



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Ian C.W. Russell FCSI
President & Chief Executive Officer

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Mr. Robin Edger
Office of the Assistant Deputy Minister
Ministry of Consumer Services
Consumer and Business Policy Unit
777 Bay Street, 5th Floor
Toronto, ON M7A 2J3
E-mailed to: robin.edger@ontario.ca

Dear Mr. Edger:

Re: Proposed Reform of the *Personal Property Security Act* (PPSA)

The Investment Industry Association of Canada (IIAC) is pleased to comment on the Ontario Government's proposal for amendments to the *Personal Property Security Act* (PPSA) with respect to the perfection of security interests in cash collateral. As the professional association of Canada's securities industry, IIAC represents over 170 investment dealers across the country, approximately two thirds of which are headquartered in Ontario. More than an estimated 50% of Canadian securities industry GDP and employment is derived, and 80% of market activity takes place, in Ontario. To ensure that Ontario legislation supporting these markets remains modern and effective, we believe that the Ontario Government should adopt the recommendations of the February 6, 2012 Ontario Bar Association (OBA) Personal Property Security Law Subcommittee proposal, *Perfecting Security Interests in Cash Collateral*.

The proposed changes to Ontario's personal property security legislation will make it easier for businesses and financial institutions to provide or obtain a first-priority security interest in cash collateral. This will:

1. Reduce risk, uncertainty and the related costs by clarifying legal status and adding certainty to our increasingly global financial marketplace, where transactions often involve multiple jurisdictions, by providing for effective and enforceable collateral arrangements that contribute to the soundness and efficiency of our markets.
2. Promote the competitiveness of Canadian capital markets and Canada's securities industry and, through those individuals and organizations operating in this industry, in the broader Ontario and Canadian economy.
3. Enable Canada to meet its international financial reform commitments and mitigate financial system risk related to over-the-counter (OTC) derivatives.

The Ontario government played a key role in 2006 in modernizing securities transfer legislation and we are optimistic it similarly will champion these important changes to the PPSA as recommended by the OBA Subcommittee. These amendments will act as a catalyst to encourage other provincial jurisdictions to make similar changes to their personal property security legislation. Importantly, adoption of these changes will help harmonize with the legal framework of secured transactions in the U.S and other jurisdictions. For these reasons, we particularly would like to re-enforce two recommendations made by the OBA and other industry groups in and outside Canada, namely:

1. **Breadth of coverage:** The solution Ontario adopts to confer a first priority based on control, in a fashion similar to the regime with respect to securities under the *Securities Transfer Act* (2006), should be broad enough to address all cash collateral needs for every type of secured transaction. The implementation of first-priority security interests in cash collateral through control is important not only to derivatives market participants, but also for securities lending, repurchase (repo) and other collateralized transactions, as well as for markets that may develop in future.
2. **Timing:** We believe that the changes proposed by the OBA should be implemented expeditiously to ensure transactions under Ontario law will be interpreted globally as subject to the same legal protections as transactions with counterparties in other leading jurisdictions coincident with market and policy reform around the world. This will avoid expected significantly higher transaction costs. To ensure consistency, we recommend the Ontario government apply the proposed changes retroactively to existing security agreements.

At a September 2009 Group of 20 Summit, Canada and other participants committed to improving the OTC derivatives market. This will be achieved by mandating central counterparties (CCPs) for the clearing of financial transactions with the goal of having standardized OTC derivatives cleared centrally on a securely collateralized basis by the end of 2012. IIAC and its members are engaged in a number of major industry initiatives, such as the launch of a new repo CCP in Canada in February of this year. Without amendments to the PPSA, Canada's CCP infrastructure and financial institutions will be at a competitive disadvantage in global markets. If financial transactions are not centrally cleared and backed by enforceable collateral agreements, regulators will likely impose additional capital requirements that will increase transaction costs and disadvantage Canadian institutions.

Foreign investor participation is an important dimension of Ontario's capital markets. The PPSA amendments to improve the certainty of collateral will strengthen the competitiveness of financial markets in Ontario. Equally importantly, the proposed changes will bring benefits to Canadian investors, to Canadian financial institutions and to Canada's economy.

We would be pleased to discuss our views further with you.

Yours sincerely,

