA uses two concepts: the defined term “appropriate person”, and when an endorsement, instruction or entitlement order is “effective”. This section and sections 37-39 specify when an endorsement, instruction or entitlement order is “effective”. The use of these two concepts enables the USTA to more clearly state the legal effect of an endorsement, instruction or entitlement order in various circumstances.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-107(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section [together with the definition of ‘appropriate person’ in s. 1(1) and sections 37-39, define]

two concepts, 'appropriate person' and 'effective.' Effectiveness is a broader concept than appropriate person. For example, if a security or securities account is registered in the name of Mary Roe, Mary Roe is the 'appropriate person,' but an [endorsement], instruction, or entitlement order made by John Doe is 'effective' if, under agency or other law, Mary Roe is precluded from denying Doe's authority. Treating these two concepts separately facilitates [more precise statement of the USTA rules] that state the legal effect of an [endorsement], instruction, or entitlement order. For example, a securities intermediary is protected against liability if it acts on an effective entitlement order, but has a duty to comply with an entitlement order only if it is originated by an appropriate person. See [s. 63 and s. 112]."

"One important application of the 'effectiveness' concept is in the direct holding system rules on the rights of purchasers. A purchaser of a certificated security in registered form can qualify as a protected purchaser who takes free from adverse claims under [s. 81] only if the purchaser obtains 'control.' [Section 30(2)(a)] provides that a purchaser of a certificated security in registered form obtains control if there has been an 'effective' [endorsement]."

"2. [This section] sets out the general rule that an [endorsement], instruction, or entitlement order is effective if it is made by the appropriate person or by a person who has power to transfer under agency law or if the appropriate person is precluded from denying its effectiveness. The control rules in [s. 31 and s. 32] provide for arrangements where a person who holds securities through a securities intermediary, or holds uncertificated securities directly, enters into a control agreement giving the secured party the right to initiate entitlement orders [or] instructions. [Section 36(b)] states explicitly that an entitlement order or instruction initiated by a person who has obtained such a control agreement is "effective.""

"[Sections 37-39] supplement the general rule of [s. 36] on effectiveness."

Definitional cross references: "appropriate person"	s. 1(1)
"endorsement"	s. 1(1)
"entitlement order"	s. 1(1)
"fiduciary"	s. 1(1)
"financial asset"	s. 1(1)
"instruction"	s. 1(1)
"secured party"	s. 1(1)
"security certificate"	s. 1(1)

“security entitlement”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-107(c)

Comparison with previous law: See OBCA s. 73(6); ABCA s. 64(10); CBCA s. 65(10); all of which are based on, and similar to (1962) UCC 8-308(7). In previous law, this provision addressed endorsements only and was located together with other rules governing transfers of securities held in the direct holding system. This provision now addresses endorsements, instructions and entitlement orders, so it is relocated to Part 2 – General Matters Concerning Securities and Financial Assets.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-107(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 37] provides that an [endorsement], instruction, or entitlement order made by a representative is effective even though the representative's action is a violation of duties. The following example illustrates this subsection:”

“Example 1. Certificated securities are registered in the name of John Doe. Doe dies and Mary Roe is appointed executor. Roe [endorses] the security certificate and transfers it to a purchaser in a transaction that is a violation of her duties as executor.”

“Roe's [endorsement] is effective, because Roe is the appropriate person [under paragraph (d) of the definition of ‘appropriate person’ in s. 1(1)]. This is so even though Roe's transfer violated her obligations as executor. The policies of free transferability of securities that underlie [the USTA] dictate that neither a purchaser to whom Roe transfers the securities nor the issuer who registers transfer should be required to investigate the terms of the will to determine whether Roe is acting properly. Although Roe's [endorsement] is effective under this section, her breach of duty may be such that her beneficiary has an adverse claim to the securities that Roe transferred. The question whether that adverse claim can be asserted against purchasers is governed not by this section but by [s. 81]. Under [s. 102], the issuer has no duties to an adverse claimant unless the claimant obtains legal process enjoining the issuer from registering transfer.”

Definitional cross references: “endorsement”	s. 1(1)
“entitlement order”	s. 1(1)
“instruction”	s. 1(1)
“representative”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-107(d)

Comparison with previous law: See paragraph (b) of the definition of “appropriate person” in OBCA s. 53(1); ABCA s. 64(1)(b); CBCA s. 65(1)(b); all of which are based on, and similar to, (1962) UCC 8-308(3)(c).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-107(d), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 38] deals with cases where a security or a securities account is registered in the name of a person specifically designated as a representative. The following example illustrates this subsection:”

“Example [1]. Certificated securities are registered in the name of ‘John Jones, trustee of the Smith Family Trust.’ John Jones is removed as trustee and Martha Moe is appointed successor trustee. The securities, however, are not reregistered, but remain registered in the name of ‘John Jones, trustee of the Smith Family Trust.’ Jones [endorses] the security certificate and transfers it to a purchaser.”

“[Section 38] provides that an [endorsement] by John Jones as trustee is effective even though Jones is no longer serving in that capacity. Since the securities were registered in the name of ‘John Jones, trustee of the Smith Family Trust,’ a purchaser, or the issuer when called upon to register transfer, should be entitled to assume without further inquiry that Jones has the power to act as trustee for the Smith Family Trust.”

“Note that [s. 38] does not apply to a case where the security or securities account is registered in the name of principal rather than the representative as such. The following example illustrates this point:”

“Example [2]. Certificated securities are registered in the name of John Doe. John Doe dies and Mary Roe is appointed executor. The securities are not reregistered in the name of Mary Roe as executor. Later, Mary Roe is removed as executor and Martha Moe is appointed as her successor. After being removed, Mary Roe [endorses] the security certificate that is registered in the name of John Doe and transfers it to a purchaser.”

“Mary Roe's [endorsement] is not made effective by [s. 38], because the securities were not registered in the name of Mary Roe as representative. A purchaser or the issuer registering transfer should be required to determine whether Roe has power to act for John Doe. Purchasers and issuers can protect themselves in such cases by requiring signature guaranties. See [sections 90-95].”

Definitional cross references: “endorsement” s. 1(1)
“entitlement order” s. 1(1)
“instruction” s. 1(1)

“representative” s. 1(1)

“securities account” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-107(e)

Comparison with previous law: See OBCA s. 73(5); ABCA s. 64(2); CBCA s. 65(2); all of which are based on, and similar to, (1962) UCC 8-308(6). In previous law, this provision addressed endorsements only and was located together with other rules governing transfers of securities held in the direct holding system. This provision now addresses endorsements, instructions and entitlement orders, so it is relocated to Part 2 General Matters Concerning Securities and Financial Assets.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-107(e), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 39] provides that the effectiveness of an [endorsement], instruction, or entitlement order is determined as of the date it is made. The following example illustrates this subsection:”

“Example 1. Certificated securities are registered in the name of John Doe. John Doe dies and Mary Roe is appointed executor. Mary Roe [endorses] the security certificate that is registered in the name of John Doe and transfers it to a purchaser. After the [endorsement] and transfer, but before the security certificate is presented to the issuer for registration of transfer, Mary Roe is removed as executor and Martha Moe is appointed as her successor.”

“Mary Roe's [endorsement] is effective, because at the time Roe [endorsed] she was the appropriate person under [paragraph (d) of the definition of ‘appropriate person’ in s. 1(1)]. Her later removal as executor

does not render the [endorsement] ineffective. Accordingly, the issuer would not be liable for registering the transfer. See [s. 102].”

Definitional cross references: “endorsement”	s. 1(1)
“entitlement order”	s. 1(1)
“instruction”	s. 1(1)
“representative”	s. 1(1)
“securities account”	s. 1(1)

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.

(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.

COMMENT

Source: UCC Rev 8-108(a)

Comparison with previous law: See OBCA s. 71(2); ABCA s. 62(2); CBCA s. 63(2); all of which are based on and similar to (1962) 8-306(2), which derives from s. 11 of the Uniform Stock Transfer Act of 1909. This provision has been relocated so that it can be grouped together with parallel provisions dealing with warranties given in the context of other types of transactions.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-108(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[This section deals with certain] warranties made by a person who transfers a certificated security to a purchaser for value. [Subparagraphs (c), (d), and (e)] make explicit several key points that are implicit in the general warranty of [subparagraph (f)] that the transfer is effective and rightful.”

[The warranties given to any subsequent purchasers by an endorser in s. 40(2) are merely the explicit statement of warranties that were implicit under previous law. Under previous law, the warranty was given separately by each transferor so that, in the event of a breach, each person would claim against their transferor, and so on, until the claim reached the endorser.]

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.”

Definitional cross references: “adverse claim” s. 1(1)
“appropriate person” s. 1(1)

“certificated security”	s. 1(1)
“endorsement”	s. 1(1)
“person”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“valid”	s. 7
“value”	sections 9 and 64

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.

COMMENT

Source: UCC Rev 8-108(b) and (c)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to uncertificated securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-108(b) and (c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 41] sets forth the warranties made to a purchaser for value by one who originates an instruction. These warranties are quite similar to those made by one transferring a certificated security, [s. 40], the principal difference being the absolute warranty of validity. If upon receipt of the instruction the issuer should dispute the validity of the security, the burden of proving validity is upon the transferor. Subsection [(2)] provides for the limited circumstances in which an uncertificated security could be transferred without an instruction, see [s. 79(2)(b)].”

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.”

Definitional cross references:	
“adverse claim”	s. 1(1)
“appropriate person”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“security interest”	s. 1(1)
“uncertificated security”	s. 1(1)
“valid”	s. 7
“value”	sections 9 and 64

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.

COMMENT

Source: UCC Rev 8-108(d)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with transfers of securities. This provision states explicitly the result that was implicit in the application of OBCA s. 71(1) and (2); ABCA s. 62(1) and (2); CBCA s. 63(1) and (2); all of which are based on and similar to (1962) 8-306(1) and (2), which derive from s. 11 of the Uniform Stock Transfer Act of 1909.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-108(d), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 42 gives] the issuer the benefit of the warranties of an [endorser] on those matters not within the issuer's knowledge.” [The warranties given to an issuer by an endorser in this section are merely the explicit statement of warranties that were implicit under previous law. Under previous law, each transferor of a certificated security, starting with the endorser, gave warranties to each purchaser for value and, eventually, a purchaser gave warranties to the issuer upon presentation for registration of transfer. In the event of a breach, the issuer would claim against the last transferor, who would claim back against the previous transferor, and so on, until the claim reached the endorser.]

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.”

Definitional cross references:

“adverse claim”	s. 1(1)
“endorsement”	s. 1(1)
“issuer”	s. 1(1)

“person”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-108(e)

Comparison with previous law: There are no comparable provisions in existing Canadian law relating to uncertificated securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-108(e), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 43 gives] the issuer of an uncertificated security the benefit of the warranties of an originator...on those matters not within the issuer's knowledge.” [The warranties given to an issuer by an originator under this section parallel those given by an endorser under s. 42.]

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.”

Definitional cross references:

“instruction”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)

“purchaser”	s. 1(1)
“uncertificated security”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-108(f)

Comparison with previous law: See OBCA s. 71(1); ABCA s. 62(1); CBCA s. 63(1); all of which are based on, and similar to, (1962) UCC 8-306(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-108(f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 44] limits the warranties made by a purchaser for value without notice whose presentation of a security certificate is defective in some way but to whom the issuer does register transfer. The effect is to deny the issuer a remedy against such a person unless at the time of [presentation] the person had knowledge of an unauthorized signature in a necessary [endorsement]. The issuer can protect itself by refusing to make the transfer or, if it registers the transfer before it discovers the defect, by pursuing its remedy against a signature guarantor.”

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.”

Definitional cross references: “adverse claim”	s. 1(1)
“certificated security”	s. 1(1)
“endorsement”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)
“purchaser”	s. 1(1)
“value”	sections 9 and 64

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.

COMMENT

Source: UCC Rev 8-108(g)

Comparison with previous law: See OBCA s. 71(3); ABCA s. 62(3); CBCA s. 63(3); all of which are based on, and similar to, (1962) UCC 8-306(3).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-108(g), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 45] eliminates all substantive warranties in the relatively unusual case of a delivery of certificated security by an agent of a disclosed principal where the agent delivers the exact certificate that it received from or for the principal.”

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the

defect, and these warranties will not be breached in such a case.”

Definitional cross references: “adverse claim”	s. 1(1)
“certificated security”	s. 1(1)
“delivery”	s. 4 and s. 79
“person”	s. 1(1)
“purchaser”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-108(h)

Comparison with previous law: See OBCA s. 71(4); ABCA s. 62(4); CBCA s. 63(4); all of which are based on, and similar to, (1962) UCC 8-306(4).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-108(h), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 46] limits the warranties given by a secured party who redelivers a certificate.”

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.”

Definitional cross references: “delivery”	s. 4 and s. 79
“person”	s. 1(1)

“secured party”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-108(i)

Comparison with previous law: See OBCA s. 71(5); ABCA s. 62(5); CBCA s. 63(5); all of which are based on, and similar to, (1962) UCC 8-306(5).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-108(i), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 47] specifies the warranties of brokers in the more common scenarios.”

“[Under s. 13(3)] the warranty provisions apply ‘unless otherwise agreed’ and the parties may enter into express agreements to allocate the risks of possible defects. Usual estoppel principles apply with respect to transfers of both certificated and uncertificated securities whenever the purchaser has knowledge of the defect, and these warranties will not be breached in such a case.”

Definitional cross references: “broker”	s. 1(1)
“delivery”	s. 4 and s. 79
“issuer”	s. 1(1)
“purchaser”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-109(a)

Comparison with previous law: There are no comparable provisions in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-109(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 48] provides that a person who originates an entitlement order warrants to the securities intermediary that the order is authorized, and warrants the absence of adverse claims.”

“The warranties specified in this section may be modified by agreement under [s. 13(3)].”

Definitional cross references: “adverse claim”	s. 1(1)
“appropriate person”	s. 1(1)
“entitlement holder”	s. 1(1)
“entitlement order”	s. 1(1)
“person”	s. 1(1)
“security entitlement”	s. 1(1)
“securities intermediary”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-109(b)

Comparison with previous law: There are no comparable provisions in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-109(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 49] specifies the warranties that are given when a person who holds securities directly has the holding converted into indirect form. A person who delivers a certificate to a securities intermediary or originates an instruction for an uncertificated security gives to the securities intermediary the transfer warranties under [s. 40 or s. 41]. If the securities intermediary in turn delivers the certificate to a higher level securities intermediary, it gives the same warranties.”

“The warranties specified in this section may be modified by agreement under [s. 13(3)].”

Definitional cross references: “delivery”	s. 4 and s. 79
“person”	s. 1(1)
“security entitlement”	s. 1(1)
“securities account”	s. 1(1)
“securities intermediary”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-109(c)

Comparison with previous law: There are no comparable provisions in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-109(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 50] states the warranties that a securities intermediary gives when a customer who has been holding securities in an account with the securities intermediary requests that certificates be delivered or that uncertificated securities be registered in the customer's name. The warranties are the same as those that brokers make with respect to securities that the brokers sell to or buy on behalf of the customers. See

[s. 47].”

“The warranties specified in this section may be modified by agreement under [s. 13(3)].”

Definitional cross references: “delivery”	s. 4 and s. 79
“entitlement holder”	s. 1(1)
“securities intermediary”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

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).

(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).

COMMENT

Source: s. 51(1), (3), and (5) are based on UCC Rev 8-110 (a) and (d); s. 51(2) and (4) are new.

Comparison with previous law: There are no comparable choice of law provisions in existing Canadian law dealing with the transfer of securities. OBCA s. 60 is a limited form of choice of law rule based on (1962) UCC 8-106. Existing Canadian law dealing with the transfer of securities is located in federal and provincial corporate statutes but the choice of law implications are unclear.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-110(a) and (d), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“This section deals with [some of the] applicability and choice of law issues concerning [the USTA]. The distinction between the direct and indirect holding systems plays a significant role in determining the governing law. An investor in the direct holding system is registered on the books of the issuer and/or has possession of a security certificate. Accordingly, [this section and s. 53 state that] the jurisdiction of incorporation of the issuer or location of the certificate determine the applicable law. By contrast, an investor in the indirect holding system has a security entitlement, which is a bundle of rights against the securities intermediary with respect to a security, rather than a direct interest in the underlying security. Accordingly, in the rules for the indirect holding system [described in s. 52], the jurisdiction of

incorporation of the issuer of the underlying security or the location of any certificates that might be held by the intermediary or a higher tier intermediary, do not determine the applicable law.”

“Subsection [(3)] provides that the law of an issuer's jurisdiction governs certain issues where the substantive rules of [the USTA] determine the issuer's rights and duties. [Subject to subsection (4), p]aragraph [(a)] of subsection [(3)] provides that the law of the issuer's jurisdiction governs the validity of the security. This ensures that a single body of law will govern the questions addressed in Part [3] of [the USTA], concerning the circumstances in which an issuer can and cannot assert invalidity as a defense against purchasers. Similarly, paragraphs [(b), (c), and (d)] of subsection [(3)] ensure that the issuer will be able to look to a single body of law on the questions addressed in Part [5] of [the USTA], concerning the issuer's duties and liabilities with respect to registration of transfer.”

“Paragraph [(e)] of subsection [(3)] applies the law of an issuer's jurisdiction to the question whether an adverse claim can be asserted against a purchaser to whom transfer has been registered, or who has obtained control over an uncertificated security. Although this issue deals with the rights of persons other than the issuer, the law of the issuer's jurisdiction applies because the purchasers to whom the provision applies are those whose protection against adverse claims depends on the fact that their interests have been recorded on the books of the issuer.”

“The principal policy reflected in the choice of law rules in subsection [(3)] is that an issuer and others should be able to look to a single body of law on the matters specified in subsection [(3)], rather than having to look to the law of all of the different jurisdictions in which security holders may reside. The choice of law policies reflected in this [section] do not require that the body of law governing all of the matters specified in subsection [(3)] be that of the jurisdiction in which the issuer is incorporated. Thus, [the general rule is found in paragraphs (1)(b) and (c), which provide] that the term ‘issuer's jurisdiction’ means the jurisdiction in which the issuer is organized, or, if permitted by that law, the law of another jurisdiction selected by the issuer. [See the discussion below on issuers incorporated under a federal law of Canada.] Subsection [(5)] also provides that issuers organized under the law of a [Province which adopts the USTA] may make such a selection, except as to the validity issue specified in paragraph [(3)(a)]. The question whether an issuer can assert the defense of invalidity may implicate significant policies of the issuer's jurisdiction of incorporation. See, e.g., [sections 65-70] and Comments thereto.”

“Although subsection [(3)] provides that the issuer's rights and duties concerning registration of transfer are governed by the law of the issuer's jurisdiction, other matters related to registration of transfer, such as

appointment of a guardian for a registered owner or the existence of agency relationships, might be governed by another jurisdiction's law. [For example, this section does not deal] with what law governs the appointment of the administrator or executor; that question is determined under generally applicable choice of law rules.”

[This section reflects the view that, with the exception of the validity of a security, legal questions relating to the transfer of securities, including the rights and duties of the issuer with respect to the registration of transfer, are matters of commercial property-transfer law, not corporate law. The fact that existing Canadian law dealing with the transfer of securities is located in corporate statutes instead of commercial property-transfer legislation is an historical accident and one of the principal objectives of the USTA is to clarify the law by removing it from corporate statutes. Accordingly, for issuers incorporated under a federal law of Canada, s. 51(1)(a) effectively designates the province or territory where the issuer’s registered or head executive office is located as the “issuer’s jurisdiction.” Subsection 19(1) of the CBCA requires that a corporation “shall at all times have a registered office in the province in Canada specified in its articles”. The *Bank Act* (s. 28), *Trust and Loan Companies Act* (s. 242), *Cooperative Credit Associations Act* (s. 234), and *Insurance Companies Act* (s. 28) all require “a head office in the place within Canada specified in its incorporating instrument or by-laws”. The law of that jurisdiction governs all the matters referred to in s. 51(3), except for the validity of a security, which is governed by federal law under s. 51(4). This is a departure from existing Ontario law. In the case of a federally incorporated company, current OBCA s. 60(2) would apply the federal law of Canada (including its conflict of law rules) to govern the rights and duties with respect to the registration of transfer of a security of an issuer. The USTA, like Rev8, recognizes a further distinction between matters of validity (which pertain to the internal affairs of the issuer and formal requirements for issuance of a security), and matters of registration or adverse claims (which are essentially matters of property-transfer law). In the case of a federally incorporated company, therefore, s. 51 points to federal law on matters of validity, and to provincial law on matters of registration or adverse claims.]

[Section 51(2) addresses choice of law when the issuer is the Crown.]

[See the Comment to s. 52 for examples of the combined operation of sections 51 and 52.]

Definitional cross references: “adverse claim”	s. 1(1)
“certificated security”	s. 1(1)
“control”	s. 3

“issuer”	s. 1(1)
“person”	s. 1(1)
“security”	s. 1(1)
“uncertificated security”	s. 1(1)
“validity”	s. 7

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.

(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*.]

COMMENT

Source: S. 52 (1), (2), and (3) are based on UCC Rev 8-110(b), (e), and (f); s. 52(4) is new.

Comparison with previous law: There are no comparable choice of law provisions in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-110(b), (e), and (f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“Subsection [(1)] determines what is a ‘securities intermediary's jurisdiction.’ The policy of subsection [(3)] is to ensure that a securities intermediary and all of its entitlement holders can look to a single, readily-identifiable body of law to determine their rights and duties. Accordingly, subsection [(1)] sets out a sequential series of tests to facilitate identification of that body of law. [Section 52(1)(a)] permits specification of the securities intermediary's jurisdiction by agreement. In the absence of such a

specification, the law chosen by the parties to govern the securities account determines the securities intermediary's jurisdiction. See [section 52(1)(b)]. Because the policy of this section is to enable parties to determine, in advance and with certainty, what law will apply to transactions governed by [the USTA], the validation of selection of governing law by agreement is not conditioned upon a determination that the jurisdiction whose law is chosen bear a 'reasonable relation' to the transaction. [See the Comment below on s. 52(4).] That is also true with respect to the similar provisions in [s. 51 and the proposed PPSA choice of law rules. See proposed OPPSA/APPSA s. 7.1.] [Paragraphs (c), (d), and (e) of s. 52(1)] contain additional default rules for determining the securities intermediary's jurisdiction."

"[Section 52(2)] makes explicit a point that is implicit in the [USTA] description of a security entitlement as a bundle of rights against the intermediary with respect to a security or other financial asset, rather than as a direct interest in the underlying security or other financial asset. The governing law for relationships in the indirect holding system is not determined by such matters as the jurisdiction of incorporation of the issuer of the securities held through the intermediary, or the location of any physical certificates held by the intermediary or a higher tier intermediary."

"Subsection [(3)] provides that the law of the securities intermediary's jurisdiction governs the issues concerning the indirect holding system that are dealt with in [the USTA]. Paragraphs [(3)(a) and (3)(b)] cover the matters dealt with in the [USTA] rules defining the concept of security entitlement and specifying the duties of securities intermediaries. Paragraph [(3)(c)] provides that the law of the [securities] intermediary's jurisdiction determines whether the intermediary owes any duties to an adverse claimant. Paragraph [(3)(d)] provides that the law of the [securities] intermediary's jurisdiction determines whether adverse claims can be asserted against entitlement holders and others."

[Subsection (4) has been inserted in square brackets to illustrate how this section may relate to the "Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary" (the Hague Convention), which was adopted by the *Hague Conference on Private International Law* in December 2002. Once ratified, the Hague Convention will apply in cases where there is a choice between the laws of different countries. The ratification of the Hague Convention may not require any change to the USTA choice of law provisions except for proposed subsection (4). The Hague Convention may rarely affect choice of law issues in Canada but, if and when it does, Article 12 of the Hague Convention makes the operation of the USTA choice of law rules an important component in determining which law applies.]

"The following examples illustrate how a court in a jurisdiction which has enacted the USTA section

would determine the governing law:”

“Example 1. John Doe, a resident of [British Columbia], maintains a securities account with Able & Co. Able is incorporated in [Nova Scotia]. Its chief executive offices are located in [New Brunswick]. The office where Doe transacts business with Able is located in [Alberta]. The agreement between Doe and Able specifies that [New Brunswick] is the securities intermediary’s jurisdiction. Through the account, Doe holds securities of a [Saskatchewan] corporation, which Able holds through [Clearing Agency]. The rules of [Clearing Agency] provide that the rights and duties of [Clearing Agency] and its participants are governed by [Ontario] law. [Section 51] specifies that a controversy concerning the rights and duties as between the issuer and [Clearing Agency] is governed by [Saskatchewan] law. [Section 52 specifies] that a controversy concerning the rights and duties as between [Clearing Agency] and Able is governed by [Ontario] law, and that a controversy concerning the rights and duties as between Able and Doe is governed by [New Brunswick] law.”

“Example 2. Same facts as to Doe and Able as in Example 1. Through the account, Doe holds securities of a Senegalese corporation, which Able holds through [Clearing Agency]. [Clearing Agency’s] operations are located in Belgium, and its rules and agreements with its participants provide that they are governed by Belgian law. [Clearing Agency] holds the securities through a custodial account at the Paris branch office of Global Bank, which is organized under English law. The agreement between [Clearing Agency] and Global Bank provides that it is governed by French law. [Section 51] specifies that a controversy concerning the rights and duties as between the issuer and Global Bank is governed by Senegalese law. [Section 52 specifies] that a controversy concerning the rights and duties as between Global Bank and [Clearing Agency] is governed by French law, that a controversy concerning the rights and duties as between [Clearing Agency] and Able is governed by Belgian law, and that a controversy concerning the rights and duties as between Able and Doe is governed by [New Brunswick] law.” [Upon ratification of the Hague Convention, the agreements between Able and Clearing Agency, and between Clearing Agency and Global Bank, may or may not be effective in the manner described, depending upon whether the agreements meet certain “reality tests” imposed by the Hague Convention. The choice of law concerning the rights and duties as between Able and Doe would not be affected by the Hague Convention.]

“To the extent that [the USTA choice of law rules do] not specify the governing law, general choice of law rules apply. For example, suppose that in either of the [preceding] examples, Doe enters into an agreement with Roe, also a resident of [British Columbia], in which Doe agrees to transfer all of his

interests in the securities held through Able to Roe. [The USTA] does not deal with whether such an agreement is enforceable or whether it gives Roe some interest in Doe's security entitlement. [The USTA] specifies what jurisdiction's law governs the issues that are dealt with in [the USTA]. [The USTA does, however,] specify that securities intermediaries have only limited duties with respect to adverse claims. See [s. 63]. [Section 52(3)(c)] provides that [New Brunswick] law governs whether Able owes any duties to an adverse claimant. Thus, if [New Brunswick] has adopted [the USTA, s. 63] determines whether Roe has any rights against Able.”

Definitional cross references: “adverse claim”	s. 1(1)
“entitlement holder”	s. 1(1)
“financial asset”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-110(c)

Comparison with previous law: There are no comparable choice of law provisions in existing Canadian law dealing with the transfer of securities

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-110(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 53] provides a choice of law rule for adverse claim issues that may arise in connection with

delivery of security certificates in the direct holding system. It applies the law of the place of delivery. If a certificated security issued by an [Alberta] corporation is sold, and the sale is settled by physical delivery of the certificate from Seller to Buyer in [Ontario], under [section 53], [Ontario] law determines whether Buyer takes free from adverse claims. The domicile of Seller, Buyer, and any adverse claimant is irrelevant.”

Definitional cross references: “adverse claim”	s. 1(1)
“delivery”	s. 4 and s. 79
“person”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-111

Comparison with previous law: There are no comparable provisions in existing Canadian provincial law dealing with clearing agency rules. (Current OBCA s. 53(1) contains a definition of “clearing agency” for the purposes of the book-entry transfer provisions of s. 85, including the “super priority” rule for perfected security interests created pursuant to the clearing agency’s contractual arrangements with its participants under s. 85(1.1)). In Canadian federal law, see the *Payment Clearing and Settlement Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-111, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The experience of the past few decades shows that securities holding and settlement practices may develop rapidly, and in unforeseeable directions. Accordingly, it is desirable that the rules of [the USTA] be adaptable both to ensure that commercial law can conform to changing practices and to ensure that

commercial law does not operate as an obstacle to developments in securities practice. Even if practices were unchanging, it would not be possible in a general statute to specify in detail the rules needed to provide certainty in the operations of the clearance and settlement system.”

“The provisions of [the USTA] provide considerable flexibility in the specification of the details of the rights and obligations of participants in the securities holding system by agreement. See [sections 109-113 and s. 13(3)]. Given the magnitude of the exposures involved in securities transactions, however, it may not be possible for the parties in developing practices to rely solely on private agreements, particularly with respect to matters that might affect others, such as creditors. For example, in order to be fully effective, rules of [clearing agencies] on the finality or reversibility of securities settlements must not only bind the participants in the [clearing agency] but also be effective against their creditors. [This objective has been re-confirmed and re-stated in the reports of the joint Task Force on Securities Settlement Systems of the Committee on Payment and Settlement Systems of the central banks of the Group of Ten Countries (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) entitled “Recommendations for Securities Settlement Systems” (November 2001) and “Assessment Methodology for ‘Recommendations for Securities Settlement Systems’” (November 2002), and the January 2003 report of the Group of Thirty entitled “Global Clearing and Settlement: A Plan of Action”. Section 54] provides that [clearing agency] rules are effective even if they indirectly affect third parties, such as creditors of a participant. This provision does not, however, permit rules to be adopted that would govern the rights and obligations of third parties other than as a consequence of rules that specify the rights and obligations of the [clearing agency] and its participants.”

“The definition of [clearing agency] in s. 1(1) covers only entities regulated by a provincial securities regulator that are also (i) regulated by the Bank of Canada under the federal *Payment Clearing and Settlement Act* or (ii) securities and derivatives clearing houses for the purposes of section 13.1 of that Act.] The rules of [recognized] clearing agencies are subject to regulatory oversight by [the provincial securities regulator or both the provincial securities regulator and the Bank of Canada.]”

Definitional cross references: “clearing agency” s. 1(1)

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.

COMMENT

Source: New

Comparison with previous law: See ABCA s. 73.

Explanation: This provision describes the limited role of sections 56-60. Those sections enable securities market participants to clearly know the particular methods by which property interests can be seized by a judgment creditor. Comparable provisions appear in the 1909 Uniform Stock Transfer Act and subsequent U.S. and Canadian securities transfer legislation. The methods of seizure are the only point governed by these provisions—all other civil enforcement issues are governed by other law.

Definitional cross references: None

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.

COMMENT

Source: UCC Rev 8-112(a)

Comparison with previous law: See OBCA s. 82; ABCA s. 73; CBCA s. 74; all of which are based on,

and similar to, (1962) UCC 8-317, which is similar to s. 13 of the 1909 *Uniform Stock Transfer Act*. This provision has been relocated. In previous law, there was only this one provision dealing with seizure of certificated securities within the direct holding system. Now that there are parallel provisions dealing with seizure of uncertificated securities and security entitlements, all these provisions have been grouped together in Part 2 - General Matters Concerning Securities and Financial Assets.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-112(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“In dealing with certificated securities the instrument itself is the vital thing, and therefore a valid [seizure] cannot be made unless all possibility of the certificate's wrongfully finding its way into a transferee's hands has been removed. This can be accomplished only when the certificate is in the possession of [an enforcement officer], the issuer, or an independent third party. [In the U.S., a] debtor who has been enjoined can still transfer the security in contempt of court. See *Overlock v. Jerome-Portland Copper Mining Co.*, 29 Ariz. 560, 243 P. 400 (1926). [We are not aware of any Canadian decisions on this point but the same result seems likely.] Therefore, although injunctive relief is provided in [s. 60] so that creditors may use this method to gain control of the certificated security, the security certificate itself must be reached to constitute a proper [seizure] whenever the [judgment debtor] has possession.”

Definitional cross references: “certificated security” s. 1(1)
“issuer” s. 1(1)
“security certificate” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-112(b)

Comparison with previous law: There are no provisions in existing Canadian securities transfer

legislation dealing with the seizure of an uncertificated security.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-112(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

[Section 57] provides that when the security is uncertificated and registered in the debtor's name, the debtor's interest can be reached only by legal process upon the issuer. The most logical place to serve the issuer would be the place where the transfer records are maintained, but that location might be difficult to identify, especially when the separate elements of a computer network might be situated in different places. The chief executive office is [designated] as the appropriate place....”

Definitional cross references: “issuer” s. 1(1)
“uncertificated security” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-112(c)

Comparison with previous law: There are no comparable provisions in existing Canadian securities transfer legislation dealing with the seizure of securities held in the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-112(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 58] provides that a security entitlement can be reached only by legal process upon the debtor's [securities] intermediary. Process is effective only if directed to the debtor's own [securities] intermediary.

If Debtor holds securities through Broker, and Broker in turn holds through Clearing Agency], Debtor's property interest is a security entitlement against Broker. Accordingly, Debtor's creditor cannot [seize] Debtor's interest by legal process directed to the [Clearing Agency]. See also [s. 63].”

Definitional cross references: “securities account” s. 1(1)
“securities intermediary” s. 1(1)
“security entitlement” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-112(d)

Comparison with previous law: There are no provisions in existing Canadian securities transfer legislation dealing with the seizure of a security or a security entitlement held by a secured party.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-112(d), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 59] provides that when a certificated security, an uncertificated security, or a security entitlement is controlled by a secured party, the debtor's interest can be reached by [giving a notice of seizure to] the secured party. This section does not attempt to provide for rights as between the creditor and the secured party, as, for example, whether or when the secured party must liquidate the security.”

Definitional cross references: “certificated security” s. 1(1)

“secured party”	s. 1(1)
“security entitlement”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-112(e)

Comparison with previous law: There are no comparable provisions in existing Canadian securities transfer legislation dealing with the seizure of a security or uncertificated security.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-112(e). It makes clear that creditors are entitled to pursue any proceedings that may be necessary to assist in effecting seizure by the prescribed methods or in satisfying the claim by other means.

Definitional cross references: “certificated security” s. 1(1)
“security entitlement” s. 1(1)
“uncertificated security” s. 1(1)

**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.

COMMENT

Source: UCC Rev 8-113

Comparison with previous law: See OBCA s. 84, which is based on, and similar to, (1962) UCC 8-319. There are no comparable provisions in the ABCA or CBCA.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-113, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“This section provides that the statute of frauds does not apply to contracts for the sale of securities, reversing prior law which had a special statute of frauds in [OBCA s. 84]. With the increasing use of electronic means of communication, the statute of frauds is unsuited to the realities of the securities business. For securities transactions, whatever benefits a statute of frauds may play in filtering out fraudulent claims are outweighed by the obstacles it places in the development of modern commercial practices in the securities business.”

Definitional cross references: “purchase” s. 1(1)
“security” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-114

Comparison with previous law: See OBCA s. 59; ABCA s. 52; CBCA s. 53; all of which are based on, and similar to (1962) UCC 8-105(2).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-114, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“This section adapts the rules of negotiable instruments law concerning procedure in actions on instruments...to actions on certificated securities governed by [the USTA]. An ‘action on a security’ includes any action or proceeding brought against the issuer to enforce a right or interest that is part of the security, such as an action to collect principal or interest or a dividend, or to establish a right to vote or to receive a new security under an exchange offer or plan of reorganization. This section applies only to certificated securities; actions on uncertificated securities are governed by general evidentiary principles.”

Definitional cross references:

“certificated security”	s. 1(1)
“endorsement”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)

**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](#).

COMMENT

Source: UCC Rev 8-115

Comparison with previous law: See OBCA s. 83; ABCA s. 74; CBCA s. 75; all of which are based on, and similar to (1962) UCC 8-318. This provision has been relocated. In previous law, it applied only to protect an innocent agent or bailee from liability for a transfer within the direct holding system, so it was located together with other direct transfer rules. The provision now extends to intermediaries who perform a comparable role within the indirect holding system, so it has been relocated to Part 2 - General Matters

Concerning Securities and Financial Assets.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-115, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

[The application of this provision to security interests is slightly different in Canada than under the UCC because it is proposed that Canadian PPSAs continue to include cut-off rules that are not included in UCC Rev 9. See the Comment to the definition of “adverse claim” in s. 1(1). The PPSA cut-off rules may result in certain security interests not meeting the definition of “adverse claim”, so this provision refers specifically to protection against security interests where UCC Rev 8-115 refers only to protection against adverse claims. No substantive or policy difference is intended.]

“1. Other provisions of [the USTA] protect certain purchasers against adverse claims, both for the direct holding system and the indirect holding system. See [s. 81 and s. 107]. This section deals with the related question of the possible liability of a person who acted as the ‘conduit’ for a securities transaction. It covers both securities intermediaries -- the ‘conduits’ in the indirect holding system—and brokers or other agents or bailees—the ‘conduits’ in the direct holding system. The following examples illustrate its operation:”

“Example 1. John Doe is a customer of the brokerage firm of Able & Co. Doe delivers to Able a certificate for 100 shares of XYZ Co. common stock, registered in Doe's name and properly [endorsed], and asks the firm to sell it for him. Able does so. Later, John Doe's spouse Mary Doe brings an action against Able asserting that Able's action was wrongful against her because the XYZ Co. stock was marital property in which she had an interest, and John Doe was acting wrongfully against her in transferring the securities.”

“Example 2. Mary Roe is a customer of the brokerage firm of Baker & Co. and holds her securities through a securities account with Baker. Roe instructs Baker to sell 100 shares of XYZ Co. common stock that she carried in her account. Baker does so. Later, Mary Roe's spouse John Roe brings an action against Baker asserting that Baker's action was wrongful against him because the XYZ Co. stock was marital property in which he had an interest, and Mary Roe was acting wrongfully against him in transferring the securities.”

“Under common law conversion principles, Mary Doe might be able to assert that Able & Co. is liable to her in Example 1 for exercising dominion over property inconsistent with her rights in it. On that or some similar theory John Roe might assert that Baker is liable to him in Example 2. [Section 63] protects both Able and Baker from liability.”

“2. The policy of this section is similar to that of many other rules of law that protect agents and bailees from liability as innocent converters. If a thief steals property and ships it by mail, express service, or carrier, to another person, the recipient of the property does not obtain good title, even though the recipient may have given value to the thief and had no notice or knowledge that the property was stolen. Accordingly, the true owner can recover the property from the recipient or obtain damages in a conversion or similar action. An action against the postal service, express company, or carrier presents entirely different policy considerations. Accordingly, general tort law protects agents or bailees who act on the instructions of their principals or bailors....”

“3. Except as provided in [subsection (3)], this section applies even though the securities intermediary, or the broker or other agent or bailee, had notice or knowledge that another person asserts a claim to the securities. Consider the following examples:”

“Example 3. Same facts as in Example 1, except that before John Doe brought the XYZ Co. security certificate to Able for sale, Mary Doe telephoned or wrote to the firm asserting that she had an interest in all of John Doe's securities and demanding that they not trade for him.”

“Example 4. Same facts as in Example 2, except that before Mary Roe gave an entitlement order to Baker to sell the XYZ Co. securities from her account, John Roe telephoned or wrote to the firm asserting that he had an interest in all of Mary Roe's securities and demanding that they not trade for her.”

“[Section 63] protects Able and Baker from liability. The protections of [s. 63] do not depend on the presence or absence of notice of adverse claims. It is essential to the securities settlement system that brokers and securities intermediaries be able to act promptly on the directions of their customers. Even though a firm has notice that someone asserts a claim to a customer's securities or security entitlements, the firm should not be placed in the position of having to make a legal judgment about the validity of the claim at the risk of liability either to its customer or to the third party for guessing wrong. Under this section, the broker or securities intermediary is privileged to act on the instructions of its customer or entitlement holder, unless it has been served with a restraining order or other legal process enjoining it

from doing so....”

“[Paragraph (3)(a)] of this section refers only to a court order enjoining the securities intermediary or the broker or other agent or bailee from acting at the instructions of the customer. It does not apply to cases where the adverse claimant tells the intermediary or broker that the customer has been enjoined, or shows the intermediary or broker a copy of a court order binding the customer.”

“[Paragraph (3)(c)] takes a different approach in one limited class of cases, those where a customer sells stolen certificated securities through a securities firm. Here the policies that lead to protection of securities firms against assertions of other sorts of claims must be weighed against the desirability of having securities firms guard against the disposition of stolen securities. Accordingly, [paragraph (3)(c)] denies protection to a broker, custodian, or other agent or bailee who receives a stolen security certificate from its customer, if the broker, custodian, or other agent or bailee had notice of adverse claims. The circumstances that give notice of adverse claims are specified in [sections 25-29]. The result is that brokers, custodians, and other agents and bailees face the same liability for selling stolen certificated securities that purchasers face for buying them.”

“4. As applied to securities intermediaries, this section embodies one of the fundamental principles of the [the USTA] indirect holding system rules—that a securities intermediary owes duties only to its own entitlement holders. The following examples illustrate the operation of this section in the multi-tiered indirect holding system:”

“Example 5. Able & Co., a broker-dealer, holds 50,000 shares of XYZ Co. stock in its account at [Clearing Agency]. Able acquired the XYZ shares from another firm, Baker & Co., in a transaction that Baker contends was tainted by fraud, giving Baker a right to rescind the transaction and recover the XYZ shares from Able. Baker sends notice to [Clearing Agency] stating that Baker has a claim to the 50,000 shares of XYZ Co. in Able's account. Able then initiates an entitlement order directing [Clearing Agency] to transfer the 50,000 shares of XYZ Co. to another firm in settlement of a trade. Under [s. 63], [Clearing Agency] is privileged to comply with Able's entitlement order, without fear of liability to Baker. This is so even though [Clearing Agency] has notice of Baker's claim, unless Baker obtains a court order enjoining [Clearing Agency] from acting on Able's entitlement order.”

“Example 6. Able & Co., a broker-dealer, holds 50,000 shares of XYZ Co. stock in its account at [Clearing Agency]. Able initiates an entitlement order directing [Clearing Agency] to transfer the 50,000

shares of XYZ Co. to another firm in settlement of a trade. That trade was made by Able for its own account, and the proceeds were devoted to its own use. Able becomes insolvent, and it is discovered that Able has a shortfall in the shares of XYZ Co. stock that it should have been carrying for its customers. Able's customers bring an action against [Clearing Agency] asserting that [Clearing Agency] acted wrongfully in transferring the XYZ shares on Able's order because those were shares that should have been held by Able for its customers. Under [s. 63], [Clearing Agency] is not liable to Able's customers, because [Clearing Agency] acted on an effective entitlement order of its own entitlement holder, Able. [Clearing Agency]'s protection against liability does not depend on the presence or absence of notice or knowledge of the claim by [Clearing Agency].”

“5. If the conduct of a securities intermediary or a broker or other agent or bailee rises to a level of complicity in the wrongdoing of its customer or principal, the policies that [favour] protection against liability do not apply. Accordingly, [paragraph (3)(b)] provides that the protections of this section do not apply if the securities intermediary or broker or other agent or bailee acted in collusion with the customer or principal in violating the rights of another person. The collusion test is intended to adopt a standard akin to the tort rules that determine whether a person is liable as an aider or abettor for the tortious conduct of a third party. See [the definition of ‘collusion’ in s. 1(1) and Comment].”

“Knowledge that the action of the customer is wrongful is a necessary but not sufficient condition of the collusion test. The aspect of the role of securities intermediaries and brokers that [the USTA] deals with is the clerical or ministerial role of implementing and recording the securities transactions that their customers conduct. Faithful performance of this role consists of following the instructions of the customer. It is not the role of the record-keeper to police whether the transactions recorded are appropriate, so mere awareness that the customer may be acting wrongfully does not itself constitute collusion. That, of course, does not insulate an intermediary or broker from responsibility in egregious cases where its action goes beyond the ordinary standards of the business of implementing and recording transactions, and reaches a level of affirmative misconduct in assisting the customer in the commission of a wrong.”

Definitional cross references: “broker”	s. 1(1)
“effective”	sections 36-39
“entitlement order”	s. 1(1)
“financial asset”	s. 1(1)
“securities intermediary”	s. 1(1)

“security certificate” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-116

Comparison with previous law: There are no comparable provisions in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-116, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section is intended to make explicit two points that, while implicit in other provisions, are of sufficient importance to the operation of the indirect holding system that they warrant explicit statement. First, it makes clear that a securities intermediary that receives a financial asset and establishes a security entitlement in respect thereof in [favour] of an entitlement holder is a ‘purchaser’ of the financial asset that the securities intermediary received. Second, it makes clear that by establishing a security entitlement in [favour] of an entitlement holder a securities intermediary gives value for any corresponding financial asset that the securities intermediary receives or acquires from another party, whether the intermediary holds directly or indirectly.”

“In many cases a securities intermediary that receives a financial asset will also be transferring value to the person from whom the financial asset was received. That, however, is not always the case. Payment may occur through a different system than settlement of the securities side of the transaction, or the securities

might be transferred without a corresponding payment, as when a person moves an account from one securities intermediary to another. Even though the securities intermediary does not give value to the transferor, it does give value by incurring obligations to its own entitlement holder. Although the general definition of value in [s. 9] should be interpreted to cover the point, this section is included to make this point explicit.”

“2. The following examples illustrate the effect of this section:”

“Example 1. Buyer buys 1000 shares of XYZ Co. common stock through Buyer's broker Able & Co. to be held in Buyer's securities account. In settlement of the trade, the selling broker delivers to Able a security certificate in street name, [endorsed] in blank, for 1000 shares XYZ Co. stock, which Able holds in its vault. Able credits Buyer's account for securities in that amount. [Section 64] specifies that Able is a purchaser of the XYZ Co. stock certificate, and gave value for it. Thus, Able can obtain the benefit of [s. 81], which protects purchasers for value, if it satisfies the other requirements of that section.”

“Example 2. Buyer buys 1000 shares XYZ Co. common stock through Buyer's broker Able & Co. to be held in Buyer's securities account. The trade is settled by crediting 1000 shares XYZ Co. stock to Able's account at [Clearing Agency]. Able credits Buyer's account for securities in that amount. When [Clearing Agency] credits Able's account, Able acquires a security entitlement under [s. 106]. [Section 64] specifies that Able acquired this security entitlement for value. Thus, Able can obtain the benefit of [s. 107], which protects persons who acquire security entitlements for value, if it satisfies the other requirements of that section.”

“Example 3. Thief steals a certificated bearer bond from Owner. Thief sends the certificate to his broker Able & Co. to be held in his securities account, and Able credits Thief's account for the bond. [Section 64] specifies that Able is a purchaser of the bond and gave value for it. Thus, Able can obtain the benefit of [s. 81], which protects purchasers for value, if it satisfies the other requirements of that section.”

Definitional cross references: “entitlement holder” s. 1(1)
“financial asset” s. 1(1)
“securities intermediary” s. 1(1)
“security entitlement” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-202(a)

Comparison with previous law: See OBCA s. 63(1); ABCA s. 54(1); CBCA s. 55(1); all of which are based on, and similar to (1962) UCC 8-202(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-202(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“In [the USTA] the rights of the purchaser for value without notice are divided into two aspects, those against the issuer, and those against other claimants to the security. Part 3 of [the USTA], and especially [sections 65-70], deal with rights against the issuer.”

“[Section 65] states, in accordance with the prevailing case law, the right of the issuer (who prepares the

text of the security) to include terms incorporated by adequate reference to an extrinsic source, so long as the terms so incorporated do not conflict with the stated terms. Thus, the standard practice of referring in a bond or debenture to the trust indenture under which it is issued without spelling out its necessarily complex and lengthy provisions is approved. Every stock certificate refers in some manner to the charter or articles of incorporation of the issuer. [A private company’s certificates should refer to a unanimous shareholder agreement, if there is one.] At least where there is more than one class of stock authorized [corporate statutes normally] require a statement or summary as to preferences, voting powers and the like. References to...statutes, ordinances, rules, regulations or orders are not so common, except in the obligations of governments or governmental agencies or units; but where appropriate they fit into the rule here stated.” [Rev8-202 (a) includes the term ‘constitution’ before ‘statute, ordinance, rule...’, while the USTA does not because that term has different connotations in Canada and the U.S., and its use adds nothing to this provision in the Canadian context. Compare with the use of “constitutional provisions” in sections 7 and 66.]

“Courts have generally held that an issuer is estopped from denying representations made in the text of a security. *Delaware-New Jersey Ferry Co. v. Leeds*, 21 Del.Ch. 279, 186 A. 913 (1936). Nor is a defect in form or the invalidity of a security normally available to the issuer as a defense. *Bonini v. Family Theatre Corporation*, 327 Pa. 273, 194 A. 498 (1937); *First National Bank of Fairbanks v. Alaska Airmotive*, 119 F.2d 267 (C.C.A.Alaska 1941).” [There are no equivalent Canadian decisions. The USTA is intended to produce the same commercial-law results reflected by the U.S. decisions.]

“The rule in subsection [(1)] requiring that the terms of a security be noted or referred to on the certificate is based on practices and expectations in the direct holding system for certificated securities. This rule does not express a general rule or policy that the terms of a security are effective only if they are communicated to beneficial owners in some particular fashion. Rather, subsection [(1)] is based on the principle that a purchaser who does obtain a certificate is entitled to assume that the terms of the security have been noted or referred to on the certificate. That policy does not come into play in a securities holding system in which purchasers do not take delivery of certificates.”

“The provisions of subsection [(1)] concerning notation of terms on security certificates are necessary only because paper certificates play such an important role for certificated securities that a purchaser should be protected against assertion of any defenses or rights that are not noted on the certificate. No similar problem exists with respect to uncertificated securities. [Subsection (3)] is, strictly speaking, unnecessary, since it only recognizes the fact that the terms of an uncertificated security are determined by whatever

other law or agreement governs the security. It is included only to preclude any inference that uncertificated securities are subject to any requirement analogous to the requirement of notation of terms on security certificates.”

“The rule of subsection [(1)] applies to the indirect holding system only in the sense that if a certificated security has been delivered to the [Clearing Agency] or other securities intermediary, the terms of the security should be noted or referred to on the certificate. If the security is uncertificated, that principle does not apply even at the issuer-[Clearing Agency] level. The beneficial owners who hold securities through the [Clearing Agency] are bound by the terms of the security, even though they do not actually see the certificate. Since entitlement holders in an indirect holding system have not taken delivery of certificates, the policy of subsection [(1)] does not apply.”

“[Subsection (2), together with s. 66] embody the concept that it is the duty of the issuer, not of the purchaser, to make sure that the security complies with the law governing its issue. [Subsection (2)] makes clear that the issuer cannot, by incorporating a reference to a statute or other document, charge the purchaser with notice of the security's invalidity.”

Definitional cross references: “certificated security”	s. 1(1)
“notice”	s. 11
“person”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)
“validity”	s. 7
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-202(b)

Comparison with previous law: See OBCA s. 63(2); ABCA s. 54(2); CBCA s. 55(2); all of which are based on, and similar to (1962) UCC 8-202(2).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-202(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 66] gives to a purchaser for value without notice of the defect the right to enforce the security against the issuer despite the presence of a defect that otherwise would render the security invalid. There are three circumstances in which a purchaser does not gain such rights: first, [in subsection (3)] if the defect involves a violation of constitutional provisions [governing the issuer], these rights accrue only to a subsequent purchaser, that is, one who takes other than by original issue. [The USTA] leaves to the law of each particular [issuer’s jurisdiction, or the federal law of Canada if the issuer is federally incorporated,] the rights of a purchaser on original issue of a security with a constitutional defect. No negative implication is intended by the explicit grant of rights to a subsequent purchaser.” [The term “constitutional provisions governing the issuer” is used in the definition of “validity” in s. 7 and is intended to capture all provisions governing the issuer’s capacity to issue a security such as a corporation’s articles and other constating documents and comparable provisions applicable to trusts, partnerships or other types of issuers.]

“Second, governmental issuers are distinguished in subsection [(4)] from other issuers as a matter of public policy, and additional safeguards are imposed before governmental issues are validated. Governmental issuers are estopped from asserting defenses only if there has been substantial compliance

with the legal requirements governing the issue or if substantial consideration has been received and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security. The purpose of the substantial compliance requirement is to make certain that a mere technicality as, e.g., in the manner of publishing election notices, shall not be a ground for depriving an innocent purchaser of rights in the security. The policy is here adopted of such cases as *Tommie v. City of Gadsden*, 229 Ala. 521, 158 So. 763 (1935), in which minor discrepancies in the form of the election ballot used were overlooked and the bonds were declared valid since there had been substantial compliance with the statute.” [There are no equivalent Canadian cases. The USTA is intended to produce the same commercial property-transfer law result reflected by the U.S. decisions.]

“A long and well established line of federal cases recognizes the principle of estoppel in [favour] of purchasers for value without notices where municipalities issue bonds containing recitals of compliance with governing constitutional and statutory provisions, made by the municipal authorities entrusted with determining such compliance. *Chaffee County v. Potter*, 142 U.S. 355 (1892); *Oregon v. Jennings*, 119 U.S. 74 (1886); *Gunnison County Commissioners v. Rollins*, 173 U.S. 255 (1898). This rule has been qualified, however, by requiring that the municipality have power to issue the security. *Anthony v. County of Jasper*, 101 U.S. 693 (1879); *Town of South Ottawa v. Perkins*, 94 U.S. 260 (1876). This section follows the case law trend, simplifying the rule by setting up two conditions for an estoppel against a governmental issuer: (1) substantial consideration given, and (2) power in the issuer to borrow money or issue the security for the stated purpose. As a practical matter the problem of policing governmental issuers has been alleviated by the present practice of requiring legal opinions as to the validity of the issue. The bulk of the case law on this point is nearly 100 years old and it may be assumed that the question now seldom arises.” [There are no equivalent Canadian cases. The USTA is intended to produce the same commercial property-transfer law result reflected by the U.S. decisions.]

“[Section 78], regarding overissue, provides the third exception to the rule that an innocent purchase for value takes a valid security despite the presence of a defect that would otherwise give rise to invalidity. See that section and its Comment for further explanation.”

Definitional cross references:	“government or agency of it”	s. 1(1)
	“issuer”	s. 1(1)
	“notice”	s. 11
	“purchaser”	s. 1(1)
	“validity”	s. 7

“value”

s. 9 and s. 64

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](#).

COMMENT

Source: UCC Rev 8-202(c)

Comparison with previous law: See OBCA s. 63(3); ABCA s. 54(3); CBCA s. 55(3); all of which are based on, and similar to (1962) UCC 8-202(3).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-202(c). It states that an issuer has a complete defence against a security that is forged or counterfeit, subject to s. 73 (see the discussion in the Comment to that section).

Definitional cross references:

“certificated security”	s. 1(1)
“genuine”	s. 1(1)
“notice”	s. 11
“purchaser”	s. 1(1)
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-202(d)

Comparison with previous law: See OBCA s. 63(4); ABCA s. 54(4); CBCA s. 55(4); all of which are based on, and similar to (1962) UCC 8-202(4).

Explanation: This provision is intended to be similar to the corresponding provision of Rev 8-202(d). The difference is that Rev 8-202(d) refers only to a “certificated security”, while s. 68 refers to a “security”. The inclusion of the word “certificated” in Rev8 appears to be a minor drafting error since there is no reason to restrict the application of this provision to certificated securities. The New York version of UCC Article 8 also deletes the word “certificated”. This provision otherwise reflects a well-established rule and there is no substantive change from existing law.

Definitional cross references: “certificated security”	s. 1(1)
“delivery”	s. 4 and s. 79
“issuer”	s. 1(1)
“purchaser”	s. 1(1)
“notice”	s. 11
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-202(f)

Comparison with previous law: There are no comparable provisions in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-202(f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 69] has been added because the introduction of the security entitlement concept requires some adaptation of the Part [3] rules, particularly those that distinguish between purchasers who take by original issue and subsequent purchasers. The basic concept of Part [3] is to apply to investment securities the

principle of negotiable instruments law that an obligor is precluded from asserting most defenses against purchasers for value without notice. [Sections 65-70 describe] in some detail which defenses issuers can raise against purchasers for value and subsequent purchasers for value. Because these rules were drafted with the direct holding system in mind, some interpretive problems might be presented in applying them to the indirect holding. For example, if a municipality issues a bond in book-entry only form, the only direct 'purchaser' of that bond would be the [clearing agency]. The policy of precluding the issuer from asserting defenses is, however, equally applicable. [Section 69] is designed to ensure that the defense preclusion rules developed for the direct holding system will also apply to the indirect holding system."

Definitional cross references: "entitlement holder"	s. 1(1)
"issuer"	s. 1(1)
"securities intermediary"	s. 1(1)
"security"	s. 1(1)
"security entitlement"	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-202(e)

Comparison with previous law: See OBCA s. 63(5); which is based on, and similar to (1962) UCC 8-202(5). There is no comparable provision in the ABCA or CBCA.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-202(e), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

"[Section 70] is included to make clear that this section does not affect the presently recognized right of either party to a 'when, as and if' or 'when distributed' contract to cancel the contract on substantial

change.”

Definitional cross references: “security” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-203

Comparison with previous law: See OBCA s. 64; ABCA s. 55; CBCA s. 56; all of which are based on, and similar to (1962) UCC 8-203.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-203, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. The problem of matured or called securities is here dealt with in terms of the effect of such events in giving notice of the issuer's defenses and not in terms of ‘negotiability’. The substance of this section applies only to certificated securities because certificates may be transferred to a purchaser by delivery after the security has matured, been called, or become redeemable or exchangeable. It is contemplated that uncertificated securities which have matured or been called will merely be canceled on the books of the issuer and the proceeds sent to the registered owner. Uncertificated securities which have become redeemable or exchangeable, at the option of the owner, may be transferred to a purchaser, but the transfer is effectuated only by registration of transfer, thus necessitating communication with the issuer. If defects or defenses in such securities exist, the issuer will necessarily have the opportunity to bring them to the attention of the purchaser.”

“2. The fact that a security certificate is in circulation long after it has been called for redemption or exchange must give rise to the question in a purchaser's mind as to why it has not been surrendered. After the lapse of a reasonable period of time a purchaser can no longer claim ‘no reason to know’ of any defects or irregularities in its issue. Where funds are available for the redemption the security certificate is normally turned in more promptly and a shorter time is set as the ‘reasonable period’ than is set where funds are not available.”

“Defaulted certificated securities may be traded on financial markets in the same manner as unmatured and defaulted instruments and a purchaser might not be placed upon notice of irregularity by the mere fact of default. An issuer, however, should at some point be placed in a position to determine definitely its liability on an invalid or improper issue, and for this purpose a security under this section becomes ‘stale’ two years after the default. A different rule applies when the question is notice not of issuer's defenses but of claims of ownership. [See sections 25-29 and Comments].”

“3. Nothing in this section is designed to extend the life of preferred stocks called for redemption as ‘shares of stock’ beyond the redemption date. After such a call, the security represents only a right to the funds set aside for redemption.”

Definitional cross references: “certificated security”	s. 1(1)
“delivery”	s. 4 and s. 79
“issuer”	s. 1(1)
“notice”	s. 11

“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-204

Comparison with previous law: See OBCA s. 56(3); ABCA s. 48(8); CBCA s. 49(8); all of which are based on, and similar to (1962) UCC 8-103 and 8-204, which are similar to s. 15 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-204, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Restrictions on transfer of securities are imposed by issuers in a variety of circumstances and for a variety of purposes, such as to retain control of a [private company or to comply with securities regulatory law.] Other law determines whether such restrictions are permissible. This section deals only with the consequences of failure to note the restriction on a security certificate.”

“This section imposes no bar to enforcement of a restriction on transfer against a person who [knows] of it.”

“2. A restriction on transfer of a certificated security is ineffective against a person without knowledge of

the restriction unless the restriction is noted conspicuously on the certificate. The word ‘noted’ is used to make clear that the restriction need not be set forth in full text. [If the words “private company” or “compagnie fermée” appear conspicuously on a certificate, the restriction would be ‘noted’ within the meaning of this section.] Refusal by an issuer to register a transfer on the basis of an unnoted restriction would be a violation of the issuer's duty to register under [s. 97].”

“3. The policy of this section is the same as in [sections 65-70]. A purchaser who takes delivery of a certificated security is entitled to rely on the terms stated on the certificate. That policy obviously does not apply to uncertificated securities. For uncertificated securities, this section requires only that the registered owner has been notified of the restriction. Suppose, for example, that A is the registered owner of an uncertificated security, and that the issuer has notified A of a restriction on transfer. A agrees to sell the security to B, in violation of the restriction. A completes a written instruction directing the issuer to register transfer to B, and B pays A for the security at the time A delivers the instruction to B. A does not inform B of the restriction, and B does not otherwise have notice or knowledge of it at the time B pays and receives the instruction. B presents the instruction to the issuer, but the issuer refuses to register the transfer on the grounds that it would violate the restriction. The issuer has complied with this section, because it did notify the registered owner A of the restriction. The issuer's refusal to register transfer is not wrongful. B has an action against A for breach of transfer warranty, see [s. 41(2)(c)]. B's mistake was treating an uncertificated security transaction in the fashion appropriate only for a certificated security. The mechanism for transfer of uncertificated securities is registration of transfer on the books of the issuer; handing over an instruction only initiates the process. The purchaser should make arrangements to ensure that the price is not paid until it knows that the issuer has or will register transfer.”

“4. In the indirect holding system, investors neither take physical delivery of security certificates nor have uncertificated securities registered in their names. So long as the requirements of this section have been satisfied at the level of the relationship between the issuer and the securities intermediary that is a direct holder, this section does not preclude the issuer from enforcing a restriction on transfer. See [s. 65 and Comment].”

“5. This section deals only with restrictions imposed by the issuer. Restrictions imposed by statute are not affected. See *Quiner v. Marblehead Social Co.*, 10 Mass. 476 (1813); *Madison Bank v. Price*, 79 Kan. 289, 100 P. 280 (1909); *Healey v. Steele Center Creamery Ass'n*, 115 Minn. 451, 133 N.W. 69 (1911). [There are no equivalent Canadian cases. The USTA is intended to produce the same result.] Nor does it deal with private agreements between stockholders containing restrictive covenants as to the sale of the

security.” [“Unanimous shareholder agreements” are given special status under corporate law. Where the issuer is a party to such an agreement imposing transfer restrictions, the restriction is “imposed by the issuer” for purposes of this section. If the issuer is not a party, the restriction is not “imposed by the issuer”.]

Definitional cross references: “certificated security”	s. 1(1)
“conspicuous”	s. 6
“issuer”	s. 1(1)
“knowledge”	s. 11
“notify”	s. 11
“person”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-205

Comparison with previous law: See OBCA s. 65; ABCA s. 56; CBCA s. 57; all of which are based on, and similar to (1962) UCC 8-205.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-205, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. The problem of forged or unauthorized signatures may arise where an employee of the issuer, transfer agent, or registrar has access to securities which the employee is required to prepare for issue by affixing the corporate seal or by adding a signature necessary for issue. This section is based upon the issuer's duty to avoid the negligent entrusting of securities to such persons. Issuers have long been held responsible for signatures placed upon securities by parties whom they have held out to the public as authorized to prepare such securities. See *Fifth Avenue Bank of New York v. The Forty-Second & Grand Street Ferry Railroad Co.*, 137 N.Y. 231, 33 N.E. 378, 19 L.R.A. 331, 33 Am.St.Rep. 712 (1893); *Jarvis v. Manhattan Beach Co.*, 148 N.Y. 652, 43 N.E. 68, 31 L.R.A. 776, 51 Am.St.Rep. 727 (1896). The ‘apparent authority’ concept of some of the case-law, however, is here extended and this section expressly rejects the technical distinction, made by courts reluctant to recognize forged signatures, between cases where forgers sign signatures they are authorized to sign under proper circumstances and those in which they sign signatures they are never authorized to sign. *Citizens' & Southern National Bank v. Trust Co. of Georgia*, 50 Ga.App. 681, 179 S.E. 278 (1935). Normally the purchaser is not in a position to determine which signature a forger, entrusted with the preparation of securities, has ‘apparent authority’ to sign. The issuer, on the other hand, can protect itself against such fraud by the careful selection and bonding of agents and employees, or by action over against transfer agents and registrars who in turn may bond their personnel.”

[There are no equivalent Canadian cases. These U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

“2. The issuer cannot be held liable for the honesty of employees not entrusted, directly or indirectly, with the signing, preparation, or responsible handling of similar securities and whose possible commission of forgery it has no reason to anticipate. The result in such cases as *Hudson Trust Co. v. American Linseed Co.*, 232 N.Y. 350, 134 N.E. 178 (1922), and *Dollar Savings Fund & Trust Co. v. Pittsburgh Plate Glass Co.*, 213 Pa. 307, 62 A. 916, 5 Ann.Cas. 248 (1906) is here adopted.” [There are no equivalent Canadian cases. These U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

“3. This section is not concerned with forged or unauthorized [endorsements], but only with unauthorized signatures of issuers, transfer agents, etc., placed upon security certificates during the course of their issue. The protection here stated is available to all purchasers for value without notice and not merely to

subsequent purchasers.”

Definitional cross references: “certificated security”	s. 1(1)
“issuer”	s. 1(1)
“notice”	s. 11
“purchaser”	s. 1(1)
“security certificate”	s. 1(1)
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-206

Comparison with previous law: See OBCA s. 66; ABCA s. 57; CBCA s. 58; all of which are based on, and similar to (1962) UCC 8-206, which is similar to s. 16 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-206, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. The problem of forged or unauthorized signatures necessary for the issue or transfer of a security is not involved here, and a person in possession of a blank certificate is not, by this section, given authority to fill in blanks with such signatures. Completion of blanks left in a transfer instruction is dealt with [in s. 88].”

“2. Blanks left upon issue of a security certificate are the only ones dealt with here, and a purchaser for value without notice is protected. A purchaser is not in a good position to determine whether blanks were completed by the issuer or by some person not authorized to complete them. On the other hand the issuer can protect itself by not placing its signature on the writing until the blanks are completed or, if it does sign before all blanks are completed, by carefully selecting the agents and employees to whom it entrusts the writing after authentication. With respect to a security certificate that is completed by the issuer but later is altered, the issuer has done everything it can to protect the purchaser and thus is not charged with the terms as altered. However, it is charged according to the original terms, since it is not thereby prejudiced. If the completion or alteration is obviously irregular, the purchaser may not qualify as a purchaser who took without notice under this section.”

“3. Only the purchaser who physically takes the certificate is directly protected. However, a transferee may receive protection indirectly through [s. 80(1)].”

“4. The protection granted a purchaser for value without notice under this section is modified to the extent that an overissue may result where an incorrect amount is inserted into a blank [s. 78].”

Definitional cross references: “certificated security”	s. 1(1)
“issuer”	s. 1(1)
“notice”	s. 11
“person”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-207

Comparison with previous law: See OBCA s. 67(1); ABCA s. 50(1); CBCA s. 51(1); all of which are based on, and similar to (1962) UCC 8-207, which is similar to s. 3 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-207, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Subsection [(1)] states the issuer's right to treat the registered owner of a security as the person entitled to exercise all the rights of an owner. This right of the issuer is limited by the provisions of Part [5 of the USTA]. Once there has been due presentation for registration of transfer, the issuer has a duty to register ownership in the name of the transferee. [See s. 97.] Thus its right to treat the old registered owner as exclusively entitled to the rights of ownership must cease.”

“The issuer may under this section make distributions of money or securities to the registered owners of securities without requiring further proof of ownership, provided that such distributions are distributable to the owners of all securities of the same issue and the terms of the security do not require surrender of a security certificate as a condition of payment or exchange. Any such distribution shall constitute a defense against a claim for the same distribution by a person, even if that person is in possession of the security certificate and is a protected purchaser of the security. [These matters are analyzed in detail in Permanent Editorial Board (PEB) Commentary No. 4, dated March 10, 1990.]”

“2. Subsection (a) is permissive and does not require that the issuer deal exclusively with the registered owner. It is free to require proof of ownership before paying out dividends or the like if it chooses to. *Barbato v. Breeze Corporation*, 128 N.J.L. 309, 26 A.2d 53 (1942).” [There are no equivalent Canadian

cases but the intention is the same. In some respects, the current location of this provision in Canadian corporate statutes produced different results than in the U.S. See *Verdun v. Toronto Dominion Bank*, [1996] 3 S.C.R. 550, where s. 93(1) of the *Bank Act*, which is similar to s. 78, prevented a “beneficial shareholder” from advancing a shareholder proposal—a long-standing right under U.S. law. The *Bank Act* was later amended to expressly permit such proposals. The rights of persons who hold through the indirect holding system are also addressed in securities regulatory law. See National Instrument 54-101 — Communication With Beneficial Owners Of Securities Of Reporting Issuers. The rights of an entitlement holder against the securities intermediary include rights to have the intermediary take action to obtain payments or distributions (s. 110) or to exercise rights with respect to the financial asset (s. 111).]

“3. This section does not operate to determine who is finally entitled to exercise voting and other rights or to receive payments and distributions. The parties are still free to incorporate their own arrangements as to these matters in seller-purchaser agreements which may be definitive as between them.”

“4. No change in existing state laws as to the liability of registered owners for calls and assessments is here intended; nor is anything in this section designed to estop record holders from denying ownership when assessments are levied if they are otherwise entitled to do so under [applicable] law. See *State ex rel. Squire v. Murfey, Blosson & Co.*, 131 Ohio St. 289, 2 N.E.2d 866 (1936); *Willing v. Delaplaine*, 23 F.Supp. 579 (1937).” [There are no equivalent Canadian cases. These U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

“5. No interference is intended with the common practice of closing the transfer books or taking a record date for dividend, voting, and other purposes, as provided for in by-laws, charters, and statutes.”

[Although most often considered in the context of corporate issuers, this provision applies equally to non-corporate issuers of registered securities, including trusts, partnerships and governments.]

Definitional cross references:	
“certificated security”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“registered form”	s. 1(1)
“security”	s. 1(1)
“uncertificated security”	s. 1(1)

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).

COMMENT

Source: UCC Rev 8-208

Comparison with previous law: See OBCA s. 68; ABCA s. 58; CBCA s. 59; all of which are based on, and similar to (1962) UCC 8-208.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-208, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

[This Comment refers to a number of American cases to which there are no equivalent Canadian cases. The U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

“1. The warranties here stated express the current understanding and prevailing case law as to the effect of the signatures of authenticating trustees, transfer agents, and registrars. See *Jarvis v. Manhattan Beach Co.*, 148 N.Y. 652, 43 N.E. 68, 31 L.R.A. 776, 51 Am.St.Rep. 727 (1896). Although it has generally been regarded as the particular obligation of the transfer agent to determine whether securities are in proper form as provided by the by-laws and Articles of Incorporation, neither a registrar nor an authenticating

trustee should properly place a signature upon a certificate without determining whether it is at least regular on its face. The obligations of these parties in this respect have therefore been made explicit in terms of due care. See *Feldmeier v. Mortgage Securities, Inc.*, 34 Cal.App.2d 201, 93 P.2d 593 (1939).”

“2. Those cases which hold that an authenticating trustee is not liable for any defect in the mortgage or property which secures the bond or for any fraudulent misrepresentations made by the issuer are not here affected since these matters do not involve the genuineness or proper form of the security. *Ainsa v. Mercantile Trust Co.*, 174 Cal. 504, 163 P. 898 (1917); *Tschetinian v. City Trust Co.*, 186 N.Y. 432, 79 N.E. 401 (1906); *Davidge v. Guardian Trust Co. of New York*, 203 N.Y. 331, 96 N.E. 751 (1911).”

“3. The charter or an applicable statute may affect the capacity of a bank or other corporation undertaking to act as an authenticating trustee, registrar, or transfer agent....Such corporations are therefore held to certify as to their legal capacity to act as well as to their authority.”

“4. Authenticating trustees, registrars, and transfer agents have normally been held liable for an issue in excess of the authorized amount. *Jarvis v. Manhattan Beach Co.*, supra; *Mullen v. Eastern Trust & Banking Co.*, 108 Me. 498, 81 A. 948 (1911). In imposing upon these parties a duty of due care with respect to the amount they are authorized to help issue, this section does not necessarily validate the security, but merely holds persons responsible for the excess issue liable in damages for any loss suffered by the purchaser.”

5. Aside from questions of genuineness and excess issue, these parties are not held to certify as to the validity of the security unless they specifically undertake to do so. The case law which has recognized a unique responsibility on the transfer agent's part to testify as to the validity of any security which it countersigns is rejected.”

“6. This provision does not prevent a transfer agent or issuer from agreeing with a registrar of stock to protect the registrar in respect of the genuineness and proper form of a security certificate signed by the issuer or the transfer agent or both. Nor does it interfere with proper indemnity arrangements between the issuer and trustees, transfer agents, registrars, and the like.”

“7. An unauthorized signature is a signature for purposes of this section if and only if it is made effective by [s. 73].”

Definitional cross references: “certificated security”	s. 1(1)
“genuine”	s. 1(1)
“issuer”	s. 1(1)
“notice”	s. 11
“person”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)
“value”	s. 9 and s. 64

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](#).

COMMENT

Source: UCC Rev 8-209

Comparison with previous law: See OBCA s. 56(3); ABCA s. 48(8); CBCA s. 49(8); all of which are based on, and similar to (1962) UCC 8-103, which is similar to s. 15 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-209, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“This section is similar to [sections 65 and 72] which require that the terms of a certificated security and any restriction on transfer imposed by the issuer be noted on the security certificate. This section differs from those two sections in that the purchaser’s knowledge of the issuer’s claim is irrelevant. ‘Noted’ makes clear that the text of the lien provisions need not be set forth in full. However, this would not override a provision of an applicable [corporation statute requiring a particular form of statement]. This section does not apply to uncertificated securities. It applies to the indirect holding system in the same

fashion as [sections 65 and 72, see the Comment to s. 65].”

Definitional cross references: “certificated security”	s. 1(1)
“conspicuously”	s. 6
“issuer”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-210

Comparison with previous law: See OBCA s. 58(1); ABCA s. 51(1); CBCA s. 52(1); all of which are based on, and similar to (1962) UCC 8-104.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-210, as described in the UCC Official Comment as follows [editing and additional material by the

CSA Task Force shown in square brackets]:

[See the definition of “overissue” in s. 1(1) and Comment. This Comment refers to a number of American cases to which there are no equivalent Canadian cases. The U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

“Where an identical security is reasonably available for purchase, whether because traded on an organized market, or because one or more security owners may be willing to sell at a not unreasonable price, the issuer, although unable to issue additional shares, will be able to purchase them and may be compelled to follow that procedure. *West v. Tintic Standard Mining Co.*, 71 Utah 158, 263 P. 490 (1928).”

“The right to recover damages from an issuer who has permitted an overissue to occur is well settled. *New York and New Haven R.R. Co. v. Schuyler*, 34 N.Y. 30 (1865). The measure of such damages, however, has been open to question, some courts basing them upon the value of stock at the time registration is refused; some upon the value at the time of trial; and some upon the highest value between the time of refusal and the time of trial. *Allen v. South Boston Railroad*, 150 Mass. 200, 22 N.E. 917, 5 L.R.A. 716, 15 Am.St.Rep. 185 (1889); *Commercial Bank v. Kortright*, 22 Wend. (N.Y.) 348 (1839). The purchase price of the security to the last purchaser who gave value for it is here adopted as being the fairest means of reducing the possibility of speculation by the purchaser. Interest may be recovered as the best available measure of compensation for delay.”

[One potential application of the overissue provisions is the situation contemplated by existing OBCA s. 56(8) and (10), where an issuer is obligated, but fails to, disclose a transfer restriction. In that situation, the transfer restriction is not enforceable against an innocent purchaser without notice (see s. 72 and s. 97) but, if the issuer is not authorized to register the transfer because it would result in the violation of some constraint, s. 78 provides the appropriate solution.]

Definitional cross references: “certificated security”	s. 1(1)
“deliver”	s. 4 and s. 79
“issuer”	s. 1(1)
“overissue”	s. 1(1)
“purchaser”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)

“uncertificated security”	s. 1(1)
“validation”	s. 7
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-301

Comparison with previous law: See OBCA s. 78(1); ABCA s. 69(1); CBCA s. 70(1); all of which are based on, and similar to (1962) UCC 8-313(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-301, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section specifies the requirements for ‘delivery’ of securities. Delivery is used in [the USTA] to describe the formal steps necessary for a purchaser to acquire a direct interest in a security under [the USTA]. The concept of delivery refers to the implementation of a transaction, not the legal categorization of the transaction which is consummated by delivery. Issuance and transfer are different kinds of transaction, though both may be implemented by delivery. Sale and pledge are different kinds of transfers, but both may be implemented by delivery.”

“2. Subsection [(1)] defines delivery with respect to certificated securities. Paragraph [(a)] deals with simple cases where purchasers themselves acquire physical possession of certificates. Paragraphs [(b)] and [(c)] of subsection [1] specify the circumstances in which delivery to a purchaser can occur although the certificate is in the possession of a person other than the purchaser. Paragraph [(b)] contains the general rule that a purchaser can take delivery through another person, so long as the other person is actually acting on behalf of the purchaser or acknowledges that it is holding on behalf of the purchaser. Paragraph [(b)] does not apply to acquisition of possession by a securities intermediary, because a person who holds securities through a securities account acquires a security entitlement, rather than having a direct interest. See [s. 106]. Subsection [(1)(c)] specifies the limited circumstances in which delivery of security certificates to a securities intermediary is treated as a delivery to the customer. Note that delivery is a method of perfecting a security interest in a certificated security under [proposed OPPSA s. 22(2) and (3); APPSA s. 24(3) and (4)].”

“3. Subsection [(2)] defines delivery with respect to uncertificated securities. Use of the term ‘delivery’ with respect to uncertificated securities, does, at least on first hearing, seem a bit solecistic. The word ‘delivery’ is, however, routinely used in the securities business in a broader sense than manual tradition. For example, settlement by entries on the books of a [clearing agency] is commonly called ‘delivery,’ as in the expression ‘delivery versus payment.’ The diction of this section has the advantage of using the same term for uncertificated securities as for certificated securities, for which delivery is conventional usage. Paragraph [(a)] of subsection [(2)] provides that delivery occurs when the purchaser becomes the registered owner of an uncertificated security, either upon original issue or registration of transfer. Paragraph [(b)] provides for delivery of an uncertificated security through a third person, in a fashion analogous to subsection [(1)(b)].”

Definitional cross references: “certificated security”	s. 1(1)
“effective”	sections 36-39
“issuer”	s. 1(1)
“purchaser”	s. 1(1)
“registered form”	s. 1(1)
“securities intermediary”	s. 1(1)
“security certificate”	s. 1(1)
“security interest”	s. 1(1)
“special endorsement”	s. 82(3)
“uncertificated security”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-302

Comparison with previous law: See OBCA s. 69(1) and (3); ABCA s. 59(1) and (3); CBCA s. 60(1) and (3); all of which are based on, and similar to (1962) UCC 8-301(1) and (3).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-302, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Subsection [(1)] provides that a purchaser of a certificated or uncertificated security acquires all rights that the transferor had or had power to transfer. This statement of the familiar ‘shelter’ principle is qualified by the exceptions that a purchaser of a limited interest acquires only that interest, subsection [(2)], and that a person who does not qualify as a protected purchaser cannot improve its position by taking from a subsequent protected purchaser, subsection [(3)].”

“2. Although this section provides that a purchaser acquires a property interest in a certificated or uncertificated security, it does not state that a person can acquire an interest in a security only by purchase. [The USTA] is also not a comprehensive codification of all of the law governing the creation or transfer of interests in securities. For example, the grant of a security interest is a transfer of a property interest, but the formal steps necessary to effectuate such a transfer are governed by [the PPSA] not by [the USTA]. Under the [PPSA] rules, a security interest in a certificated or uncertificated security can be created by execution of a security agreement...and can be perfected by filing. A transfer of a [PPSA security interest] can be implemented by [a USTA] delivery, but need not be.”

“Similarly, [the USTA] does not determine whether a property interest in certificated or uncertificated security is acquired under other law, such as the law of gifts, trusts, or equitable remedies. Nor does [the USTA] deal with transfers by operation of law. For example, transfers from decedent to administrator, from ward to guardian, and from bankrupt to trustee in bankruptcy are governed by other law as to both the time they occur and the substance of the transfer. The [USTA] rules do, however, determine whether the issuer is obligated to recognize the rights that a third party, such as a transferee, may acquire under other law. See [sections 75, 97 and 102].”

Definitional cross references: “certificated security” s. 1(1)
“delivery” s. 4 and s. 79

“notice of adverse claim”	sections 25-29
“protected purchaser”	s. 1(1)
“purchaser”	s. 1(1)
“security interest”	s. 1(1)
“uncertificated security”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-303

Comparison with previous law: See OBCA s. 69(2); ABCA s. 59(2); CBCA s. 60(2); all of which are based on, and similar to (1962) UCC 8-301(2).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-303, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. [The definition in s. 1(1)] lists the requirements that a purchaser must meet to qualify as a ‘protected purchaser.’ [Section 81] provides that a protected purchaser takes its interest free from adverse claims. ‘Purchaser’ is defined broadly in [s. 1(1)]. A secured party as well as an outright buyer can qualify as a protected purchaser. Also, ‘purchase’ includes taking by issue, so a person to whom a security is originally issued can qualify as a protected purchaser.”

“2. To qualify as a protected purchaser, a purchaser must give value, take without notice of any adverse claim, and obtain control. Value is used in the broad sense defined in [s. 9]. See also [s. 64] (securities intermediary as purchaser for value). Adverse claim is defined in [s. 1(1)]. [Sections 25-29 specify] whether a purchaser has notice of an adverse claim. Control is defined in [section 3 and sections 30-33]. To qualify as a protected purchaser there must be a time at which all of the requirements are satisfied. Thus if a purchaser obtains notice of an adverse claim before giving value or satisfying the requirements for control, the purchaser cannot be a protected purchaser. See also [s. 85].”

“The requirement that a protected purchaser obtain control expresses the point that to qualify for the adverse claim cut-off rule a purchaser must take through a transaction that is implemented by the appropriate mechanism. By contrast, the rules in Part [3] provide that any purchaser for value of a security without notice of a [defence] may take free of the issuer’s [defence] based on that [defence]. See [sections 65-70].”

“3. The requirements for control differ depending on the form of the security. For securities represented by bearer certificates, a purchaser obtains control by delivery. See [s. 30(1) and s. 79(1)]. For securities represented by certificates in registered form, the requirements for control are: (1) delivery as defined in [s. 79(1)], plus (2) either an effective [endorsement] or registration of transfer by the issuer. See [s. 30(2)]. Thus, a person who takes through a forged [endorsement] does not qualify as a protected purchaser by virtue of the delivery alone. If, however, the purchaser presents the certificate to the issuer for registration of transfer, and the issuer registers transfer over the forged [endorsement], the purchaser can qualify as a protected purchaser of the new certificate. If the issuer registers transfer on a forged [endorsement], the true owner will be able to recover from the issuer for wrongful registration, see [s. 102], unless the owner's delay in notifying the issuer of a loss or theft of the certificate results in preclusion under [s. 104].”

“For uncertificated securities, a purchaser can obtain control either by delivery, see [s. 31(1)(a) and s. 79(2)], or by obtaining an agreement pursuant to which the issuer agrees to act on instructions from the purchaser without further consent from the registered owner, see [s. 31(1)(b)]. The control agreement device of [s. 31(1)(b) can provide a secured lender with an interest similar to] the “registered pledge” concept of the 1978 version of [UCC] Article 8. A secured lender who obtains a control agreement under [s. 31(1)(b)] can qualify as a protected purchaser of an uncertificated security.”

“4. This section states directly the rules determining whether one takes free from adverse claims without using the phrase ‘good faith.’ Whether a person who takes under suspicious circumstances is disqualified is determined by the rules of [sections 25-29] on notice of adverse claims. The term ‘protected purchaser,’ which replaces the term ‘bona fide purchaser’ [and ‘good faith purchaser’ used in previous law], is derived from the term ‘protected holder’ used in the Convention on International Bills and Notes prepared by the United Nations Commission on International Trade Law (‘UNCITRAL’).”

[This section explicitly rejects the decision in *First City Trust v. Emery* (1985), 64 B.C.L.R. 326 (B.C.S.C.), to the extent that decision held that a *bona fide* purchaser for value, without notice of an

adverse claim, takes securities subject to that adverse claim.]

Definitional cross references: “adverse claim”	s. 1(1)
“protected purchaser”	s. 1(1)
“purchaser”	s. 1(1)
“secured party”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-304(a)

Comparison with previous law: See OBCA s. 73(2); ABCA s. 64(4)-(7); CBCA s. 65(4)-(7); all of which are based on, and similar to (1962) UCC 8-308(2), which is similar to s. 21 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-304(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“By virtue of the definition of [endorsement] in [s. 1(1)] and the rules of this section, the simplified method of [endorsing] certificated securities previously set forth in the *Uniform Stock Transfer Act* is continued. Although more than one special [endorsement] on a given security certificate is possible, the desire for dividends or interest, as the case may be, should operate to bring the certificate home for registration of transfer within a reasonable period of time. The usual form of assignment which appears on the back of a stock certificate or in a separate ‘power’ may be filled up either in the form of an assignment,

a power of attorney to transfer, or both. If it is not filled up at all but merely signed, the [endorsement] is in blank. If filled up either as an assignment or as a power of attorney to transfer, the [endorsement] is special.”

Definitional cross references: “endorsement” s. 1(1)
“security” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-304(b)

Comparison with previous law: See OBCA s. 73(4); ABCA s. 64(9); CBCA s. 65(9); all of which are based on, and similar to (1962) UCC 8-308(5).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-304(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 83] recognizes the validity of a ‘partial’ [endorsement], e.g., as to fifty shares of the one hundred represented by a single certificate. The rights of a transferee under a partial [endorsement] to the status of a protected purchaser are left to the case law.” [There appear to be no U.S. or Canadian cases on this point, which suggests that it does not arise in practice.]

Definitional cross references: “endorsement” s. 1(1)
“issuer” s. 1(1)
“security certificate” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-304(c)

Comparison with previous law: See OBCA s. 74; ABCA s. 65; CBCA s. 66; all of which are based on, and similar to (1962) UCC 8-309, which is similar to sections 1 and 10 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-304(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 84] deals with the effect of an [endorsement] without delivery. There must be a voluntary parting with control in order to effect a valid transfer of a certificated security as between the parties. *Levey v. Nason*, 279 Mass. 268, 181 N.E. 193 (1932), and *National Surety Co. v. Indemnity Insurance Co. of North America*, 237 App.Div. 485, 261 N.Y.S. 605 (1933). The provision in Section 10 of the *Uniform Stock Transfer Act* that an attempted transfer without delivery amounts to a promise to transfer is omitted. Even under that Act the effect of such a promise was left to the applicable law of contracts, and [the USTA] by making no reference to such situations intends to achieve a similar result. With respect to delivery there is no counterpart to [s. 85] on right to compel [endorsement], such as is envisaged in *Johnson v. Johnson*, 300 Mass. 24, 13 N.E.2d 788 (1938), where the transferee under a written assignment was given the right to compel a transfer of the certificate.” [There are no equivalent Canadian cases to the U.S. decisions referred to in this Comment. These U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

Definitional cross references:

“delivery”	s. 4 and s. 79
“endorsement”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-304(d)

Comparison with previous law: See OBCA s. 72; ABCA s. 63; CBCA s. 64; all of which are based on, and similar to (1962) UCC 8-307, which is similar to s. 9 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-304(d), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 85] deals with the effect of delivery without [endorsement]. As between the parties the transfer is made complete upon delivery, but the transferee cannot become a protected purchaser until [endorsement] is made. The [endorsement] does not operate retroactively, and notice may intervene between delivery and [endorsement] so as to prevent the transferee from becoming a protected purchaser. Although a purchaser taking without a necessary [endorsement] may be subject to claims of ownership, any issuer’s [defence] of which the purchaser had no notice at the time of delivery will be cut off, since the provisions of [the USTA] protect all purchasers for value without notice ([sections 65-70]).”

“The transferee’s right to compel an [endorsement] where a security certificate has been delivered with intent to transfer is recognized in the case law. See *Coats v. Guaranty Bank & Trust Co.*, 170 La. 871, 129 So. 513 (1930). A proper [endorsement] is one of the requisites of transfer which a purchaser of a certificated security has a right to obtain ([s. 96]). A purchaser may not only compel an [endorsement] under that section but may also recover for any reasonable expense incurred by the transferor’s failure to respond to the demand for an [endorsement].” [There are no equivalent Canadian cases to the U.S decision referred to in this Comment. That U.S. decision is part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

Definitional cross references: “delivery”	s. 4 and s. 79
“endorsement”	s. 1(1)
“protected purchaser”	s. 1(1)
“purchaser”	s. 1(1)
“registered form”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-304(e)

Comparison with previous law: See OBCA s. 75; ABCA s. 66; CBCA s. 67; all of which are based on, and similar to (1962) UCC 8-310.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-304(e), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 86] deals with the significance of [a purported endorsement] on a security certificate in bearer form. [This provision differs from Rev8-304(e) only by the addition of the word ‘purported’, which recognizes that the concept and definition of endorsement applies only to registered securities]. A purported [endorsement] of bearer paper is normally of no effect. An [endorsement] ‘for collection,’ ‘for surrender’ or the like, charges a purchaser with notice of adverse claims [s. 28] but does not operate beyond this to interfere with any right the holder may otherwise possess to have the security registered.”

Definitional cross references: “adverse claim”	s. 1(1)
“bearer form”	s. 1(1)
“endorsement”	s. 1(1)
“security certificate”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-304(f)

Comparison with previous law: See OBCA s. 73(3); ABCA s. 64(8); CBCA s. 65(8); all of which are based on, and similar to (1962) UCC 8-308(4).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-304(f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 87] makes clear that the [endorser] of a security certificate does not warrant that the issuer will honor the underlying obligation. In view of the nature of investment securities and the circumstances under which they are normally transferred, a transferor cannot be held to warrant as to the issuer's actions. As a transferor the [endorser], of course, remains liable for breach of the warranties set forth in [sections 40 and 42].”

Definitional cross references:

“endorsement”	s. 1(1)
“issuer”	s. 1(1)
“security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-305(a)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the transfer of uncertificated securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-305(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The term instruction is defined in [s. 1(1)] as a notification communicated to the issuer of an uncertificated security directing that transfer be registered. [sections 36-39 specify] who may initiate an effective instruction.”

“Functionally, presentation of an instruction is quite similar to the presentation of an [endorsed] certificate for reregistration. Note that instruction is defined in terms of ‘communicate,’ see [s. 10]. Thus, the instruction may be in the form of a writing signed by the registered owner or in any other form agreed upon by the issuer and the registered owner. Allowing nonwritten forms of instructions will permit the development and employment of means of transmitting instructions electronically.”

“When a person who originates an instruction leaves a blank and the blank later is completed, [this section] gives the issuer the same rights it would have had against the originating person had that person completed the blank. This is true regardless of whether the person completing the instruction had authority to complete it. Compare [s. 74] and its Comment, dealing with blanks left upon issue.”

Definitional cross references:

“appropriate person”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)

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](#).

COMMENT

Source: UCC Rev 8-305(b)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the transfer of uncertificated securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-305(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 89] makes clear that the originator of an instruction, like the [endorser] of a security certificate, does not warrant that the issuer will honor the underlying obligation, but does make warranties as a transferor under [sections 41 and 43].”

Definitional cross references: “instruction”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)
“security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-306(a)

Comparison with previous law: See OBCA s. 77(1); ABCA s. 68(1); CBCA s. 69(1); all of which are based on, and similar to (1962) UCC 8-312(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-306(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 90] provides that a guarantor of the signature of the [endorser] of a security certificate warrants that the signature is genuine, that the signer is an appropriate person or has actual authority to [endorse] on behalf of the appropriate person, and that the signer has legal capacity. [Section 91] provides similar, though not identical, warranties for the guarantor of a signature of the originator of an instruction for transfer of an uncertificated security.”

“Appropriate person is defined in [s. 1(1)] to include a successor or person who has power under other law to act for a person who is deceased or lacks capacity. Thus if a certificate registered in the name of Mary Roe is [endorsed] by Jane Doe as executor of Mary Roe, a guarantor of the signature of Jane Doe warrants that she has power to act as executor.”

“Although the definition of appropriate person in [s. 1(1)] does not itself include an agent, an [endorsement] by an agent is effective under [s. 36] if the agent has authority to act for the appropriate person. Accordingly, this section provides an explicit warranty of authority for agents.”

“The rationale of the principle that a signature guarantor warrants the authority of the signer, rather than simply the genuineness of the signature, was explained in the leading case of *Jennie Clarkson Home for Children v. Missouri, K. & T. R. Co.*, 182 N.Y. 47, 74 N.E. 571, 70 A.L.R. 787 (1905), which dealt with a [guarantee] of the signature of a person [endorsing] on behalf of a corporation. ‘If stock is held by an individual who is executing a power of attorney for its transfer, the member of the exchange who signs as a witness thereto guaranties not only the genuineness of the signature affixed to the power of attorney, but that the person signing is the individual in whose name the stock stands. With reference to stock standing in the name of a corporation, which can only sign a power of attorney through its authorized officers or agents, a different situation is presented. If the witnessing of the signature of the corporation is only that of the signature of a person who signs for the corporation, then the [guarantee] is of no value, and there is nothing to protect purchasers or the companies who are called upon to issue new stock in the place of that transferred from the frauds of persons who have signed the names of corporations without authority. If

such is the only effect of the [guarantee], purchasers and transfer agents must first go to the corporation in whose name the stock stands and ascertain whether the individual who signed the power of attorney had authority to so do. This will require time, and in many cases will necessitate the postponement of the completion of the purchase by the payment of the money until the facts can be ascertained. The broker who is acting for the owner has an opportunity to become acquainted with his customer, and may readily before sale ascertain, in case of a corporation, the name of the officer who is authorized to execute the power of attorney. It was therefore, we think, the purpose of the rule to cast upon the broker who witnesses the signature the duty of ascertaining whether the person signing the name of the corporation had authority to so do, and making the witness a guarantor that it is the signature of the corporation in whose name the stock stands.’’ [There are no equivalent Canadian cases to the U.S decision referred to in this Comment. That U.S. decision is part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

Definitional cross references: “appropriate person” s. 1(1)
“endorsement” s. 1(1)
“genuine” s. 1(1)
“person” s. 1(1)
“security certificate” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-306(b)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the transfer of uncertificated securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-306(b), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“Subsection [(1)] sets forth the warranties that can reasonably be expected from the guarantor of the signature of the originator of an instruction, who, though familiar with the signer, does not have any evidence that the purported owner is in fact the owner of the subject uncertificated security. This is in contrast to the position of the person guaranteeing a signature on a certificate who can see a certificate in the signer's possession in the name of or [endorsed] to the signer or in blank. Thus, the warranty in paragraph [(b)] of subsection [(1)] is expressly conditioned on the actual registration's conforming to that represented by the originator. If the signer purports to be the owner, the guarantor under paragraph [(b)], warrants only the identity of the signer. If, however, the signer is acting in a representative capacity, the guarantor warrants both the signer's identity and authority to act for the purported owner. The issuer needs no warranty as to the facts of registration because those facts can be ascertained from the issuer's own records.”

Definitional cross references:

“appropriate person”	s. 1(1)
“genuine”	s. 1(1)
“instruction”	s. 1(1)
“person”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-306(c)

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the transfer of uncertificated securities.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-306(c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 92] sets forth a ‘special [guarantee] of signature’ under which the guarantor additionally warrants both registered ownership and freedom from undisclosed defects of record. The guarantor of the signature of an [endorser] of a security certificate effectively makes these warranties to a purchaser for value on the evidence of a clean certificate issued in the name of the [endorser, endorsed to the endorser or endorsed] in blank. By specially guaranteeing under [s. 92], the guarantor warrants that the instruction will, when presented to the issuer, result in the requested registration free from defects not specified.”

Definitional cross references: “instruction”	s. 1(1)
“issuer”	s. 1(1)
“security interest”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-306(d), (e), and (f)

Comparison with previous law: See OBCA s. 77(1) and (2); ABCA s. 68(1) and (2); CBCA s. 69(1) and (2); all of which are based on, and similar to (1962) UCC 8-312(1) and (2).

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-306(d), (e), and (f), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“Subsection [(1)] makes clear that the warranties of a signature guarantor are limited to those specified in this section and do not include a general warranty of rightfulness. On the other hand subsections [(2)] and [(3)] provide that a person guaranteeing an [endorsement] or an instruction does warrant that the transfer is rightful in all respects.”

Definitional cross references: “endorsement”	s. 1(1)
“person”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-306(g)

Comparison with previous law: See OBCA s. 77(3); ABCA s. 68(3); CBCA s. 69(3); all of which are

based on, and similar to (1962) UCC 8-312(2).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-306(g), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 94] makes clear what can be inferred from the combination of [sections 97 and 98], that the issuer may not require as a condition to transfer a [guarantee] of the [endorsement] or instruction nor may it require a special signature [guarantee].”

Definitional cross references:

“endorsement”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-306(h)

Comparison with previous law: See OBCA s. 77(4); ABCA s. 68(4); CBCA s. 69(4); all of which are based on, and similar to (1962) UCC 8-312(3).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-306(h), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Section 95] specifies to whom the warranties in this section run, and also provides that a person who

gives a [guarantee] under this section has an action against the [endorser] or originator for any loss suffered by the guarantor.”

Definitional cross references: “endorsement”	s. 1(1)
“instruction”	s. 1(1)
“person”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-307

Comparison with previous law: See OBCA s. 81; ABCA s. 72; CBCA s. 73; all of which are based on, and similar to (1962) UCC 8-316.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-307, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Because registration of the transfer of a security is a matter of vital importance, a purchaser is here provided with the means of obtaining such formal requirements for registration as signature guaranties, proof of authority, transfer tax stamps and the like. The transferor is the one in a position to supply most conveniently whatever documentation may be requisite for registration of transfer, and the duty to do so upon demand within a reasonable time is here stated affirmatively. If an essential item is peculiarly within the province of the transferor so that the transferor is the only one who can obtain it, the purchaser may

specifically enforce the right to obtain it. Compare [s. 85]. If a transfer is not for value the transferor need not pay expenses.”

“2. If the transferor's duty is not performed the transferee may reject or rescind the contract to transfer. The transferee is not bound to do so. An action for damages for breach of contract may be preferred.”

Definitional cross references: “purchaser”	s. 1(1)
“security”	s. 1(1)
“value”	s. 9 and s. 64

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,
- (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.

COMMENT

Source: UCC Rev 8-401

Comparison with previous law: See OBCA s. 86; ABCA s. 75; CBCA s. 76; all of which are based on, and similar to (1962) UCC 8-401.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-401, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section states the duty of the issuer to register transfers. A duty exists only if certain preconditions exist. If any of the preconditions do not exist, there is no duty to register transfer. If an [endorsement] on a security certificate is a forgery, there is no duty. If an instruction to transfer an uncertificated security is not originated by an appropriate person, there is no duty. If there has not been compliance with applicable tax laws, there is no duty. If a security certificate is properly [endorsed] but nevertheless the transfer is in fact wrongful, there is no duty unless the transfer is to a protected purchaser (and the other preconditions exist).”

“This section does not constitute a mandate that the issuer must establish that all preconditions are met before the issuer registers a transfer. The issuer may waive the reasonable assurances specified in paragraph [(1)(c)]. If it has confidence in the responsibility of the persons requesting transfer, it may ignore questions of compliance with tax laws. Although an issuer has no duty if the transfer is wrongful, the issuer has no duty to inquire into adverse claims, see [s. 102].”

[In subsection (1)(e), the USTA adds the words “by statute” to make clear that the issuer is not obligated to register a transfer in violation of a statutory transfer restriction such as s. 379 of the *Bank Act*.

Subsection (g) allows an issuer to protect itself against sham transfers. See *Evanov v. Burlington Broadcasting Inc.*, [1997] O.J. No. 1781 (Ont. C.J.).]

“2. By subsection [(2)] the person entitled to registration may not only compel it but may hold the issuer liable in damages for unreasonable delay.”

“3. [Clause (a) of the definition of ‘issuer’ in s. 1(1)] provides that with respect to registration of transfer, ‘issuer’ means the person on whose behalf transfer books are maintained. Transfer agents, registrars or the like within the scope of their respective functions have rights and duties under this Part similar to those of the issuer. See [s. 105].”

Definitional cross references: “appropriate person”	s. 1(1)
“certificated security”	s. 1(1)
“endorsement”	s. 1(1)
“genuine”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)
“protected purchaser”	s. 1(1)
“registered form”	s. 1(1)
“uncertificated security”	s. 1(1)

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;
 - (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.

COMMENT

Source: UCC Rev 8-402

Comparison with previous law: See OBCA s. 87; ABCA s. 76; CBCA s. 77; all of which are based on, and similar to (1962) UCC 8-402.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-402, as described in the UCC Official Comment as follows [editing and additional material by the

CSA Task Force shown in square brackets]:

“1. An issuer is absolutely liable for wrongful registration of transfer if the [endorsement] or instruction is ineffective. See [s. 102]. Accordingly, an issuer is entitled to require such assurance as is reasonable under the circumstances that all necessary [endorsements] are effective, and thus to minimize its risk. This section establishes the requirements the issuer may make in terms of documentation which, except in the rarest of instances, should be easily furnished. Subsection [(2)] provides that an issuer may require additional assurances if that requirement is reasonable under the circumstances, but if the issuer demands more than reasonable assurance that the instruction or the necessary [endorsements] are genuine and authorized, the presenter may refuse the demand and sue for improper refusal to register. Section [97(2)].”

“2. Under subsection [(3)(a)], the issuer may require in all cases a [guarantee] of signature. See [sections 90 and 91]. When an instruction is presented the issuer always may require reasonable assurance as to the identity of the originator. Subsection [(1)(b)] allows the issuer to require that the person making these guaranties be one reasonably believed to be responsible, and the issuer may adopt standards of responsibility which are not manifestly unreasonable [subsection (2)]....”

“3. This section, by paragraphs [(b) through (e)] of subsection [(3)], permits the issuer to seek confirmation that the [endorsement] or instruction is genuine and authorized. The permitted methods act as a double check on matters which are within the warranties of the signature guarantor. See [sections 90 and 91]. Thus, an agent may be required to submit a power of attorney, a corporation to submit a certified resolution evidencing the authority of its signing officer to sign, an executor or administrator to submit the usual ‘short-form certificate,’ etc. But failure of a fiduciary to obtain court approval of the transfer or to comply with other requirements does not make the fiduciary's signature ineffective. Section [37]. Hence court orders and other controlling instruments are omitted from subsection [(3)].”

“Subsection [(3)(c)] authorizes the issuer to require ‘appropriate evidence’ of appointment or incumbency, and subsection [(1)] indicates what evidence will be ‘appropriate’. In the case of a fiduciary appointed or qualified by a court that evidence will be a court certificate dated within sixty days before the date of presentation, subsection [(1)(a)(i)]. Where the fiduciary is not appointed or qualified by a court, as in the case of a successor trustee, subsection [(1)(a)(ii)] applies. In that case, the issuer may require a copy of a trust instrument or other document showing the appointment, or it may require the certificate of a responsible person. In the absence of such a document or certificate, it may require other appropriate evidence. If the security is registered in the name of the fiduciary as such, the person's signature is

effective even though the person is no longer serving in that capacity, see [s. 38], hence no evidence of incumbency is needed.”

“4. Circumstances may indicate that a necessary signature was unauthorized or was not that of an appropriate person. Such circumstances would be ignored at risk of absolute liability. To minimize that risk the issuer may properly exercise the option given by subsection [(4)] to require assurance beyond that specified in subsection [(3)]. On the other hand, the facts at hand may reflect only on the rightfulness of the transfer. Such facts do not create a duty of inquiry, because the issuer is not liable to an adverse claimant unless the claimant obtains legal process. See [s. 102].”

Definitional cross references: “appropriate person”	s. 1(1)
“endorsement”	s. 1(1)
“fiduciary”	s. 1(1)
“genuine”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-403(a)

Comparison with previous law: See OBCA s. 88(1); ABCA s. 77(1); CBCA s. 78(1); all of which are based on, and similar to (1962) UCC 8-403(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-403(a), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The general rule under [the USTA] is that if there has been an effective [endorsement] or instruction, a person who contends that registration of the transfer would be wrongful should not be able to interfere with the registration process merely by sending notice of the assertion to the issuer. Rather, the claimant must obtain legal process. See [s. 102]. Section [99] is an exception to this general rule. It permits the registered owner -- but not third parties -- to demand that the issuer not register a transfer.”

“This section is intended to alleviate the problems faced by registered owners of certificated securities who lose or misplace their certificates. A registered owner who realizes that a certificate may have been lost or stolen should promptly report that fact to the issuer, lest the owner be precluded from asserting a claim for wrongful registration. See [s. 104]. The usual practice of issuers and transfer agents is that when a certificate is reported as lost, the owner is notified that a replacement can be obtained if the owner provides an indemnity bond. See [s. 103]. If the registered owner does not plan to transfer the securities, the owner might choose not to obtain a replacement, particularly if the owner suspects that the certificate has merely been misplaced.”

“Under this section, the owner's notification that the certificate has been lost would constitute a demand that the issuer not register transfer. No indemnity bond or legal process is necessary.”

Definitional cross references:	
“appropriate person”	s. 1(1)
“communicate”	s. 10
“endorsement”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“notification”	s. 11
“person”	s. 1(1)
“security”	s. 1(1)

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.

(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.

COMMENT

Source: UCC Rev 8-403(b) and (c)

Comparison with previous law: See OBCA s. 88(2); ABCA s. 77(2); CBCA s. 78(2); all of which are based on, and similar to (1962) UCC 8-403(2).

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-403(b) and (c), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“If the original certificate is presented for registration of transfer, the issuer is required to notify the

registered owner of that fact, and defer registration of transfer for a stated period. In order to prevent undue delay in the process of registration, the stated period may not exceed thirty days. This gives the registered owner an opportunity to either obtain legal process or post an indemnity bond [as provided in s. 101] and thereby prevent the issuer from registering transfer.”

Definitional cross references: “certificated security”	s. 1(1)
“communication”	s. 10
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“notify”	s. 11
“person”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-403(d) and (e)

Comparison with previous law: See OBCA s. 88(3); ABCA s. 77(3); CBCA s. 78(3); all of which are based on, and similar to (1962) UCC 8-403(3).

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-403(d) and (e), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[Subsection (1) states that an issuer is not liable for registering a transfer if the person making the demand that the issuer not register the transfer fails to act in accordance with the notice given by the issuer under s. 100. Subsection (2)] makes clear that this section does not relieve an issuer from liability for registering a transfer pursuant to an ineffective [endorsement]. An issuer's liability for wrongful registration in such cases does not depend on the presence or absence of notice that the [endorsement] was ineffective. Registered owners who are confident that they neither [endorsed] the certificates, nor did anything that would preclude them from denying the effectiveness of another's [endorsement], see [sections 36 and 104], might prefer to pursue their rights against the issuer for wrongful registration rather than take advantage of the opportunity to post a bond or seek a restraining order when notified by the issuer under this section that their lost certificates have been presented for registration in apparently good order.”

Definitional cross references:

“effective”	sections 36-39
“endorsement”	s. 1(1)
“instruction”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)

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.
- (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.

COMMENT

Source: UCC Rev 8-404

Comparison with previous law: See OBCA s. 89; ABCA s. 78; CBCA s. 79; all of which are based on, and similar to (1962) UCC 8-404.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-404, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Subsection [(1)(a)] provides that an issuer is liable if it registers transfer pursuant to an [endorsement] or instruction that was not effective. For example, an issuer that registers transfer on a forged [endorsement] is liable to the registered owner. The fact that the issuer had no reason to suspect that the [endorsement] was forged or that the issuer obtained the ordinary assurances under [s. 98] does not relieve the issuer from liability. The reason that issuers obtain signature guaranties and other assurances is that they are liable for wrongful registration.”

“Subsections [(2) and (3)] specify the remedies] for wrongful registration. Pre-[UCC] cases established the registered owner's right to receive a new security where the issuer had wrongfully registered a transfer, but

some cases also allowed the registered owner to elect between an equitable action to compel issue of a new security and an action for damages. Cf. *Casper v. Kalt-Zimmers Mfg. Co.*, 159 Wis. 517, 149 N.W. 754 (1914). [The USTA] does not allow such election. The true owner of a certificated security is required to take a new security except where an overissue would result and a similar security is not reasonably available for purchase. See [s. 78]. The true owner of an uncertificated security is entitled and required to take restoration of the records to their proper state, with a similar exception for overissue.”

“2. Read together, subsections [(4) and (1)] have the effect of providing that an issuer has no duties to an adverse claimant unless the claimant serves legal process on the issuer to enjoin registration. [Mere commencement of legal proceedings is not sufficient; the legal process must enjoin the issuer from registering the transfer as described in s. 101.] Issuers, or their transfer agents, perform a record-keeping function for the direct holding system that is analogous to the functions performed by [clearing agencies] and securities intermediaries in the indirect holding system. This section applies to the record-keepers for the direct holding system the same standard that [s. 63] applies to the record-keepers for the indirect holding system. Thus, issuers are not liable to adverse claimants merely on the basis of notice. As in the case of the analogous rules for the indirect holding system, the policy of this section is to protect the right of investors to have their securities transfers processed without the disruption or delay that might result if the record-keepers risked liability to third parties. It would be undesirable to apply different standards to the direct and indirect holding systems, since doing so might operate as a disincentive to the development of a book-entry direct holding system.”

“3. This section changes prior law under which an issuer could be held liable, even though it registered transfer on an effective [endorsement] or instruction, if the issuer had in some fashion been notified that the transfer might be wrongful against a third party, and the issuer did not appropriately discharge its duty to inquire into the adverse claim. See [OBCA s. 88; ABCA s. 77; and CBCA s. 78].”

“The rule of former [OBCA s. 88; ABCA s. 77; and CBCA s. 78] was anomalous inasmuch as [s. 75 and similar provisions in existing Canadian law provide] that the issuer is entitled to ‘treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.’ Under [s. 75], the fact that a third person notifies the issuer of a claim does not preclude the issuer from treating the registered owner as the person entitled to the security. See *Kerrigan v. American Orthodontics Corp.*, 960 F.2d 43 (7th Cir. 1992). The change made in the present version of [s. 102] ensures that the rights of registered owners and the duties of issuers with respect to registration of transfer will be protected against third-party interference in the same fashion as other rights of registered

ownership.”

[This Comment refers to a number of American cases to which there are no equivalent Canadian cases. The U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

Definitional cross references:	“certificated security”	s. 1(1)
	“collusion”	s. 1(1)
	“endorsement”	s. 1(1)
	“effective”	sections 36-39
	“instruction”	s. 1(1)
	“issuer”	s. 1(1)
	“overissue”	s. 1(1)
	“person”	s. 1(1)
	“security”	s. 1(1)
	“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-405

Comparison with previous law: See OBCA s. 90(2), (3), and (4); ABCA s. 79(2), (3), and (4); CBCA s. 80(2), (3), and (4); all of which are based on, and similar to (1962) UCC 8-405(2) and (3), which are similar to s. 17 of the 1909 *Uniform Stock Transfer Act*.

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-405, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section enables the owner to obtain a replacement of a lost, destroyed or stolen certificate, provided that reasonable requirements are satisfied and a sufficient indemnity bond supplied.”

“2. Where an ‘original’ security certificate has reached the hands of a protected purchaser, the registered owner -- who was in the best position to prevent the loss, destruction or theft of the security certificate -- is now deprived of the new security certificate issued as a replacement. This changes the pre-UCC law under which the original certificate was ineffective after the issue of a replacement except insofar as it might represent an action for damages in the hands of a purchaser for value without notice. *Keller v. Eureka Brick Mach. Mfg. Co.*, 43 Mo.App. 84, 11 L.R.A. 472 (1890). Where both the original and the new certificate have reached protected purchasers the issuer is required to honor both certificates unless an overissue would result and the security is not reasonably available for purchase. See [s. 78]. In the latter case alone, the protected purchaser of the original certificate is relegated to an action for damages. In either case, the issuer itself may recover on the indemnity bond.”

[This Comment refers to an American case to which there are no equivalent Canadian cases. The U.S. decision is part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

Definitional cross references: “bearer form”	s. 1(1)
“certificated security”	s. 1(1)
“issuer”	s. 1(1)
“notice”	s. 11

“overissue”	s. 1(1)
“person”	s. 1(1)
“protected purchaser”	s. 1(1)
“registered form”	s. 1(1)
“security certificate”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-406

Comparison with previous law: See OBCA s. 90(1); ABCA s. 79(1); CBCA s. 80(1); all of which are based on, and similar to (1962) UCC 8-405(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-406, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“An owner who fails to notify the issuer within a reasonable time after the owner knows or has reason to know of the loss or theft of a security certificate is estopped from asserting the ineffectiveness of a forged or unauthorized [endorsement] and the wrongfulness of the registration of the transfer. If the lost certificate was [endorsed] by the owner, then the registration of the transfer was not wrongful under [s. 102], unless the owner made an effective demand that the issuer not register transfer under [s. 99].”

Definitional cross references: “issuer” s. 1(1)
“notify” s. 11

“security certificate” s. 1(1)

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.

COMMENT

Source: UCC Rev 8-407

Comparison with previous law: See OBCA s. 91(1); ABCA s. 80(1); CBCA s. 81(1); all of which are based on, and similar to (1962) UCC 8-406(1).

Explanation: This provision is intended to be substantively uniform with the corresponding provision of Rev 8-407, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Transfer agents, registrars, and the like are here expressly held liable both to the issuer and to the owner for wrongful refusal to register a transfer as well as for wrongful registration of a transfer in any case within the scope of their respective functions where the issuer would itself be liable. Those cases which have regarded these parties solely as agents of the issuer and have therefore refused to recognize their liability to the owner for mere non-feasance, i.e., refusal to register a transfer, are rejected. *Hulse v. Consolidated Quicksilver Mining Corp.*, 65 Idaho 768, 154 P.2d 149 (1944); *Nicholson v. Morgan*, 119 Misc. 309, 196 N.Y.Supp. 147 (1922); *Lewis v. Hargadine-McKittrick Dry Goods Co.*, 305 Mo. 396, 274 S.W. 1041 (1924).”

“2. The practice frequently followed by authenticating trustees of issuing certificates of indebtedness rather than authenticating duplicate certificates where securities have been lost or stolen became obsolete in view of the provisions of [s. 103], which makes express provision for the issue of substitute securities. It is not a breach of trust or lack of due diligence for trustees to authenticate new securities. Cf. *Switzerland General Ins. Co. v. N.Y.C. & H.R.R. Co.*, 152 App.Div. 70, 136 N.Y.S. 726 (1912).”

[This Comment refers to a number of American cases to which there are no equivalent Canadian cases. The U.S. decisions are part of the context to previous versions of UCC Article 8, existing Canadian law, and the USTA.]

Definitional cross references: “certificated security”	s. 1(1)
“issuer”	s. 1(1)
“person”	s. 1(1)
“security”	s. 1(1)
“security certificate”	s. 1(1)
“uncertificated security”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-501(b) to (e)

Comparison with previous law: The provisions in this section, together with the rest of Part 6, reflect a new and different approach to describing the property interest of a person who holds securities or other financial assets through a securities intermediary. This new approach describes the property interest as a “security entitlement”. It explicitly rejects previous law by omitting most of previous 8-313, upon which were based OBCA s. 78, ABCA s. 69 and CBCA s. 70; and omitting all of previous 8-320, upon which is based OBCA s. 85.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-501, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Part [6] rules apply to security entitlements, and [s. 106(1)] provides that a person has a security entitlement when a financial asset has been credited to a ‘securities account.’ Thus, the term ‘securities account’ specifies the type of arrangements between institutions and their customers that are covered by Part [6]. A securities account is a consensual arrangement in which the intermediary undertakes to treat the customer as entitled to exercise the rights that comprise the financial asset. The consensual aspect is covered by the requirement that the account be established pursuant to agreement. The term agreement is used in the broad sense [that] there is no requirement that a formal or written agreement be signed.”

“As the securities business is presently conducted, several significant relationships clearly fall within the definition of a securities account, including the relationship between a [clearing agency] and its participants, a broker and customers who leave securities with the broker, and a bank [or trust company] acting as securities custodian and its custodial customers. Given the enormous variety of arrangements concerning securities that exist today, and the certainty that new arrangements will evolve in the future, it is not possible to specify all of the arrangements to which the term does and does not apply.”

“Whether an arrangement between a firm and another person concerning a security or other financial asset is a ‘securities account’ under [the USTA] depends on whether the firm has undertaken to treat the other person as entitled to exercise the rights that comprise the security or other financial asset. [The provisions

of the USTA are intended to] be construed and applied to promote their underlying purposes and policies. Thus, the question whether a given arrangement is a securities account should be decided not by dictionary analysis of the words of the definition taken out of context, but by considering whether it promotes the objectives of [the USTA] to include the arrangement within the term securities account.”

“The effect of concluding that an arrangement is a securities account is that the rules of Part [6] apply. Accordingly, the definition of ‘securities account’ must be interpreted in light of the substantive provisions in Part [6], which describe the core features of the type of relationship for which the commercial law rules of [the USTA] concerning security entitlements were designed. There are many arrangements between institutions and other persons concerning securities or other financial assets which do not fall within the definition of ‘securities account’ because the institutions have not undertaken to treat the other persons as entitled to exercise the ordinary rights of an entitlement holder specified in the Part [6] rules. For example, the term securities account does not cover the relationship between a bank and its depositors or the relationship between a trustee and the beneficiary of an ordinary trust, because those are not relationships in which the holder of a financial asset has undertaken to treat the other as entitled to exercise the rights that comprise the financial asset in the fashion contemplated by the Part [6] rules.”

“In short, the primary factor in deciding whether an arrangement is a securities account is whether application of the Part [6] rules is consistent with the expectations of the parties to the relationship. Relationships not governed by Part [6] may be governed by other parts of [the USTA] if the relationship gives rise to a new security, or may be governed by other law entirely.”

“2. Subsection [(1)] of this section specifies what circumstances give rise to security entitlements. Paragraph [(a)] of subsection [(1)] sets out the most important rule. It turns on the intermediary's conduct, reflecting a basic operating assumption of the indirect holding system that once a securities intermediary has acknowledged that it is carrying a position in a financial asset for its customer or participant, the intermediary is obligated to treat the customer or participant as entitled to the financial asset. Paragraph [(a)] does not attempt to specify exactly what accounting, record-keeping, or information transmission steps suffice to indicate that the intermediary has credited the account. That is left to agreement, trade practice, or rule in order to provide the flexibility necessary to accommodate varying or changing accounting and information processing systems. The point of paragraph [(a)] is that once an intermediary has acknowledged that it is carrying a position for the customer or participant, the customer or participant has a security entitlement. The precise form in which the intermediary manifests that acknowledgment is left to private ordering.”

“Paragraph [(b)] of subsection [(1)] sets out a different operational test, turning not on the intermediary's accounting system but on the facts that accounting systems are supposed to represent. Under paragraph [(1)(b)] a person has a security entitlement if the intermediary has received and accepted a financial asset for credit to the account of its customer or participant. For example, if a customer of a broker or bank [or trust company] custodian delivers a security certificate in proper form to the broker, [bank or trust company] to be held in the customer's account, the customer acquires a security entitlement. Paragraph [(1)(b)] also covers circumstances in which the intermediary receives a financial asset from a third person for credit to the account of the customer or participant. Paragraph [(1)(b)] is not limited to circumstances in which the intermediary receives security certificates or other financial assets in physical form.

Paragraph [(1)(b)] also covers circumstances in which the intermediary acquires a security entitlement with respect to a financial asset which is to be credited to the account of the intermediary's own customer. For example, if a customer transfers her account from Broker A to Broker B, she acquires security entitlements against Broker B once the [clearing agency] has credited the positions to Broker B's account. It should be noted, however, that paragraph [(1)(b)] provides that a person acquires a security entitlement when the intermediary not only receives but also accepts the financial asset for credit to the account. This limitation is included to take account of the fact that there may be circumstances in which an intermediary has received a financial asset but is not willing to undertake the obligations that flow from establishing a security entitlement. For example, a security certificate which is sent to an intermediary may not be in proper form, or may represent a type of financial asset which the intermediary is not willing to carry for others. It should be noted that in all but extremely unusual cases, the circumstances covered by paragraph [(1)(b)] will also be covered by paragraph [(1)(a)], because the intermediary will have credited the positions to the customer's account.”

“Paragraph [(c)] of subsection [(1)] sets out a residual test, to avoid any implication that the failure of an intermediary to make the appropriate entries to credit a position to a customer's securities account would prevent the customer from acquiring the rights of an entitlement holder under Part [6]. As is the case with the paragraph [(1)(b)] test, the paragraph [(1)(c)] test would not be needed for the ordinary cases, since they are covered by paragraph [(1)(a)].”

“3. In a sense, [section 106(1)] is analogous to the rules set out in the provisions of [previous law, such as OBCA s. 78(1)(c) and (e), and s. 85] that specified what acts by a securities intermediary or [clearing agency] sufficed as a transfer of securities held in fungible bulk. Unlike [that previous law], however, this section is not based on the idea that an entitlement holder acquires rights only by virtue of a ‘transfer’ from

the securities intermediary to the entitlement holder. In the indirect holding system, the significant fact is that the securities intermediary has undertaken to treat the customer as entitled to the financial asset. It is up to the securities intermediary to take the necessary steps to ensure that it will be able to perform its undertaking. It is, for example, entirely possible that a securities intermediary might make entries in a customer's account reflecting that customer's acquisition of a certain security at a time when the securities intermediary did not itself happen to hold any units of that security. The person from whom the securities intermediary bought the security might have failed to deliver and it might have taken some time to clear up the problem, or there may have been an operational gap in time between the crediting of a customer's account and the receipt of securities from another securities intermediary. The entitlement holder's rights against the securities intermediary do not depend on whether or when the securities intermediary acquired its interests. Subsection [(2)] is intended to make this point clear. Subsection [(2)] does not mean that the intermediary is free to create security entitlements without itself holding sufficient financial assets to satisfy its entitlement holders. The duty of a securities intermediary to maintain sufficient assets is governed by [section 109] and regulatory law. Subsection [(2)] is included only to make it clear the question whether a person has acquired a security entitlement does not depend on whether the intermediary has complied with that duty.”

“4. [USTA Part 6] sets out a carefully designed system of rules for the indirect holding system. Persons who hold securities through brokers or custodians have security entitlements that are governed by Part [6], rather than being treated as the direct holders of securities. Subsection [(3)] specifies the limited circumstance in which a customer who leaves a financial asset with a broker or other securities intermediary has a direct interest in the financial asset, rather than a security entitlement.”

“The customer can be a direct holder only if the security certificate, or other financial asset, is registered in the name of, payable to the order of, or specially [endorsed] to the customer, and has not been [endorsed] by the customer to the securities intermediary or in blank. The distinction between those circumstances where the customer can be treated as direct owner and those where the customer has a security entitlement is essentially the same as the distinction drawn under [Part XII of the *Bankruptcy and Insolvency Act*] between [‘customer name securities’ and the ‘customer pool fund’]. The distinction does not turn on any form of physical identification or segregation. A customer who delivers certificates to a broker with blank [endorsements] or stock powers is not a direct holder but has a security entitlement, even though the broker holds those certificates in some form of separate safe-keeping arrangement for that particular customer. The customer remains the direct holder only if there is no [endorsement] or stock power so that further action by the customer is required to place the certificates in a form where they can be transferred

by the broker.”

“The rule of subsection [(3)] corresponds to the rule set out in [USTA Section 79(1)(c)] specifying when acquisition of possession of a certificate by a securities intermediary counts as ‘delivery’ to the customer.”

“5. Subsection [(4)] is intended to make clear that Part [6] does not apply to an arrangement in which a security is issued representing an interest in underlying assets, as distinguished from arrangements in which the underlying assets are carried in a securities account. A common mechanism by which new financial instruments are devised is that a financial institution that holds some security, financial instrument, or pool thereof, creates interests in that asset or pool which are sold to others. In many such cases, the interests so created will fall within the definition of ‘security’ in [USTA Section 1(1)]. If so, then by virtue of subsection [(4)] of Section [106], the relationship between the institution that creates the interests and the persons who hold them is not a security entitlement to which the Part [6] rules apply. Accordingly, an arrangement such as a ... depositary receipt facility which creates freely transferable interests in underlying securities will be issuance of a security under [the USTA] rather than establishment of a security entitlement to the underlying securities.”

“The subsection [(4)] rule can be regarded as an aspect of the definitional rules specifying the meaning of securities account and security entitlement. Among the key components of the definition of security in [USTA Section 1(1)] are the ‘transferability’ and ‘divisibility’ tests. Securities, in the [USTA] sense, are fungible interests or obligations that are intended to be tradable. The concept of security entitlement under Part [6] is quite different. A security entitlement is the package of rights that a person has against the person's own intermediary with respect to the positions carried in the person's securities account. That package of rights is not, as such, something that is traded. When a customer sells a security that she had held through a securities account, her security entitlement is terminated; when she buys a security that she will hold through her securities account, she acquires a security entitlement. In most cases, settlement of a securities trade will involve termination of one person's security entitlement and acquisition of a security entitlement by another person. That transaction, however, is not a ‘transfer’ of the same entitlement from one person to another. That is not to say that an entitlement holder cannot transfer an interest in her security entitlement as such; granting a security interest in a security entitlement is such a transfer. On the other hand, the nature of a security entitlement is that the intermediary is undertaking duties only to the person identified as the entitlement holder.”

Definitional cross references: “endorsement” s. 1(1)

“financial asset”	s. 1(1)
“person”	s. 1(1)
“securities account”	s. 1(1)
“securities intermediary”	s. 1(1)
“security”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-502

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-502, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. [Section 107] provides investors in the indirect holding system with protection against adverse claims by specifying that no adverse claim can be asserted against a person who acquires a security entitlement under [s. 106] for value and without notice of the adverse claim. It plays a role in the indirect holding system analogous to the rule of the direct holding system that protected purchasers take free from adverse claims [s. 81].”

“This section does not use the locution ‘takes free from adverse claims’ because that could be confusing as applied to the indirect holding system. The nature of indirect holding system is that an entitlement holder has an interest in common with others who hold positions in the same financial asset through the same intermediary. Thus, a particular entitlement holder's interest in the financial assets held by its intermediary

is necessarily 'subject to' the interests of others. See [s. 108]. The rule stated in this section might have been expressed by saying that a person who acquires a security entitlement under [s. 106] for value and without notice of adverse claims takes 'that security entitlement' free from adverse claims. That formulation has not been used, however, for fear that it would be misinterpreted as suggesting that the person acquires a right to the underlying financial assets that could not be affected by the competing rights of others claiming through common or higher tier intermediaries. A security entitlement is a complex bundle of rights. This section does not deal with the question of what rights are in the bundle. Rather, this section provides that once a person has acquired the bundle, someone else cannot take it away on the basis of assertion that the transaction in which the security entitlement was created involved a violation of the claimant's rights."

"2. Because securities trades are typically settled on a net basis by book-entry movements, it would ordinarily be impossible for anyone to trace the path of any particular security, no matter how the interest of parties who hold through intermediaries is described. Suppose, for example, that S has a 1000 share position in XYZ common stock through an account with a broker, Able & Co. S's identical twin impersonates S and directs Able to sell the securities. That same day, B places an order with Baker & Co., to buy 1000 shares of XYZ common stock. Later, S discovers the wrongful act and seeks to recover 'her shares.' Even if S can show that, at the stage of the trade, her sell order was matched with B's buy order, that would not suffice to show that 'her shares' went to B. Settlement between Able and Baker occurs on a net basis for all trades in XYZ that day; indeed Able's net position may have been such that it received rather than delivered shares in XYZ through the settlement system."

"In the unlikely event that this was the only trade in XYZ common stock executed in the market that day, one could follow the shares from S's account to B's account. The plaintiff in an action in conversion or similar legal action to enforce a property interest must show that the defendant has an item of property that belongs to the plaintiff. In this example, B's security entitlement is not the same item of property that formerly was held by S, it is a new package of rights that B acquired against Baker under [s. 106]. Principles of equitable remedies might, however, provide S with a basis for contending that if the position B received was the traceable product of the wrongful taking of S's property by S's twin, a constructive trust should be imposed on B's property in [favour] of S. [See for example G. H. L. Fridman, *Restitution*, 2nd ed. (Scarborough: Carswell, 1992) at pp. 417-46.] [Section 107] ensures that no such claims can be asserted against a person, such as B in this example, who acquires a security entitlement under [s. 106] for value and without notice, regardless of what theory of law or equity is used to describe the basis of the assertion of the adverse claim."

“In the above example, S would ordinarily have no reason to pursue B unless Able is insolvent and S's claim will not be satisfied in the insolvency proceedings. Because S did not give an entitlement order for the disposition of her security entitlement, Able must recredit her account for the 1000 shares of XYZ common stock. See [s. 112(3) and (4)].”

“3. The following examples illustrate the operation of [s. 107].”

“Example 1. Thief steals bearer bonds from Owner. Thief delivers the bonds to Broker for credit to Thief's securities account, thereby acquiring a security entitlement under [s. 106(1)]. Under other law, Owner may have a claim to have a constructive trust imposed on the security entitlement as the traceable product of the bonds that Thief misappropriated. Because Thief was himself the wrongdoer, Thief obviously had notice of Owner's adverse claim. Accordingly, [s. 107] does not preclude Owner from asserting an adverse claim against Thief.”

“Example 2. Thief steals bearer bonds from Owner. Thief owes a personal debt to Creditor. Creditor has a securities account with Broker. Thief agrees to transfer the bonds to Creditor as security for or in satisfaction of his debt to Creditor. Thief does so by sending the bonds to Broker for credit to Creditor's securities account. Creditor thereby acquires a security entitlement under [s. 106(1)]. Under other law, Owner may have a claim to have a constructive trust imposed on the security entitlement as the traceable product of the bonds that Thief misappropriated. Creditor acquired the security entitlement for value, since Creditor acquired it as security for or in satisfaction of Thief's debt to Creditor. See [s. 9]. If Creditor did not have notice of Owner's claim, [s. 107] precludes any action by Owner against Creditor, whether framed in constructive trust or other theory. [Sections 25-29 specify] what counts as notice of an adverse claim.”

“Example 3. Father, as trustee for Son, holds XYZ Co. shares in a securities account with Able & Co. In violation of his fiduciary duties, Father sells the XYZ Co. shares and uses the proceeds for personal purposes. Father dies, and his estate is insolvent. Assume—implausibly—that Son is able to trace the XYZ Co. shares and show that the ‘same shares’ ended up in Buyer's securities account with Baker & Co. [s. 107] precludes any action by Son against Buyer, whether framed in constructive trust or other theory, provided that Buyer acquired the security entitlement for value and without notice of adverse claims.”

“Example 4. Debtor holds XYZ Co. shares in a securities account with Able & Co. As collateral for a

loan from Bank, Debtor grants Bank a security interest in the security entitlement to the XYZ Co. shares. Bank perfects by a method which leaves Debtor with the ability to dispose of the shares [e.g. by registration; see OPPSA s. 23 and APPSA s. 25].... In violation of the security agreement, Debtor sells the XYZ Co. shares and absconds with the proceeds. Assume—implausibly—that Bank is able to trace the XYZ Co. shares and show that the ‘same shares’ ended up in Buyer’s securities account with Baker & Co. [If Buyer acquired the security entitlement for value and did not know that there was a breach of the security agreement, then Bank’s claim is precluded by the PPSA cut-off rules. See proposed OPPSA s. 28(8)-(10) and APPSA s. 30(11)-(13). Bank’s claim does not meet the definition of “adverse claim” but, if it did, section 107] precludes any action by Bank against Buyer, whether framed in constructive trust or other theory, provided that Buyer acquired the security entitlement for value and without notice of adverse claims.”

“Example 5. Debtor owns controlling interests in various public companies, including Acme and Ajax. Acme owns 60% of the stock of another public company, Beta. Debtor causes the Beta stock to be pledged to Lending Bank as collateral for Ajax’s debt. Acme holds the Beta stock through an account with a securities custodian, C Bank, which in turn holds through [Clearing Agency]. Lending Bank is also a [Clearing Agency] participant. The pledge of the Beta stock is implemented by Acme instructing C Bank to instruct [Clearing Agency] to debit C Bank’s account and credit Lending Bank’s account. Acme and Ajax both become insolvent. The Beta stock is still valuable. Acme’s liquidator asserts that the pledge of the Beta stock for Ajax’s debt was wrongful as against Acme and seeks to recover the Beta stock from Lending Bank. Because the pledge was implemented by an outright transfer into Lending Bank’s account at [Clearing Agency], Lending Bank acquired a security entitlement to the Beta stock under [s. 106(1)]. Lending Bank acquired the security entitlement for value, since it acquired it as security for a debt. See [s. 9]. If Lending Bank did not have notice of Acme’s claim, [s. 107] will preclude any action by Acme against Lending Bank, whether framed in constructive trust or other theory.”

“Example 6. Debtor grants Alpha Co. a security interest in a security entitlement that includes 1000 shares of XYZ Co. stock that Debtor holds through an account with Able & Co. Alpha also has an account with Able. Debtor instructs Able to transfer the shares to Alpha, and Able does so by crediting the shares to Alpha’s account. Alpha has control of the 1000 shares under [s. 32(1)]. (The facts to this point are identical to those in [Example 1 in the Comment to s. 32, except that Alpha Co. was Alpha Bank.]) Alpha next grants Beta Co. a security interest in the 1000 shares included in Alpha’s security entitlement. See [proposed OPPSA/APPSA s. 17.1]. Alpha instructs Able to transfer the shares to Gamma Co., Beta’s custodian. Able does so, and Gamma credits the 1000 shares to Beta’s account. Beta now has control

under [s. 32(1)]. By virtue of Debtor's explicit permission or by virtue of the permission inherent in Debtor's creation of a security interest in [favour] of Alpha and Alpha's resulting power to grant a security interest under [proposed OPPSA/APPSSA s. 17.1], Debtor has no adverse claim to assert against Beta, assuming implausibly that Debtor could 'trace' an interest to the Gamma account. Moreover, even if Debtor did hold an adverse claim, if Beta did not have notice of Debtor's claim, [s. 107] will preclude any action by Debtor against Beta, whether framed in constructive trust or other theory."

"4. Although this section protects entitlement holders against adverse claims, it does not protect them against the risk that their securities intermediary will not itself have sufficient financial assets to satisfy the claims of all of its entitlement holders. Suppose that Customer A holds 1000 shares of XYZ Co. stock in an account with her broker, Able & Co. Able in turn holds 1000 shares of XYZ Co. through its account with [Clearing Agency], but has no other positions in XYZ Co. shares, either for other customers or for its own proprietary account. Customer B places an order with Able for the purchase of 1000 shares of XYZ Co. stock, and pays the purchase price. Able credits B's account with a 1000 share position in XYZ Co. stock, but Able does not itself buy any additional XYZ Co. shares. Able fails, having only 1000 shares to satisfy the claims of A and B. Unless other insolvency law establishes a different distributional rule, A and B would share the 1000 shares held by Able pro rata, without regard to the time that their respective entitlements were established. See [s. 108(2)]. [Section 107] protects entitlement holders, such as A and B, against adverse claimants. In this case, however, the problem that A and B face is not that someone is trying to take away their entitlements, but that the entitlements are not worth what they thought. The only role that [s. 107] plays in this case is to preclude any assertion that A has some form of claim against B by virtue of the fact that Able's establishment of an entitlement in [favour] of B diluted A's rights to the limited assets held by Able."

Definitional cross references:	
“adverse claim”	s. 1(1)
“fiduciary”	s. 1(1)
“financial asset”	s. 1(1)
“notice of an adverse claim”	sections 25-29
“person”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)
“value”	s. 9 and s. 64

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.

(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.

COMMENT

Source: UCC Rev 8-503

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-503, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section specifies the sense in which a security entitlement is an interest in the property held by the securities intermediary. It expresses the ordinary understanding that securities that a firm holds for its customers are not general assets of the firm subject to the claims of creditors. Since securities intermediaries generally do not segregate securities in such fashion that one could identify particular securities as the ones held for customers, it would not be realistic for this section to state that ‘customers’ securities’ are not subject to creditors’ claims. Rather subsection [(1)] provides that to the extent necessary to satisfy all customer claims, all units of that security held by the firm are held for the entitlement holders, are not property of the securities intermediary, and are not subject to creditors’ claims, except as otherwise provided in [s. 116].”

“An entitlement holder’s property interest under this section is an interest with respect to a specific issue of securities or financial assets. For example, customers of a firm who have positions in XYZ common stock

have security entitlements with respect to the XYZ common stock held by the intermediary, while other customers who have positions in ABC common stock have security entitlements with respect to the ABC common stock held by the intermediary.”

“Subsection [(2)] makes clear that the property interest described in subsection [(2)] is an interest held in common by all entitlement holders who have entitlements to a particular security or other financial asset. Temporal factors are irrelevant. One entitlement holder cannot claim that its rights to the assets held by the intermediary are superior to the rights of another entitlement holder by virtue of having acquired those rights before, or after, the other entitlement holder. Nor does it matter whether the intermediary had sufficient assets to satisfy all entitlement holders' claims at one point, but no longer does. Rather, all entitlement holders have a pro rata interest in whatever positions in that financial asset the intermediary holds.”

“Although this section describes the property interest of entitlement holders in the assets held by the intermediary, it does not necessarily determine how property held by a failed intermediary will be distributed in [bankruptcy or] insolvency proceedings. If the intermediary fails and its affairs are being administered in an [bankruptcy or] insolvency proceeding, the applicable [bankruptcy or] insolvency law governs how the various parties having claims against the firm are treated. For example, the distributional rules...under [Part XII of the *Bankruptcy and Insolvency Act*, entitled ‘Securities Firm Bankruptcies’] provide that [the ‘customer pool fund’] is distributed pro rata among all customers in proportion to [their ‘net equity’], rather than dividing the property on an issue by issue basis. For intermediaries that are not subject to the [*Bankruptcy and Insolvency Act*], other insolvency law would determine what distributional rule is applied.”

“2. Although this section recognizes that the entitlement holders of a securities intermediary have a property interest in the financial assets held by the intermediary, the incidents of this property interest are established by the rules of [the USTA], not by common law property concepts. The traditional...rules on certificated securities were based on the idea that a paper certificate could be regarded as a nearly complete reification of the underlying right. The rules on transfer and the consequences of wrongful transfer could then be written using the same basic concepts as the rules for physical chattels. A person's claim of ownership of a certificated security is a right to a specific identifiable physical object, and that right can be asserted against any person who ends up in possession of that physical certificate, unless cut off by the rules protecting purchasers for value without notice. Those concepts do not work for the indirect holding system. A security entitlement is not a claim to a specific identifiable thing; it is a

package of rights and interests that a person has against the person's securities intermediary and the property held by the intermediary. The idea that discrete objects might be traced through the hands of different persons has no place in the [USTA] rules for the indirect holding system. The fundamental principles of the indirect holding system rules are that an entitlement holder's own intermediary has the obligation to see to it that the entitlement holder receives all of the economic and corporate rights that comprise the financial asset, and that the entitlement holder can look only to that intermediary for performance of the obligations. The entitlement holder cannot assert rights directly against other persons, such as other intermediaries through whom the intermediary holds the positions, or third parties to whom the intermediary may have wrongfully transferred interests, except in extremely unusual circumstances where the third party was itself a participant in the wrongdoing. Subsections [(3)] through [(7)] reflect these fundamental principles.”

“Subsection [(3)] provides that an entitlement holder's property interest can be enforced against the intermediary only by exercise of the entitlement holder's rights under [sections 110 through 113]. These are the provisions that set out the duty of an intermediary to see to it that the entitlement holder receives all of the economic and corporate rights that comprise the security. If the intermediary is in [bankruptcy or] insolvency proceedings and can no longer perform in accordance with the ordinary Part [6] rules, the applicable [bankruptcy or] insolvency law will determine how the intermediary's assets are to be distributed.”

“Subsections [(4) through (7)] specify the limited circumstances in which an entitlement holder's property interest can be asserted against a third person to whom the intermediary transferred a financial asset that was subject to the entitlement holder's claim when held by the intermediary. [Subsections (4) through (6) provide] that the property interest of entitlement holders cannot be asserted against any transferee except in the circumstances therein specified. So long as the intermediary is solvent, the entitlement holders must look to the intermediary to satisfy their claims. [UCC Rev 8-503(d)(1) refers to ‘insolvency proceedings’, while USTA s. 108(4)(a) refers to ‘bankruptcy or insolvency proceedings’. No substantive difference is intended. ‘Insolvency proceedings’ is defined in UCC 1-201(b)(22) to include ‘an assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved’. The additional reference to bankruptcy in USTA s. 108(4)(a) is intended to avoid any possible confusion arising from the fact that the *Bankruptcy and Insolvency Act* defines an ‘insolvent person’ as someone who is not bankrupt. The provision is intended to include proceedings under the *Bankruptcy and Insolvency Act*, *Companies’ Creditors Arrangement Act*, or *Winding-up and Restructuring Act*.] If the intermediary does not hold financial assets corresponding to the entitlement holders' claims, the

intermediary has the duty to acquire them. See [s. 109]. Thus, paragraphs [(a), (b), and (c) of subsection (4)] specify that the only occasion in which the entitlement holders can pursue transferees is when the intermediary is unable to perform its obligation, and the transfer to the transferee was a violation of those obligations. Even in that case, a transferee who gave value and obtained control is protected by virtue of the rule in subsection [(7)], unless the transferee acted in collusion with the intermediary.”

“Subsections [(4) through (7)] have the effect of protecting transferees from an intermediary against adverse claims arising out of assertions by the intermediary's entitlement holders that the intermediary acted wrongfully in transferring the financial assets. These rules, however, operate in a slightly different fashion than traditional adverse claim cut-off rules. Rather than specifying that a certain class of transferee takes free from all claims, subsections [(4) through (7)] specify the circumstances in which this particular form of claim can be asserted against a transferee. [The USTA] also contains general adverse claim cut-off rules for the indirect holding system. See [sections 107 and 115]. The rule of subsections [(4) through (7) take] precedence over the general cut-off rules of those sections, because [s. 108] itself defines and sets limits on the assertion of the property interest of entitlement holders. Thus, the question whether entitlement holders' property interest can be asserted as an adverse claim against a transferee from the intermediary is governed by the collusion test of [s. 108(7)], rather than by the ‘without notice’ test of [sections 107 and 115].”

“3. The limitations that subsections [(3) through (7)] place on the ability of customers of a failed intermediary to recover securities or other financial assets from transferees are consistent with the fundamental policies of investor protection that underlie [the USTA] and other bodies of law governing the securities business. The commercial law rules for the securities holding and transfer system must be assessed from the forward-looking perspective of their impact on the vast number of transactions in which no wrongful conduct occurred or will occur, rather than from the *post hoc* perspective of what rule might be most advantageous to a particular class of persons in litigation that might arise out of the occasional case in which someone has acted wrongfully. Although one can devise hypothetical scenarios where particular customers might find it advantageous to be able to assert rights against someone other than the customers' own intermediary, commercial law rules that permitted customers to do so would impair rather than promote the interest of investors and the safe and efficient operation of the clearance and settlement system. Suppose, for example, that Intermediary A transfers securities to B, that Intermediary A acted wrongfully as against its customers in so doing, and that after the transaction Intermediary A did not have sufficient securities to satisfy its obligations to its entitlement holders. Viewed solely from the standpoint of the customers of Intermediary A, it would seem that permitting the property to be recovered from B,

would be good for investors. That, however, is not the case. B may itself be an intermediary with its own customers, or may be some other institution through which individuals invest, such as a pension fund or investment company. There is no reason to think that rules permitting customers of an intermediary to trace and recover securities that their intermediary wrongfully transferred work to the advantage of investors in general. To the contrary, application of such rules would often merely shift losses from one set of investors to another. The uncertainties that would result from rules permitting such recoveries would work to the disadvantage of all participants in the securities markets.”

“The use of the collusion test in [s. 108(7)] furthers the interests of investors generally in the sound and efficient operation of the securities holding and settlement system. The effect of the choice of this standard is that customers of a failed intermediary must show that the transferee from whom they seek to recover was affirmatively engaged in wrongful conduct, rather than casting on the transferee any burden of showing that the transferee had no awareness of wrongful conduct by the failed intermediary. The rule of [s. 108(7)] is based on the long-standing policy that it is undesirable to impose upon purchasers of securities any duty to investigate whether their sellers may be acting wrongfully.”

“Rather than imposing duties to investigate, the general policy of the commercial law of the securities holding and transfer system has been to eliminate legal rules that might induce participants to conduct investigations of the authority of persons transferring securities on behalf of others for fear that they might be held liable for participating in a wrongful transfer. The rules in [Part 5 of the USTA] concerning transfers by fiduciaries provide a good example. Under *Lowry v. Commercial & Farmers' Bank*, 15 F. Cas. 1040 (C.C.D. Md. 1848) (No. 8551), an issuer could be held liable for wrongful transfer if it registered transfer of securities by a fiduciary under circumstances where it had any reason to believe that the fiduciary may have been acting improperly. In one sense that seems to be advantageous for beneficiaries who might be harmed by wrongful conduct by fiduciaries. The consequence of the *Lowry* rule, however, was that in order to protect against risk of such liability, issuers developed the practice of requiring extensive documentation for fiduciary stock transfers, making such transfers cumbersome and time consuming. Accordingly, the rules in Part 4 of [UCC] Article 8 [in the U.S., upon which similar provisions in existing Canadian law were based], and in the prior fiduciary transfer statutes [in the U.S.], were designed to discourage transfer agents from conducting investigations into the rightfulness of transfers by fiduciaries.”

[The *Lowry* decision referred to above was a departure from previous U.S. law, which had followed the English position that a company was not bound to notice trusts of its stock (see *Hartga v. Bank of England*

(1796), 3 Ves. Jun. 56, 30 E.R. 891 (Ch.); *Bank of Virginia v. Craig* (1835), 32 Va. (6 Leigh) 399; *Hutchins v. State Bank* (1847), 52 Mass. (12 Metc.) 421). This principle was reflected in early English and Canadian corporate legislation (see for example s. 25 of the 1864 *Act to authorize the granting of Charters of Incorporation, etc.* (27 & 28 Vict. c. 23), and it remains in s. 199(1) of the *Canada Corporations Act* (R.S.C. 1970, c. C-32), which says: “The company is not bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share.” There is, however, no analogous provision in the CBCA or provincial BCAs, apparently because such Acts dealt with the issue by copying Part 4 of prior versions of UCC Article 8. The issue raised by the U.S. *Lowry* decision has apparently not been addressed in any Canadian decision under the CBCA or provincial BCAs and one objective of Part 5 of the USTA is to preclude any possibility of a decision similar to *Lowry* being made under Canadian law.]

“The rules of [the USTA] implement for the indirect holding system the same policies that the rules on protected purchasers and registration of transfer adopt for the direct holding system. A securities intermediary is, by definition, a person who is holding securities on behalf of other persons. There is nothing unusual or suspicious about a transaction in which a securities intermediary sells securities that it was holding for its customers. That is exactly what securities intermediaries are in business to do. The interests of customers of securities intermediaries would not be served by a rule that required counterparties to transfers from securities intermediaries to investigate whether the intermediary was acting wrongfully against its customers. Quite the contrary, such a rule would impair the ability of securities intermediaries to perform the function that customers want.”

“The rules of [s. 108(3) through (7)] apply to transferees generally, including pledgees. The reasons for treating pledgees in the same fashion as other transferees are discussed in the [Comment to s. 116]. The statement in subsection [(1)] that an intermediary holds financial assets for customers and not as its own property does not, of course, mean that the intermediary lacks power to transfer the financial assets to others. For example, although [the PPSAs provide] that for a security interest to attach the debtor must have ‘rights’ in the collateral, [see OPPSA s. 11(2)(b); APPSA s. 12(1)(b)], the fact that an intermediary is holding a financial asset in a form that permits ready transfer means that it has such rights, even if the intermediary is acting wrongfully against its entitlement holders in granting the security interest. The question whether the secured party takes subject to the entitlement holder's claim in such a case is governed by [s. 116], which is an application to secured transactions of the general principles expressed in subsections [(4) through (7)] of this section.”

Definitional cross references: “collusion” s. 1(1)

“control”	s. 3
“entitlement holder”	s. 1(1)
“fiduciary”	s. 1(1)
“financial asset”	s. 1(1)
“purchaser”	s. 1(1) and s. 64
“secured party”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)
“value”	s. 9 and s. 64

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).

(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.

COMMENT

Source: UCC Rev 8-504

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-504, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section expresses one of the core elements of the relationships for which the Part [6] rules were designed, to wit, that a securities intermediary undertakes to hold financial assets corresponding to the security entitlements of its entitlement holders. The locution ‘shall promptly obtain and shall thereafter maintain’ is taken from the corresponding regulation under [U.S.] federal securities law, 17 C.F.R. § 240.15c3-3. [Comparable Canadian regulatory provisions are found in SRO rules, such as Regulation 2000 and By-Law 17.3 of the Investment Dealers Association of Canada (IDA), dealing with the segregation of fully paid or excess margin securities. The phrase ‘shall promptly obtain and shall thereafter maintain’ is compatible with Canadian practice.] This section recognizes the reality that, as the securities business is conducted today, it is not possible to identify particular securities as belonging to customers as distinguished from other particular securities that are the firm's own property. Securities firms typically keep all securities in fungible form, and may maintain their inventory of a particular security in various locations and forms, including physical securities held in vaults or in transit to transfer agents, and book entry positions at one or more [clearing agencies]. Accordingly, this section states that a securities intermediary shall maintain a quantity of financial assets corresponding to the aggregate of all security entitlements it has established. ... Subsection [(2)] provides explicitly that the securities intermediary may hold directly or indirectly. That point is implicit in the use of the term ‘financial asset,’ inasmuch as [s. 5] provides that the term ‘financial asset’ may refer either to the underlying asset or the means by which it is held, including both security certificates and security entitlements.”

“2. Subsection [(3)] states explicitly a point that is implicit in the notion that a securities intermediary must maintain financial assets corresponding to the security entitlements of its entitlement holders, to wit, that it is wrongful for a securities intermediary to grant security interests in positions that it needs to satisfy customers' claims, except as authorized by the customers. This statement does not determine the rights of a secured party to whom a securities intermediary wrongfully grants a security interest; that issue is governed by [s. 108 and s. 116].”

“Margin accounts are common examples of arrangements in which an entitlement holder authorizes the securities intermediary to grant security interests in the positions held for the entitlement holder. Securities firms commonly obtain the funds needed to provide margin loans to their customers by ‘rehypothecating’ the customers’ securities. In order to facilitate rehypothecation, agreements between margin customers and their brokers commonly authorize the broker to commingle securities of all margin customers for rehypothecation to the lender who provides the financing. Brokers commonly rehypothecate customer securities having a value somewhat greater than the amount of the loan made to the customer, since the lenders who provide the necessary financing to the broker need some cushion of protection against the risk of decline in the value of the rehypothecated securities. The extent and manner in which a firm may rehypothecate customers’ securities are determined by the agreement between the intermediary and the entitlement holder and by applicable regulatory [and other] law [see for example IDA By-Law 27; proposed OPPSA/APPSA s. 17.1]....”

“3. The statement in this section that an intermediary must obtain and maintain financial assets corresponding to the aggregate of all security entitlements it has established is intended only to capture the general point that one of the key elements that distinguishes securities accounts from other relationships, such as deposit accounts, is that the intermediary undertakes to maintain a direct correspondence between the positions it holds and the claims of its customers. This section is not intended as a detailed specification of precisely how the intermediary is to perform this duty, nor whether there may be special circumstances in which an intermediary’s general duty is excused. Accordingly, the general statement of the duties of a securities intermediary in this and the following sections is supplemented by two other provisions. First, each of [sections 109 through 113] contains an ‘agreement/due care’ provision. Second, [s. 114] sets out general qualifications on the duties stated in these sections, including the important point that compliance with corresponding regulatory provisions constitutes compliance with the [USTA] duties.”

“4. The ‘agreement/due care’ provision in subsection [(4)] of this section is necessary to provide sufficient flexibility to accommodate the general duty stated in subsection [(1)] to the wide variety of circumstances that may be encountered in the modern securities holding system. For the most common forms of publicly traded securities, the modern depository-based indirect holding system has made the likelihood of an actual loss of securities remote, though correctable errors in accounting or temporary interruptions of data processing facilities may occur. Indeed, one of the reasons for the evolution of book-entry systems is to eliminate the risk of loss or destruction of physical certificates. There are, however, some forms of securities and other financial assets which must still be held in physical certificated form, with the

attendant risk of loss or destruction. Risk of loss or delay may be a more significant consideration in connection with foreign securities. A [Canadian] securities intermediary may well be willing to hold a foreign security in a securities account for its customer, but the intermediary may have relatively little choice of or control over foreign intermediaries through which the security must in turn be held. Accordingly, it is common for [Canadian] securities intermediaries to disclaim responsibility for custodial risk of holding through foreign intermediaries.”

“Subsection [(4)(a)] provides that a securities intermediary satisfies the duty stated in subsection [(1)] if the intermediary acts with respect to that duty in accordance with the agreement between the intermediary and the entitlement holder. Subsection [(4)(b)] provides that if there is no agreement on the matter, the intermediary satisfies the subsection [(1)] duty if the intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset in question. This formulation does not state that the intermediary has a universally applicable statutory duty of due care. [Section 13(3)] provides that statutory duties of due care cannot be disclaimed by agreement, but the ‘agreement/due care’ formula contemplates that there may be particular circumstances where the parties do not wish to create a specific duty of due care, for example, with respect to foreign securities. Under subsection [(4)(a)], compliance with the agreement constitutes satisfaction of the subsection [(1)] duty, whether or not the agreement provides that the intermediary will exercise due care.”

“In each of the sections where the ‘agreement/due care’ formula is used, it provides that entering into an agreement and performing in accordance with that agreement is a method by which the securities intermediary may satisfy the statutory duty stated in that section. Accordingly, the general obligation of good faith performance of statutory and contract duties, see [s. 13(1) and the definition of ‘good faith’ in s. 13(2)], would apply to such an agreement. It would not be consistent with the obligation of good faith performance for an agreement to purport to establish the usual sort of arrangement between an intermediary and entitlement holder, yet disclaim altogether one of the basic elements that define that relationship. For example, an agreement stating that an intermediary assumes no responsibilities whatsoever for the safekeeping [of] any of the entitlement holder's securities positions would not be consistent with good faith performance of the intermediary's duty to obtain and maintain financial assets corresponding to the entitlement holder's security entitlements.” [See *Powers v. American Express Financial Advisors* (2000), 82 F. Supp. 2d 448 (D. Md.), *aff'd*, (2000), 43 U.C.C. Rep. Serv. 2d (West) 425 (4th Cir.).]

“To the extent that no agreement under subsection [(4)(a)] has specified the details of the intermediary's

performance of the subsection [(1)] duty, subsection [(4)(b)] provides that the intermediary satisfies that duty if it exercises due care in accordance with reasonable commercial standards. The duty of care includes both care in the intermediary's own operations and care in the selection of other intermediaries through whom the intermediary holds the assets in question. The statement of the obligation of due care is meant to incorporate the principles of the common law under which the specific actions or precautions necessary to meet the obligation of care are determined by such factors as the nature and value of the property, the customs and practices of the business, and the like.”

“5. This section necessarily states the duty of a securities intermediary to obtain and maintain financial assets only at the very general and abstract level. For the most part, these matters are specified in great detail by regulatory law. [Brokers] registered under the [provincial] securities laws are subject to detailed regulation concerning the safeguarding of customer securities [and credit balances. See for example IDA Regulations 1200 and 2000, and IDA By-Law 17.3.] [Section 114] provides explicitly that if a securities intermediary complies with such regulatory law, that constitutes compliance with [s. 109]. In certain circumstances, these rules permit a firm to be in a position where it temporarily lacks a sufficient quantity of financial assets to satisfy all customer claims. For example, if another firm has failed to make a delivery to the firm in settlement of a trade, the firm is permitted a certain period of time to clear up the problem before it is obligated to obtain the necessary securities from some other source. [See IDA Regulations 800 and 2000.9.]”

“6. Subsection [(5)] is intended to recognize that there are some circumstances, where the duty to maintain a sufficient quantity of financial assets does not apply because the intermediary is not holding anything on behalf of others. For example, the [Canadian Derivatives Clearing Corporation] is treated as a ‘securities intermediary’ under this [Act], although it does not itself hold options on behalf of its participants. Rather, it becomes the issuer of the options, by virtue of guaranteeing the obligations of participants in the [clearing agency] who have written or purchased the options cleared through it. See [s. 19]. Accordingly, the general duty of an intermediary under subsection [(1)] does not apply, nor would other provisions of Part [6] that depend upon the existence of a requirement that the securities intermediary hold financial assets, such as [s. 108 and s. 113].”

Definitional cross references: “clearing agency”	s. 1(1)
“entitlement holder”	s. 1(1)
“financial asset”	s. 1(1)
“secured party”	s. 1(1)

“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-505

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-505, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. One of the core elements of the securities account relationships for which the Part [6] rules were designed is that the securities intermediary passes through to the entitlement holders the economic benefit of ownership of the financial asset, such as payments and distributions made by the issuer. Subsection [(1)] expresses the ordinary understanding that a securities intermediary will take appropriate action to see to it that any payments or distributions made by the issuer are received. One of the main reasons that

investors make use of securities intermediaries is to obtain the services of a professional in performing the record-keeping and other functions necessary to ensure that payments and other distributions are received.”

“2. Subsection [(2)] incorporates the same ‘agreement/due care’ formula as the other provisions of Part [6] dealing with the duties of a securities intermediary. See Comment 4 to [s. 109]. This formulation permits the parties to specify by agreement what action, if any, the intermediary is to take with respect to the duty to obtain payments and distributions. In the absence of specification by agreement, the intermediary satisfies the duty if the intermediary exercises due care in accordance with reasonable commercial standards. The provisions of [s. 114] also apply to the [s. 110] duty, so that compliance with applicable regulatory requirements constitutes compliance with the [s. 110] duty.”

“3. Subsection [(3)] provides that a securities intermediary is obligated to its entitlement holder for those payments or distributions made by the issuer that are in fact received by the intermediary. It does not deal with the details of the time and manner of payment. Moreover, as with any other monetary obligation, the obligation to pay may be subject to other rights of the obligor, by way of set-off counterclaim or the like. [s. 110(3)] makes this point explicit.”

Definitional cross references: “entitlement holder”	s. 1(1)
“financial asset”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)

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.

COMMENT

Source: Rev 8-506

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-506, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Another of the core elements of the securities account relationships for which the Part [6] rules were designed is that although the intermediary may, by virtue of the structure of the indirect holding system, be the party who has the power to exercise the corporate and other rights that come from holding the security, the intermediary exercises these powers as representative of the entitlement holder rather than at its own discretion. This characteristic is one of the things that distinguishes a securities account from other arrangements where one person holds securities ‘on behalf of’ another, such as the relationship between a mutual fund and its shareholders or a trustee and its beneficiary. [The duties of a trustee in procuring rights arising from securities were considered in *Brill v. National Trust Co.*, [1994] 3 W.W.R. 85 (B.C.S.C.).]”

“2. The fact that the intermediary exercises the rights of security holding as representative of the entitlement holder does not, of course, preclude the entitlement holder from conferring discretionary authority upon the intermediary. Arrangements are not uncommon in which investors do not wish to have their intermediaries forward proxy materials or other information. Thus, this section provides that the intermediary shall exercise corporate and other rights ‘if directed to do so’ by the entitlement holder. Moreover, as with the other Part [6] duties, the ‘agreement/due care’ formulation is used in stating how the intermediary is to perform this duty. This section also provides that the intermediary satisfies the duty if it places the entitlement holder in a position to exercise the rights directly. This is to take account of the fact that some of the rights attendant upon ownership of the security, such as rights to bring derivative and other litigation, are far removed from the matters that intermediaries are expected to perform.”

“3. This section, and the two that follow, deal with the aspects of securities holding that are related to investment decisions. For example, one of the rights of holding a particular security that would fall within the purview of this section would be the right to exercise a conversion right for a convertible security. It is quite common for investors to confer discretionary authority upon another person, such as an investment adviser, with respect to these rights and other investment decisions. Because this section, and the other sections of Part [6], all specify that a securities intermediary satisfies the Part [6] duties if it acts in accordance with the entitlement holder's agreement, there is no inconsistency between the statement of duties of a securities intermediary and these common arrangements. [See *Seaboard Life Insurance Co. v. Bank of Montreal*, 2002 BCCA 192; [2002] B.C.J. No. 599; (2002) 166 B.C.A.C. 64; (2002) 23 B.L.R. (3d) 163.] ”

“4. [Section 114] also applies to the [s. 111] duty, so that compliance with applicable regulatory requirements constitutes compliance with this duty. This is quite important in this context, since the [provincial] securities laws establish a comprehensive system of regulation of the distribution of proxy materials and exercise of voting rights with respect to securities held through brokers and other intermediaries. By virtue of [s. 114], compliance with such regulatory requirement constitutes compliance with the [s. 111] duty.”

Definitional cross references:	“entitlement holder”	s. 1(1)
	“financial asset”	s. 1(1)
	“securities intermediary”	s. 1(1)
	“security entitlement”	s. 1(1)

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.

(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.

COMMENT

Source: UCC Rev 8-507

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-507, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. Subsection [(1)] of this section states another aspect of duties of securities intermediaries that make up security entitlements -- the securities intermediary's duty to comply with entitlement orders. One of the main reasons for holding securities through securities intermediaries is to enable rapid transfer in settlement of trades. Thus the right to have one's orders for disposition of the security entitlement honored is an inherent part of the relationship. [Subsections (3) and (4) state] the correlative liability of a securities intermediary for transferring a financial asset from an entitlement holder's account pursuant to an entitlement order that was not effective.”

“2. The duty to comply with entitlement orders is subject to several qualifications. The intermediary has a duty only with respect to an entitlement order that is in fact originated by the appropriate person. Moreover, the intermediary has a duty only if it has had reasonable opportunity to assure itself that the order is genuine and authorized, and reasonable opportunity to comply with the order. The same ‘agreement/due care’ formula is used in this section as in the other Part [6] sections on the duties of intermediaries, and the rules of [s. 114] apply to the [s. 112] duty.”

“3. Appropriate person is defined in [s. 1(1)]. In the usual case, the appropriate person is the entitlement holder, see [sub. (iii) of the definition]. Entitlement holder is defined in [s. 1(1)] as the person ‘identified in the records of a securities intermediary as the person having a security entitlement.’ Thus, the general rule is that an intermediary’s duty with respect to entitlement orders runs only to the person with whom the intermediary has established a relationship. One of the basic principles of the indirect holding system is that securities intermediaries owe duties only to their own customers. See also [s. 63]. The only situation in which a securities intermediary has a duty to comply with entitlement orders originated by a person other than the person with whom the intermediary established a relationship is covered by [sub. (iv) and sub. (v) of the definition of ‘appropriate person’ in s. 1(1)], which provide that the term ‘appropriate person’ includes the successor or personal representative of a decedent, or the custodian or guardian of a person who lacks capacity. If the entitlement holder is competent, another person does not fall within the defined term ‘appropriate person’ merely by virtue of having power to act as an agent for the entitlement holder. Thus, an intermediary is not required to determine at its peril whether a person who purports to be authorized to act for an entitlement holder is in fact authorized to do so. If an entitlement holder wishes to be able to act through agents, the entitlement holder can establish appropriate arrangements in advance with the securities intermediary.”

“One important application of this principle is that if an entitlement holder grants a security interest in its security entitlements to a third-party lender, the intermediary owes no duties to the secured party, unless the intermediary has entered into a ‘control’ agreement in which it agrees to act on entitlement orders originated by the secured party. See [USTA Part 2, Division 4, especially s. 32]. Even though the security agreement or some other document may give the secured party authority to act as agent for the debtor, that would not make the secured party an ‘appropriate person’ to whom the [securities] intermediary owes duties. If the entitlement holder and securities intermediary have agreed to such a control arrangement, then the intermediary’s action in following instructions from the secured party would satisfy the [s. 112(1)] duty. Although an agent, such as the secured party in this example, is not an ‘appropriate person,’ an entitlement order is ‘effective’ if originated by an authorized person. See [the definition of ‘appropriate

person' in s. 1(1) and s. 36, which states when an entitlement order is 'effective']. Moreover, [s. 112(2)] provides that the intermediary satisfies its duty if it acts in accordance with the entitlement holder's agreement.”

“4. [Section 112(3) and (4) provide] that an intermediary is liable for a wrongful transfer if the entitlement order was 'ineffective.' [Section 36] specifies whether an entitlement order is effective. An 'effective entitlement order' is different from an 'entitlement order originated by an appropriate person.' An entitlement order is effective under [s. 36] if it is made by the appropriate person, or by a person who has power to act for the appropriate person under the law of agency, or if the appropriate person has ratified the entitlement order or is precluded from denying its effectiveness. Thus, although a securities intermediary does not have a duty to act on an entitlement order originated by the entitlement holder's agent, the intermediary is not liable for wrongful transfer if it does so.”

“[Section 112(3) and (4), together with s. 36, have] the effect of leaving to other law most of the questions [relating to the] allocation between the securities intermediary and the entitlement holder of the risk of fraudulent entitlement orders.”

“5. The term entitlement order does not cover all directions that a customer might give a broker concerning securities held through the broker. [The USTA] is not a codification of all of the law of customers and stockbrokers. [The USTA] deals with the settlement of securities trades, not the trades. The term entitlement order does not refer to instructions to a broker to make trades, that is, enter into contracts for the purchase or sale of securities. Rather, the entitlement order is the mechanism of transfer for securities held through intermediaries, just as [endorsements] and instructions are the mechanism for securities held directly. In the ordinary case the customer's direction to the broker to deliver the securities at settlement is implicit in the customer's instruction to the broker to sell. The distinction is, however, significant in that this section has no application to the relationship between the customer and broker with respect to the trade itself. For example, assertions by a customer that it was damaged by a broker's failure to execute a trading order sufficiently rapidly or in the proper manner are not governed by [the USTA].”

Definitional cross references: “appropriate person”	s. 1(1)
“effective”	s. 36-39
“entitlement holder”	s. 1(1)
“entitlement order”	s. 1(1)
“financial asset”	s. 1(1)

“secured party”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-508

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-508, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section states another aspect of the duties of securities intermediaries that make up security entitlements -- the obligation of the securities intermediary to change an entitlement holder's position into any other form of holding for which the entitlement holder is eligible or to transfer the entitlement holder's position to an account at another intermediary. This section does not state unconditionally that the

securities intermediary is obligated to turn over a certificate to the customer or to cause the customer to be registered on the books of the issuer, because the customer may not be eligible to hold the security directly. [Some securities are now] issued in ‘book-entry only’ form, in which the only entity that the issuer will register on its own books is a depository [such as the Canadian Depository for Securities Limited].”

“If security certificates in registered form are issued for the security, and individuals are eligible to have the security registered in their own name, the entitlement holder can request that the intermediary deliver or cause to be delivered to the entitlement holder a certificate registered in the name of the entitlement holder or a certificate [endorsed] in blank or specially [endorsed] to the entitlement holder. If security certificates in bearer form are issued for the security, the entitlement holder can request that the intermediary deliver or cause to be delivered a certificate in bearer form. If the security can be held by individuals directly in uncertificated form, the entitlement holder can request that the security be registered in its name. The specification of this duty does not determine the pricing terms of the agreement in which the duty arises.”

“2. The same ‘agreement/due care’ formula is used in this section as in the other Part [6] sections on the duties of intermediaries. So too, the rules of [s. 114] apply to the [s. 113] duty.”

Definitional cross references: “entitlement holder”	s. 1(1)
“financial asset”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)

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.

(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.

COMMENT

Source: UCC Rev 8-509

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-509, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“[The USTA] is not a comprehensive statement of the law governing the relationship between [brokers] or other securities intermediaries and their customers. Most of the law governing that relationship is the common law of contract and agency, supplemented or supplanted by regulatory law. [The USTA] deals only with the most basic commercial/property law principles governing the relationship. Although [sections 109 through 113] specify certain duties of securities intermediaries to entitlement holders, the point of these sections is to identify what it means to have a security entitlement, not to specify the details of performance of these duties.”

“For many intermediaries, regulatory law specifies in great detail the intermediary’s obligations on such matters as safekeeping of customer property, distribution of proxy materials, and the like. To avoid any conflict between the general statement of duties in [the USTA] and the specific statement of intermediaries’ obligations in such regulatory schemes, subsection [(1)] provides that compliance with applicable regulation constitutes compliance with the duties specified in [sections 109 through 113].”

Definitional cross references: “entitlement holder”	s. 1(1)
“financial asset”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)
“security interest”	s. 1(1)

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.

COMMENT

Source: UCC Rev 8-510

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-510, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section specifies certain rules concerning the rights of persons who purchase interests in security entitlements from entitlement holders. The rules of this section are provided to take account of cases where the purchaser's rights are derivative from the rights of another person who is and continues to be the entitlement holder.”

“2. Subsection [(1)] provides that no adverse claim can be asserted against a purchaser of an interest in a security entitlement if the purchaser gives value, obtains control, and does not have notice of the adverse claim. The primary purpose of this rule is to give adverse claim protection to persons who take security interests in security entitlements and obtain control, but do not themselves become entitlement holders.”

“The following examples illustrate subsection [(1)]:”

“Example 1. X steals a certificated bearer bond from Owner. X delivers the certificate to Able & Co. for credit to X's securities account. Later, X borrows from Bank and grants bank a security interest in the security entitlement. Bank obtains control under [s. 32(1)(b)] by virtue of an agreement in which Able agrees to comply with entitlement orders originated by Bank. X absconds.”

“Example 2. Same facts as in Example 1, except that Bank does not obtain a control agreement. Instead, Bank perfects by [registering a financing statement in accordance with the relevant PPSA].”

“In both of these examples, when X deposited the bonds X acquired a security entitlement under [s. 106]. Under other law, Owner may be able to have a constructive trust imposed on the security entitlement as the traceable product of the bonds that X misappropriated. X granted a security interest in that entitlement to Bank. Bank was a purchaser of an interest in the security entitlement from X. In Example 1, although Bank was not a person who acquired a security entitlement from the intermediary, Bank did obtain control. If Bank did not have notice of Owner's claim, [s. 115(1)] precludes Owner from asserting an adverse claim against Bank. In Example 2, Bank had a perfected security interest, but did not obtain control. Accordingly, [s. 115(1)] does not preclude Owner from asserting its adverse claim against Bank.”

“3. Subsection [(2)] applies to the indirect holding system a limited version of the ‘shelter principle.’ The following example illustrates the relatively limited class of cases for which it may be needed:”

“Example 3. Thief steals a certificated bearer bond from Owner. Thief delivers the certificate to Able & Co. for credit to Thief's securities account. Able forwards the certificate to a [clearing agency] for credit to Able's account. Later Thief instructs Able to sell the positions in the bonds. Able sells to Baker & Co., acting as broker for Buyer. The trade is settled by book-entries in the accounts of Able and Baker at the [clearing agency], and in the accounts of Thief and Buyer at Able and Baker respectively. Owner may be able to reconstruct the trade records to show that settlement occurred in such fashion that the ‘same bonds’ that were carried in Thief's account at Able are traceable into Buyer's account at Baker. Buyer later decides to donate the bonds to Alma Mater University and executes an assignment of its rights as entitlement holder to Alma Mater.”

“Buyer had a position in the bonds, which Buyer held in the form of a security entitlement against Baker. Buyer then made a gift of the position to Alma Mater. Although Alma Mater is a purchaser [as defined in

s. 1(1)], it did not give value. Thus, Alma Mater is a person who purchased a security entitlement, or an interest therein, from an entitlement holder (Buyer). Buyer was protected against Owner's adverse claim by [s. 107]. Thus, by virtue of [s. 115(2)], Owner is also precluded from asserting an adverse claim against Alma Mater.”

“4. Subsection [(3)] specifies a priority rule for cases where an entitlement holder transfers conflicting interests in the same security entitlement to different purchasers. It follows the same principle as the [proposed PPSA] priority rule for investment property, that is, control trumps non-control. Indeed, the most significant category of conflicting ‘purchasers’ may be secured parties. Priority questions for security interests, however, are governed by the rules in [the PPSA]. Subsection [(3)] applies only to cases not covered by the [PPSA] rules. It is intended primarily for disputes over conflicting claims arising out of repurchase agreement transactions that are not covered by the other rules set out in [the USTA and the PPSA].”

“The following example illustrates subsection [(3)]:”

“Example 4. Dealer holds securities through an account at Alpha Bank. Alpha Bank in turns holds through a [clearing agency] account. Dealer transfers securities to RP1 in a ‘hold in custody’ repo transaction. Dealer then transfers the same securities to RP2 in another repo transaction. The repo to RP2 is implemented by transferring the securities from Dealer's regular account at Alpha Bank to a special account maintained by Alpha Bank for Dealer and RP2. The agreement among Dealer, RP2, and Alpha Bank provides that Dealer can make substitutions for the securities but RP2 can direct Alpha Bank to sell any securities held in the special account. Dealer becomes insolvent. RP1 claims a prior interest in the securities transferred to RP2.”

“In this example Dealer remained the entitlement holder but agreed that RP2 could initiate entitlement orders to Dealer's [securities] intermediary, Alpha Bank. If RP2 had become the entitlement holder, the adverse claim rule of [s. 107] would apply. Even if RP2 does not become the entitlement holder, the arrangement among Dealer, Alpha Bank, and RP2 does suffice to give RP2 control. Thus, under [s. 115(3)], RP2 has priority over RP1, because RP2 is a purchaser who obtained control, and RP1 is a purchaser who did not obtain control. The same result could be reached under [s. 115(1)] which provides that RP1's earlier in time interest cannot be asserted as an adverse claim against RP2. The same result would follow under the [PPSA] priority rules if the interests of RP1 and RP2 are characterized as ‘security interests,’ see [proposed OPPSA s. 30.1(2); APPSA s. 35.1(2)]. The main point of the rules of [s. 115(3)]

is to ensure that there will be clear rules to cover the conflicting claims of RP1 and RP2 without characterizing their interests as [security interests as defined by the PPSA].”

“The [proposed PPSA] priority rules...for conflicting security interests also include a default temporal priority rule for cases where multiple secured parties have obtained control but omitted to specify their respective rights by agreement. See [proposed OPPSA s. 30.1(4); APPSA s. 35.1(4)]. Because the purchaser priority rule in [s. 115(3)] is intended to track the [proposed PPSA] priority rules, it too has a temporal priority rule for cases where multiple non-secured party purchasers have obtained control but omitted to specify their respective rights by agreement. The rule is patterned on [proposed OPPSA s. 30.1(4); APPSA s. 35.1(4)].”

“5. If a securities intermediary itself is a purchaser, subsection [(3)(c)] provides that it has priority over the interest of another purchaser who has control. [The proposed PPSA priority rules contain a similar provision. See [proposed OPPSA s. 30.1(5); APPSA s. 35.1(5)].”

Definitional cross references:	
“adverse claim”	s. 1(1)
“control”	s. 3
“entitlement holder”	s. 1(1)
“notice of an adverse claim”	sections 25-29
“purchase”	s. 1(1)
“purchaser”	s. 1(1) and s. 64
“secured party”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-511

Comparison with previous law: There is no comparable provision in existing Canadian law dealing with the indirect holding system.

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-511, as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“1. This section sets out priority rules for circumstances in which a securities intermediary fails leaving an insufficient quantity of securities or other financial assets to satisfy the claims of its entitlement holders and the claims of creditors to whom it has granted security interests in financial assets held by it.

Subsection [(1)] provides that entitlement holders' claims have priority except as otherwise provided in subsection [(2)], and subsection [(2)] provides that the secured creditor's claim has priority if the secured creditor obtains control, as defined in [s. 3]. The following examples illustrate the operation of these rules.”

“Example 1. Able & Co., a broker, borrows from Alpha Bank and grants Alpha Bank a security interest pursuant to a written agreement which identifies certain securities that are to be collateral for the loan,

either specifically or by category. Able holds these securities in [an account with a clearing agency]. Able becomes insolvent and it is discovered that Able holds insufficient securities to satisfy the claims of customers who have paid for securities that they held in accounts with Able and the collateral claims of Alpha Bank. Alpha Bank's security interest in the security entitlements that Able holds through the [clearing agency] account may be perfected under the automatic perfection rule of [proposed OPPSA/APPSA s. 19.2], but Alpha Bank did not obtain control [as defined in s. 3]. Thus, under [s. 116(1)] the entitlement holders' claims have priority over Alpha Bank's claim.”

“Example 2. Able & Co., a broker, borrows from Beta Bank and grants Beta Bank a security interest in securities that Able holds in [an account with a clearing agency]. Pursuant to the security agreement, the securities are debited from Alpha's account and credited to Beta's account [with the clearing agency]. Able becomes insolvent and it is discovered that Able holds insufficient securities to satisfy the claims of customers who have paid for securities that they held in accounts with Able and the collateral claims of Alpha Bank. Although the transaction between Able and Beta took the form of an outright transfer on the [clearing agency's] books, as between Able and Beta, Able remains the owner and Beta has a security interest. In that respect the situation is no different than if Able had delivered bearer bonds to Beta in pledge to secure a loan. Beta's security interest is perfected, and Beta obtained control. See [s. 32(1)(a) and proposed OPPSA s. 22.1; APPSA s. 24.1]. Under [s. 116(2)], Beta Bank's security interest has priority over claims of Able's customers.”

“The result in Example 2 is an application to this particular setting of the general principle expressed in [s. 108], and explained in the Comments thereto, that the entitlement holders of a securities intermediary cannot assert rights against third parties to whom the intermediary has wrongfully transferred interests, except in extremely unusual circumstances where the third party was itself a participant in the transferor's wrongdoing. Under subsection [(2)] the claim of a secured creditor of a securities intermediary has priority over the claims of entitlement holders if the secured creditor has obtained control. If, however, the secured creditor acted in collusion with the intermediary in violating the intermediary's obligation to its entitlement holders, then under [s. 108(4)], the entitlement holders, through their representative in [bankruptcy or] insolvency proceedings, could recover the interest from the secured creditor, that is, set aside the security interest.”

“2. The risk that investors who hold through an intermediary will suffer a loss as a result of a wrongful pledge by the intermediary is no different than the risk that the intermediary might fail and not have the securities that it was supposed to be holding on behalf of its customers, either because the securities were

never acquired by the intermediary or because the intermediary wrongfully sold securities that should have been kept to satisfy customers' claims. Investors are protected against that risk by the regulatory regimes under which securities intermediaries operate. [For example, IDA By-Law 17 and Regulation 2000 provide that members of the IDA are required to segregate and hold in trust for their clients all fully paid or excess margin securities]. [The USTA] mirrors that requirement, specifying in [s. 109] that a securities intermediary must maintain a sufficient quantity of investment property to satisfy all security entitlements, and may not grant security interests in the positions it is required to hold for customers, except as authorized by the customers.”

“If a failed brokerage has violated the customer protection regulations and does not have sufficient securities to satisfy customers’ claims, its customers are [usually protected against loss by the Canadian Investor Protection Fund (CIPF). CIPF is a not-for-profit corporation that operates in Canada as a compensation fund or contingency fund approved by certain provincial securities regulatory authorities pursuant to regulatory law. A CIPF member is a member of one or more of CIPF’s sponsoring self-regulatory organizations: the IDA, the Bourse de Montréal Inc., the Toronto Stock Exchange and the Canadian Venture Exchange (other than certain foreign member participants). Generally speaking, CIPF covers customer’s losses of securities, cash balances and certain other property that result from the insolvency of a member, up to a coverage limit of \$1 million per customer’s general account. In addition, the Mutual Fund Dealers Association of Canada (MFDA) is presently considering various alternatives for establishing a similar investor protection fund company. It is anticipated that it will cover customer’s losses of mutual fund securities and cash balances that result from the insolvency of a MFDA member, up to a coverage limit of \$100,000 per customer or customer account or accounts.]”

“[The USTA] is premised on the view that the important policy of protecting investors against the risk of wrongful conduct by their intermediaries is sufficiently treated by other law.”

“3. Subsection [(3)] sets out a special rule for secured financing provided to enable [clearing agencies] to complete settlement. In order to permit [clearing agencies] to establish liquidity facilities where necessary to ensure completion of settlement, subsection [(3)] provides a priority for secured lenders to such [clearing agencies]. Subsection [(3)] does not turn on control because the [clearing agency] may be the top tier securities intermediary for the securities pledged, so that there may be no practicable method for conferring control on the lender.”

Definitional cross references: “clearing agency”	s. 1(1)
“control”	s. 3
“entitlement holder”	s. 1(1)
“securities intermediary”	s. 1(1)
“security entitlement”	s. 1(1)
“security interest”	s. 1(1)
“value”	s. 9 and s. 64

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.

COMMENT

Source: UCC Rev 8-603(a)

Explanation: This provision is intended to be substantively uniform with the corresponding provisions of Rev 8-603(1), as described in the UCC Official Comment as follows [editing and additional material by the CSA Task Force shown in square brackets]:

“The [USTA] should present few significant transition problems. Although [the USTA] involves significant changes in terminology and analysis, the substantive rules are, in large measure, based upon the current practices and are consistent with results [generally intended by market participants and] that could be reached, albeit at times with some struggle, by [purposive] interpretation of the rules of present law. Thus, the new rules can be applied, without significant dislocations, to transactions and events that occurred prior to enactment.”

“The enacting provisions should not, whether by applicability, transition, or savings clause language, attempt to provide that [previous law] continues to apply to "transactions," "events," "rights," "duties," "liabilities," or the like that occurred or accrued before the effective date and that [the USTA] applies to those that occur or accrue after the effective date. [A primary reason for the USTA and conforming

amendments to secured-lending legislation] is the concern that [previous law] could be interpreted or misinterpreted to yield results that impede the safe and efficient operation of the [Canadian] system for the clearance and settlement of securities transactions. Accordingly, it is not the case that any effort should be made to preserve the applicability of [previous law] to transactions and events that occurred before the effective date.”

“[Two circumstances] warrant continued application of [previous law]. First, to avoid disruption in the conduct of litigation, this section provides for continued application of [previous law] to lawsuits pending before the effective date. Second, there are some limited circumstances in which prior law permitted perfection of security interests by methods that are not provided for in the [conforming amendments to secured-lending legislation]. The conforming amendments give a secured creditor 4 months after the effective date to continue perfection under the new rules (see proposed APPSA s. 78; OPPSA s. 84).]

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.