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**BY E-MAIL**

April 30, 2008

Department of Finance Canada  
Department of Industry Canada

By email - [securities-valeurs@fin.gc.ca](mailto:securities-valeurs@fin.gc.ca)

Attention: Mr. Timothy C. Sargent

Dear Sirs/Mesdames:

**Re: Modernizing the Legal Framework for Financial  
Transactions: Reforming Federal Securities Transfer Rules**

The International Swaps and Derivatives Association, ISDA, submits the following letter regarding the June 2007 consultation paper issued jointly by the Department of Finance Canada and the Department of Industry Canada (the **Consultation Paper**).

ISDA represents participants in the privately negotiated derivatives industry, and is the largest global financial trade association, by number of member firms. ISDA was chartered in 1985, and today has over 815 member institutions from 56 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Information about ISDA and its activities is available on the Association's web site: [www.isda.org](http://www.isda.org).

ISDA fully endorses the comments submitted by the Canadian Bar Association dated September 30, 2007. In particular, ISDA supports Option 2 in the Consultation Paper, namely the repeal of federal securities transfer provisions.

ISDA members that enter into privately negotiated derivatives contracts, as well as securities financing arrangements such as margin loans, securities loans and repurchase agreements, depend upon securities to collateralize obligations under these contracts. Collateral can be delivered pursuant to a traditional form of securities agreement or a title transfer collateral arrangement. It is vitally important in these types of transactions that there be legal certainty and uniformity as to the rights of transferees of securities. Unless the federal government vacates the field of securities transfer, there will inevitably be

overlap and inconsistency in the law that will lead to legal uncertainty. A legal system that is not finely integrated with provincial personal property security laws and that requires an analysis of whether the transfer is an absolute one or a secured transaction would create confusion in derivatives and securities financing markets, where such distinctions are irrelevant in terms of the function and purpose of the secured transaction.

Repealing the federal securities transfer provisions will not create significant gaps with respect to those provinces that have not yet implemented the STA. Under the current law market participants do not comfortably rely on the federal transfer laws even in those situations where they apply, because of the underlying concern that they are not constitutionally valid given that they are property transfer and not corporate laws. Ambiguities in provincial law will continue to impede markets regardless of what federal laws are passed on an interim basis. Consequently, there is no significant benefit to passing a federal securities transfer law simply in order to temporarily fill gaps left by outdated provincial legislation. Efforts should be directed at persuading the remaining provinces to implement the STA.

ISDA agrees with the comments of the CBA that federal legislation in the area of securities transfer would be a regrettable step backwards.

Yours truly,



Francois Bourassa, Chair ISDA Canadian  
Steering Committee and Senior Vice-  
President, Trading and Structured Products/  
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