Securities Transfer Association of Canada

William J. Speirs
President

September 6, 2013

John Lee
Counsel
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 7th Floor
Toronto, ON M7A 2S9

Dear Mr. Lee:

As requested in your introductory remarks to the Unclaimed Property Program meeting on June 17, 2013, the Securities Transfer Association of Canada ("STAC") is pleased to be able to offer our additional comments on the Ontario government's proposed Unclaimed Property Program, including the provisions of the Uniform Unclaimed Intangible Property Act. STAC is a non-profit association of Canadian transfer agents that among others has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.

<u>Role of a Transfer Agent and Registrar</u>

To provide some context to our comments, it is important to first explain the functions performed by our members and their relationship to public and private companies, investors and the other financial intermediaries, as our role is often not clearly understood outside the industry.

STAC members' clients consist primarily of public (and sometimes, private) companies for which they act as transfer agent and registrar, and often as disbursing agent. In the vast majority of these cases, these clients' securities issues trade on listed stock exchanges or on over the counter bulletin boards. As

President: William Speirs, CST Trust Company, 320 Bay Street, 3rd Floor, Toronto, Ontario M5H 4A6
Phone: (416) 682-3885 Fax: (514)985-8837
Secretary/Treasurer: Richard Barnowski, Olympia Trust Company, 120 Adelaide St. W., Suite 920, Toronto, Ont. M5H 1T1
Phone: (416) 364-5043

transfer agent and registrar, STAC members' primary function is to keep records of the shareholders of their various clients.

It is important to highlight that the transfer agent and registrar's direct relationship is with the public or private company whose register of shareholders it maintains, not the shareholders on that register. The investors who become those shareholders typically buy their shares through a broker-dealer or other securities intermediary, who has the client relationship with them. An investor can elect to leave their shares in their brokerage account (in which case, the investor's name does not appear on the company's share register) or can elect to become a registered shareholder and receive a share certificate evidencing their ownership position.

If the investor requests to become a registered shareholder, the request is made to their broker-dealer or other securities intermediary who transacts on their behalf with the transfer agent to move the shares into the investor's name on the issuer's register. The transfer agent will generate a share certificate in the investor's name and provide it to the broker-dealer for forwarding to the investor. At this point, the investor appears on the share register, but the transfer agent has only received the bare minimum of personal information on the investor – generally name and mailing address and, in rare occurrences, SIN.

The transfer agent will subsequently use the registered shareholder's name and address to mail the continuous disclosure documents mandated under securities acts and corporate statutes (financial statements, proxy materials, etc.) and if the issuer declares a dividend, the transfer agent will also calculate and mail the dividend cheques and solicit their SIN for tax reporting purposes.

This lack of a direct client relationship between the transfer agent and the registered shareholders creates some issues from an unclaimed property program perspective that will be explored later in our comments.

Another issue with unclaimed property from a transfer agent and registrar's perspective is possession or control of the unclaimed asset. As stated earlier, share certificates representing the shareholder's interest in the public or private company are held by the shareholder, unlike in a brokerage account where the shares are retained on their behalf by the broker-dealer. When a shareholder's account is deemed dormant due to statutory number of returned mail items being met (i.e. return of continuous disclosure mailings), the transfer agent does not possess the asset. The shareholder has possession of the asset and the transfer agent has no reason to believe that they have abandoned it. The only instances where a share certificate could be viewed as abandoned and remitted under the unclaimed property program is in cases where it has been returned as undeliverable or not released under a corporate action due to a old address already noted on file.

Another form of assets that can be considered abandoned and remitted under an unclaimed property program are the dividends that some public companies declare and pay to their shareholders. Dividends on the underlying shares of dormant accounts are still calculated but not mailed due to the old address already on file. In other cases, dividend cheques may be mailed but not cashed.

The determination of possession and control of these uncashed dividend payments is dependent on the banking arrangements in place between the public company and the transfer agent. Some transfer agents require the public company to fully fund them for the dividend payment in advance. In those instances, the funds are held in the transfer agent's account so the transfer agent has both the records of the payment and the funds.

Other transfer agents have arrangements where the issuer controls the funds in an account in their name as part of their cash management process with their banker. The transfer agent has signing authority on the funding account (which is often an imprest account). In these instances, the transfer agent has the records, but the public company has the funds.

The issue of possession and control of share certificates and dividend payments creates some issues from an unclaimed property program perspective that will be explored later in our comments.

Retrospectivity

We recommend that the Act follow the approach taken in Alberta that 'the clock not start running' for the purposes of property being presumed abandoned until the Act comes into force. There are significant challenges in our business in identifying and reporting with respect to property that may have been unclaimed for many decades. The conversion from manual records to computers occurred in the late 1970's and early 1980's and was followed a decade later by a significant consolidation within the Canadian transfer agent community from 13 national transfer agents to 5 national transfer agents and a small number of regional transfer agents.

The effort and expense required to research these positions is enormous given the likelihood that they may be in less usable form, not computerized or on legacy systems. The ability to charge a reasonable fee, chargeable against the property, for the work entailed (as addressed below) may not address the expense incurred in researching these positions and tracing the bank accounts for the funding.

Reporting Requirements

In our October 11, 2012 comment letter, we submitted the following comments regarding the reporting requirements:

With regard to sections 6(2) and 7, we have several comments:

(a) The additional information required by (b)(iii) is unduly burdensome compared to any foreseeable benefit to the Province or the apparent owner. The delivery by a holder of the unclaimed property along with the name, last known address, SIN and date of birth (if/as known) should be sufficient to allow the Province to deal with claims, administer the program, etc. The additional information required by (b)(iii) may not be part of a holder's electronic database.

(b) Similarly, the additional information required by (b)(iv) is unduly burdensome compared to any foreseeable benefit to the Province or the apparent owner. The current transfer agent/trust company population in Canada includes surviving companies of numerous acquisitions, consolidations, amalgamations, name changes, etc. In some instances, a transfer agent could potentially have a dozen or more 'predecessor' transfer agents over previous decades, and the information as to which of these is/are relevant to a given item of unclaimed property will likely not be part of any relevant database and may be extremely difficult to research (likely manually). Further, the requirement to report their "addresses" is vague. (What addresses? Head office? Branches? Current or former? Etc.).

President: William Speirs, CST Trust Company, 320 Bay Street, 3rd Floor, Toronto, Ontario M5H 4A6
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A further complication to our second comment is that the public company client is also able to move from one transfer agent to another. Where such a move takes place while the now unclaimed assets were being held, it is possible that the chain of 'predecessor' transfer agents could include a combination of the numerous acquisitions, consolidations, amalgamations and name changes of both surviving national transfer agents. The current transfer agent would not necessarily have access to the list of applicable predecessor transfer agents that pre-date the involvement of the initial transfer agent in its chain.

STAC recommends that the Act require only the reporting of the basic information in 6(2)(b)(ii). The Province could be empowered to require the holder to provide more detailed information on a case-by-case basis where required to address a particular claim.

Transfer of Unclaimed Security Positions

In our October 11, 2012 comment letter, we submitted the following comments regarding the transfer of unclaimed security positions:

> The Ontario Act (or Regulations made thereunder) should clarify how a holder would deliver unclaimed property that is shares, bonds or other securities that may not be represented by physical certificates. A mechanism for remitting unclaimed security positions needs to be considered by the Province.
>
> With regard to the Province exercising the rights of an owner over unclaimed property delivered to it (section 13), please add a provision corresponding to subsection 38(7) of the Alberta Act. This would require the Province to include, with a potential endorsement (e.g., upon a sale and/or transfer) of a security certificate, a certificate stating that the endorsement is being made under the authority of the Ontario Act. This will help ensure that the transfer agent for the subject security is able to identify the authority behind the endorsement. (Otherwise, for example, a physical share certificate registered to John Q Public but endorsed by a representative of the Province might be rejected by a transfer agent or an issuer.)

While the Alberta Act provides for the endorsement required, STAC is still in discussions with Alberta on the mechanism to permit the transfer agent to receive the endorsement (usually a stock power of attorney) prior to effecting the transfer of the shares to the government's broker. Under section 29 of the *Securities Transfer Act* (Ontario), the endorsement is required in the same fashion. STAC submits that the Province incorporate a provision to include an endorsement and a mechanism to deliver it in a timely manner to permit remittance of the transferred security position prior to the remittance deadline.

Indirect Relationship with the Shareholder (Apparent Owner)

In our October 11, 2012 letter, we submitted the following comments regarding the inability to levy fees given our indirect relationship with the shareholders:

> … [If] section 4 is intended to impose a positive search obligation on holders, we believe this should be made clearer, and should be based on 'reasonable efforts'. Further, given the burden that such a

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searching obligation would place on holders, the ability to impose a fee for such services needs to be clearly established; (see point 4 below).

We do not believe the fee section of the Uniform Act is fair or reasonable in the context of transfer agents and trustees. Section 5 of the Act imposes the condition that a fee must be authorized by a written contract between the holder and the apparent owner. However, this fails to recognize that a transfer agent's contract is with the corporate entity that issued the securities; the transfer agent does not contract with the many securityholders that have invested in the corporation. Similarly, a trustee does not contract with the beneficiaries of a trust. To the extent that beneficiaries could be 'apparent owners', recovery of a reasonable fee to the holder should be provided for. We submit that section 5 is unduly prejudicial to transfer agents and trustees, and that we should be entitled to charge a reasonable fee in connection with the duties we need to perform under the Act (not just for "sending a notice" but for the work involved in ascertaining or attempting to ascertain correct addresses). We suggest that the Ontario Act include a provision similar to Section 6 of the Alberta Act to clarify that holders may charge reasonable fees for notices – and for conducting searches (which searches may be done through a third party servicer, thus resulting in out-of-pocket expenses that clearly should be recoverable). The Ontario Act should also make clear that such fees may be deducted from the monies/property remitted to the Province. Finally, a significant portion of the property held by transfer agents that will be remitted to the Province will be securities that the transfer agent is not entitled to sell. As such, the transfer agent will have no ability in such circumstances to deduct its reasonable fees. We submit that it would be fair and reasonable for holders who remit non-monetary unclaimed property to be reimbursed by the Province similar to the manner contemplated by subsection 8(3) of the Alberta Act – or to net off such unrecoverable fees from other unclaimed monies remitted to the Province.

In our description of the role of the transfer agent and registrar at the beginning of this letter, we explained how an investor in one of our public company clients becomes a registered shareholder. Clearly, unlike the broker-dealer or other financial intermediary, the transfer agent has limited personal information on the registered shareholder and limited means of contact when the mailing address ceases to be effective. This increases the importance of being able to impose a fee to meet the searching obligation as the service companies with the necessary tools to effectively trace these lost holders are all fee-based providers. STAC recommends that the Province make it clear that fees for services provided may be deducted from the monies/property remitted.

Currency of Remittance

Some of STAC's member clients pay distributions in currencies other than Canadian dollars – either to all shareholders or to certain shareholders based upon their election. If Ontario determines that it will only accept remittance of unclaimed monies in Canadian dollars, who will bear the ultimate foreign exchange risk and what exchange rate would the holder be expected to use? If Ontario elects to only receive Canadian dollar remittances, STAC recommends that this be specified clearly in the Act along with the exchange rate to be applied, such as the exchange rate on the date the money is remitted.

We would be pleased to discuss these comments and provide additional feedback as the Ministry of the Attorney General continues its consultation process regarding a new Unclaimed Intangible Property Program for Ontario.

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Phone: (416) 364-5043

Yours truly,

William J. Speirs
President
Phone: 416-682-3885
Fax: 514-985-8837
Email: bspeirs@canstockta.com