Securities Transfer Association of Canada

William J. Speirs
President

To: Tax and Revenue Administration, Alberta Treasury Board and Finance ("TRA")
via: unclaimed.property@gov.ab.ca

From: Securities Transfer Association of Canada ("STAC")

Re: Alberta *Unclaimed Personal Property and Vested Property Act* (the "UPPVPA" or the "Act")

We refer to the announcement of TRA made on August 29, 2013 that it was reviewing the application of the UPPVPA and its Regulations to securities and safety deposit box contents and was deferring application of the Act and Regulations on these types of properties for a period of one year.

TRA convened a conference call on August 12, 2014 to discuss proposed changes to the Act and obtain stakeholder input. As President of STAC, Bill Speirs was invited to join the call.

STAC appreciates the opportunity to provide feedback for consideration by your office and advisors. Our comments are limited to issues relating to unclaimed property that is securities/securities certificates (collectively, "securities").

We understand that, among the changes proposed by TRA, unclaimed securities would not be remitted to the government of Alberta. Rather, if, after an additional 10-year period, a holder still possesses particular securities as unclaimed property, the holder is to liquidate the securities and remit the cash proceeds (net of any trading commissions and a 20% fee that can be taken by the holder) to the Alberta government.

STAC's main concerns relate to the proposal that a holder liquidate the unclaimed securities. (For purposes of this submission, we will assume that the relevant securities are all in fully registered form; that is, not in bearer form.)

1. Verifiable Authority to Transfer:

In respect of any purported sale or other liquidation of any unclaimed securities, we submit that the key point in time to focus on is the actual requisite transfer of legal registration of the securities on the books of the issuer company from the name of the 'apparent owner' into the name of a broker, a purchaser or as is otherwise directed. In all cases, some party is responsible for the securities register of the relevant class of the particular securities - and for reviewing, approving and processing the transfer of the registration of the securities (such party referred to herein as the "registrar"). Fundamental questions arise regarding that transfer function, as a necessary step in your proposed liquidation model. In short:

- Who has, or will have, the necessary legal authorization to 'step into the shoes of' the registered apparent owner and transfer away their interest? (That is, who would be the "appropriate person" under *Securities Transfer Act* ?) The Minister? The holder?
- If the proposed amendments are envisioned to grant this legal authorization to the holder of the securities, how can the registrar (whether the issuing corporation itself, or its transfer agent in the case of publicly-traded securities) satisfy itself that the person or entity purporting to be the holder of particular unclaimed securities that have become due for liquidation actually has that authority? For example, how would a registrar know that an old share certificate tendered for transfer had not simply been found on the street or stolen from the apparent owner's home the previous week?

In many cases, a member of STAC may be both the holder of the unclaimed securities and the registrar (if it is the transfer agent of the issuing company). Admittedly, in such cases (or in cases where the issuing company is the holder of the unclaimed property and the STAC member is acting as its agent for purposes of compliance with the UPPVPA), the issue identified in the second bullet above would likely not arise - as we would not question our *own* authority, nor in all likelihood the authority of our issuer-client. However, in other scenarios, there has to be an answer to that question of proving authority. Otherwise, a liquidation of the securities might not be consummated – as the registrar might refuse to effect the transfer.

We offer the observation that the above-referenced issues likely do not arise if, as the legislation currently contemplates, the Province actually effects the liquidation pursuant to the authority already granted to the Minister in subsection 38(2) of the Act. We expect that a registrar, including a member of STAC, would readily obtain a comfort level with the transfer of a certificated security when it is accompanied by the "certificate of the Minister stating that the endorsement has been made by the Minister under the authority of this Act" (per UPPVPA subsection 38(7)). With regard to the proposal that holders will be the parties to liquidate the unclaimed securities, query whether the legislation could be amended in such a way as to provide some reasonable and workable mechanism that could provide a registrar with the comfort level that a subsection 38(7) certificate from the Minister currently would.

We should note that, in present times, a registrar very commonly receives its comfort level as to the validity and propriety of a transfer by relying upon a signature guarantee from a major Canadian bank or under a medallion guarantee program. For example, a share certificate submitted for transfer by a broker will typically have its endorsement 'medallion guaranteed', which tells the registrar that the signatory is guaranteeing that the transfer is proper and that the registrar is protected by insurance should the transfer prove not to be proper. However, with regard to the TRA proposal, we note that while such a guarantee might eliminate any concern on the part of a member of STAC that is asked to process such a transfer of registration, the fact remains that the burden simply shifts to the bank or other entity that is asked to affix its guarantee/medallion. The essential question thus remains: how does a prudent guarantor satisfy itself that the person or entity purporting to be the holder of particular unclaimed securities due for liquidation actually has that authority in accordance with the UPPVPA?

While the Act might be amended in such a way as to relieve a registrar from liability when acting in good faith on a transfer purportedly made pursuant to a liquidation of securities pursuant to the authority of the Act, given the range of potential claims (e.g., from the former registered owner of the liquidated securities who is actually domiciled in another province or country), we question if that would be a practical or complete enough solution.

2. Ease or Difficulty of Liquidation

The obligation to liquidate securities must be qualified and limited.

Where there is a readily available Canadian market for the relevant unclaimed securities, members of STAC will likely already have, or can establish, relationships with brokers to effect sales on a stock exchange or on the over-the-counter market. However, the securities might not be traded on such a market. The securities could be of a foreign issuer, of a private company, etc. Even though measures might be *possible* to sell such securities, with varying degrees of difficulty or complexity (e.g., consulting with a private company's current management, retaining an outside expert to advise on or operate an auction process), such options might be uneconomic and/or completely outside of the holder's knowledge, experience or business. It does not seem reasonable to compel a holder to liquidate securities that are not readily marketable in Canada.

Other holders, even if they do hold marketable securities, may not have relationships with an appropriate broker or dealer. Query whether it is reasonable to compel them to establish same for the isolated purpose of liquidation of unclaimed securities they might hold for a long-lost apparent owner.

We submit that liquidation of securities should be optional on the part of a holder. For securities that cannot practically be sold, or for which liquidation might require unusual or special efforts, perhaps a single agency of the Province should be tasked with this specialty, or with centrally engaging the requisite external experts or advisors.

In all events, a holder who does conduct such a liquidation should be shielded from any liability provided it has not acted in bad faith. It should not be vulnerable to claims from an apparent owner or from the Province that the price it obtained was too low.

3. Claims-barred Period

Currently, the Act provides that, subject to limited exceptions, a claim may not be brought more than 10 years after the date of delivery to the Minister, and the apparent owner's right is thereupon extinguished; (ss. 48(8) and (9)). Query whether the new proposals will result in the lengthening of the claims period by 10 years (to a total of 20 years since the securities would otherwise have been deliverable to the Minister under subsection 7(2) of the Act) – or whether the amendments will provide that the 10-year period for making a claim will commence on the date that the securities would have been deliverable but for the new rules.

4. Deduction of Sale Commission and 20% Charge to Cover Costs

If the proposed changes regarding the unclaimed securities are to be made, corresponding changes should be made to provide for the holder's deduction of any applicable sale commissions and the proposed 20% charge. These changes should include not only authorization for such deductions but, presumably, for corresponding limitations on the amount for which a claim will be honoured. That is, unless the Province chooses to absorb such costs, it should be clear that the owner, apparent owner or former owner will not be able to recover such costs.