



# Securities Transfer Association of Canada

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President

Delivered via e-mail – Information@fcb.ca

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Financial and Consumer Services Commission  
85 Charlotte Street, Suite 300  
Saint John, N.B.  
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Attn: Secretary, Financial and Consumer Services Commission

Dear Sirs:

Re: Notice and Request for Comments  
Proposed Financial and Consumer Services Commission Rules: UP-001 *Unclaimed Property – General* and UP-002 *Unclaimed Property – Fees*

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Dear Sirs:

This letter represents the comments of the Securities Transfer Association of Canada (STAC) in response to the Financial and Consumer Services Commissions Notice and Request for Comments on the proposed Financial and Consumer Services Commission Rules: UP-001 *Unclaimed Property – General* and UP-002 *Unclaimed Property – Fees* (collectively, the “Proposed Rules”). 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 provide membership to firms engaged as transfer agents or registrars in the field of the issuance, transfer and registration of securities and associated functions;

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- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To assist members with problems of a technical or operational nature;
- 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;
- To provide members and others with information and comments of an educational and technical nature relating to the securities transfer and corporate trust industry;
- To exercise any and all powers required to meet the needs and the obligations of this Association; and
- To ensure that its activities in relation to these purposes are communicated to all Members.

In Canada, transfer agents are retained by public and private companies to maintain records of the registered securityholders, specifically, those who hold securities directly in their own name. Our records contain the securityholder's name and address, securities held, and, in some cases, email address. We process transfers, mail disclosure material, such as proxies, annual financial statements, quarterly reports, and management information circulars, and distribute dividends and related tax slips.

Our comments relate specifically to proposed Rule UP-001 *Unclaimed Property – General* ("Rule UP-001"), Section 3.4 *Submitting report and delivery of property that is a security*.

**Rule UP-001 Section 3.4(3)**

This proposed rule states:

*If an apparent owner has securities with a total estimated fair market value in the account of less than \$1,000, the holder shall liquidate the account and deliver the liquidated property to the Director, in accordance with section 18 of the Act.*

Section 18(1)(d) of the Unclaimed Property Act, states:

*18(1) The Director may, in relation to any unclaimed property in the Director's possession or control as a result of this Act,*

*(d) if the unclaimed property is a security,*

*(i) make an endorsement or originate an instruction or entitlement order by which may be invoked the duty of the issuer, transfer agent or securities*

*intermediary to transfer or dispose of the security in accordance with the applicable law, and*

*(ii) obtain a new or replacement certificate for that security*

In reference to Section 18(1)(d)(i), the requirements to transfer securities from the name of the registered owner to another party, whether that be another individual, a broker, a purchaser, or some other party, include processes in addition to the endorsement or instruction. These processes are required whether the position is held in certificated or book form on the register maintained by the transfer agent and registrar. The individual endorsing the securities must also provide a Medallion Guarantee on the relevant paperwork, along with any required supporting documentation. The Medallion Guarantee requirement is a standard process that is followed by all members of STAC, and is authorized under Section 87(3) of the Securities Transfer Act, SNB 2008. The Medallion Guarantee is applied by a bank, broker, or other entity that is a member of the Medallion Guarantee program, and tells the transfer agent that the signatory is guaranteeing that the transfer is proper and being executed by the appropriate party. Furthermore, the transfer agent is protected by insurance required to be held by the Guarantor should the transfer prove to be improper. If a Medallion Guarantee is provided by the Director, it is important to note that although any concern on the part of the STAC member would be eliminated, the burden simply shifts to the bank, broker, or other entity that provides the Medallion Guarantee.

Further, the section states that a transfer agent may be requested to dispose of a security. Transfer Agents are not brokers, and therefore cannot sell or dispose of securities through the normal course of our business. We would also suggest that the obligation to dispose of or liquidate a security must be qualified and limited. In some instances, there is a readily available Canadian market for securities, however certain securities, such as private companies, a foreign issuer, or a debt issue, may not be traded on a Canadian public market. In these instances, varying degrees of difficulty or complexity are introduced. There may be options available, however not all holders may have the knowledge, experience, or ability to take these steps. We recommend that liquidation of securities should be optional on the part of the holder. In all cases, a holder who does liquidate securities should be shielded from any liability provided it has not acted in bad faith. The holder should not be vulnerable to claims from an apparent owner or from the Director that the price obtained for the securities was too low, or any fees or commissions paid were too high.

In reference to Section (18)(1)(d)(ii), the ability of the Director to obtain a new or replacement certificate for a security, the process for a physical certificate to be reported as lost, stolen or destroyed, and replaced is involved, and requires the purchase of an insurance bond. This bond protects the issuer and the transfer agent in the event the original security certificate is submitted for transfer. The bond is required under section 92(1)(b) of the Securities Transfer Act. We also note that Section 92(2) of the Securities Transfer Act requires an issuer to register a transfer if, after a new security certificate is issued, the original security certificate is presented for the registration of transfer, and the issuer has the right, under Section 92(2)(c) to "...recover the new security certificate from a person to whom it was

issued ...". The mechanisms of how this process would work are unclear to us, and we would therefore appreciate further clarity.

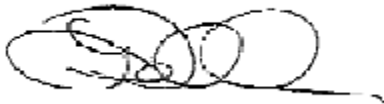
**Rule UP-001 Section 3.4(5)**

This proposed rule states:

*If an apparent owner has securities with a total estimated fair market value in an account of \$1000 or more, the holder shall submit a report to the Director in accordance with sections 9, 10, 11 or 12 of the Act, as applicable, and continue to hold the property until the Director gives the holder permission to deliver the unclaimed property.*

We note that if the record of reported securities remains outstanding on the transfer agent's books, it continues to be a transferrable position, despite notice being provided to the Director. In the event the original holder submits the relevant share certificates or instructions, along with any other requirements, the transfer agent would be obligated to transfer the position as instructed.

We thank you for the opportunity to provide our comments and welcome any further questions you may have.



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