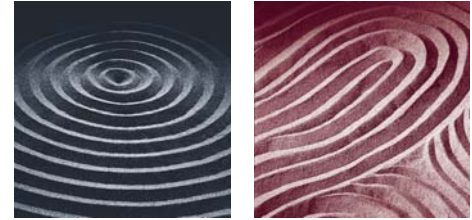


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## What You Need To Know About The *Securities Transfer Act*

Jennifer E. Babe, Partner,  
Miller Thomson LLP

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A. Where does the *Securities Transfer Act* (“STA”) come from?

The STA evolves from all of:

1. Article 8 of the *Uniform Commercial Code* of the United States, and consequent Article 9 amendments
2. 2002 Hague Securities Convention
3. *Uniform Securities Transfer Act* (“USTA”) prepared jointly by the Uniform Law Conference of Canada (“ULCC”) and the Canadian Securities Administrators task force

The goal was to mesh the STA with Article 8 to ensure smooth interaction between securities transfers between Canada and the United States, and as well to Europe under the Hague Convention.

B. What is the status of Canadian legislation?

1. *Ontario: Securities Transfer Act*, S.O. 2006, c. 8  
third reading and royal assent: May 18, 2006  
expected proclamation: January 1, 2007
2. *Alberta: Securities Transfer Act*, S.A. 2006, c.S-4.5  
third reading and royal assent: May 24, 2006
3. British Columbia, Saskatchewan, Manitoba, Quebec and New Brunswick also participated in the drafting consultations with Ontario and Alberta and are expected to follow with their own legislation this fall or early in 2007. All such legislation is expected to follow Ontario and Alberta, exception Quebec which will have unique civil law provisions.

The Ontario and Alberta statutes are virtually the same, and it is hoped that this will be uniform legislation to allow smooth interaction among the provinces. Quebec will have variations for civil law, which are intended to bring it in line with the common law jurisdictions.

C. Sources of Information

1. Eric T. Spink and Maxine A. Paré, “The Uniform Securities Transfer Act: Globalized Commercial Law for Canada”, (2004) 19 B.F. L. R. 321
2. B. Geva, “Legislative Power in Relation to Transfers of Securities: The Case for Provincial Jurisdiction in Canada”, (2004) 19 B.F.L.R. 393
3. Ontario Securities Commission website: [www.osc.gov.on.ca](http://www.osc.gov.on.ca) under “Hot Topics”, has the USTA with section by section comments

4. ULCC website: [www.ulcc.ca](http://www.ulcc.ca) under:
  - 2004 Proceedings – Report of USTA Task Force
  - Uniform Statutes – USTA adopted in 2004, with complete section by section annotations
5. Robert Scavone, “The New Securities Transfer Act, 2005: The Coming Revolution in the Law of Securities Transfers”, Jan 24, 2006, Ontario Bar Association, 2006 Institute of Continuing Legal Education
6. November 20, 2006: Ontario Bar Association is preparing a program on the STA

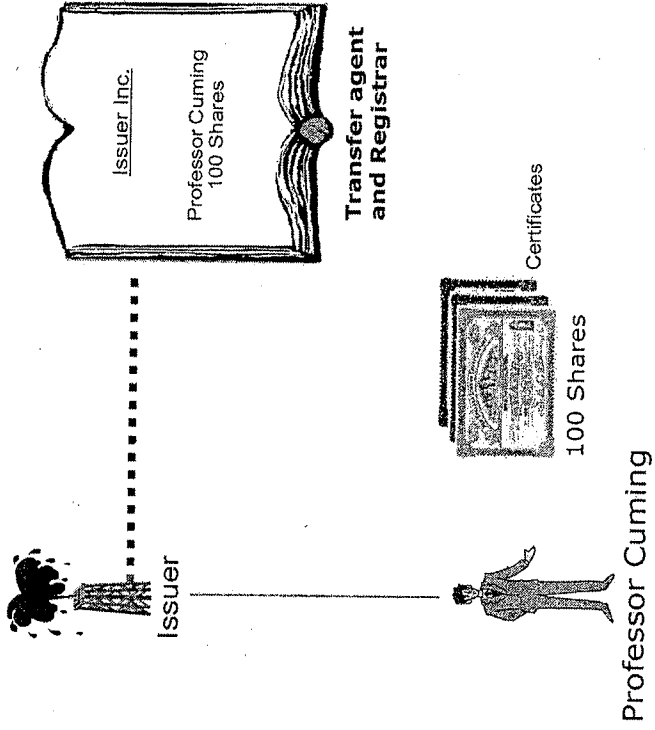
D. What is the STA?

- STA is commercial transfer law dealing with narrow element of a securities trade: the transfer of property upon settlement of the trade. It does not regulate securities issuance to the public and it does not deal with paying for trades in securities. It sets rules for buying, selling and pledging securities.
- STA brings Canadian law forward to properly reflect the property interests that currently exist in the securities markets
- The following graphics were prepared by Eric Spink and Max Paré for their presentations to various groups, including one to the Canadian Conference on Personal Property Security Law, from which these were taken, and during which Prof. R. Cuming became the security holder

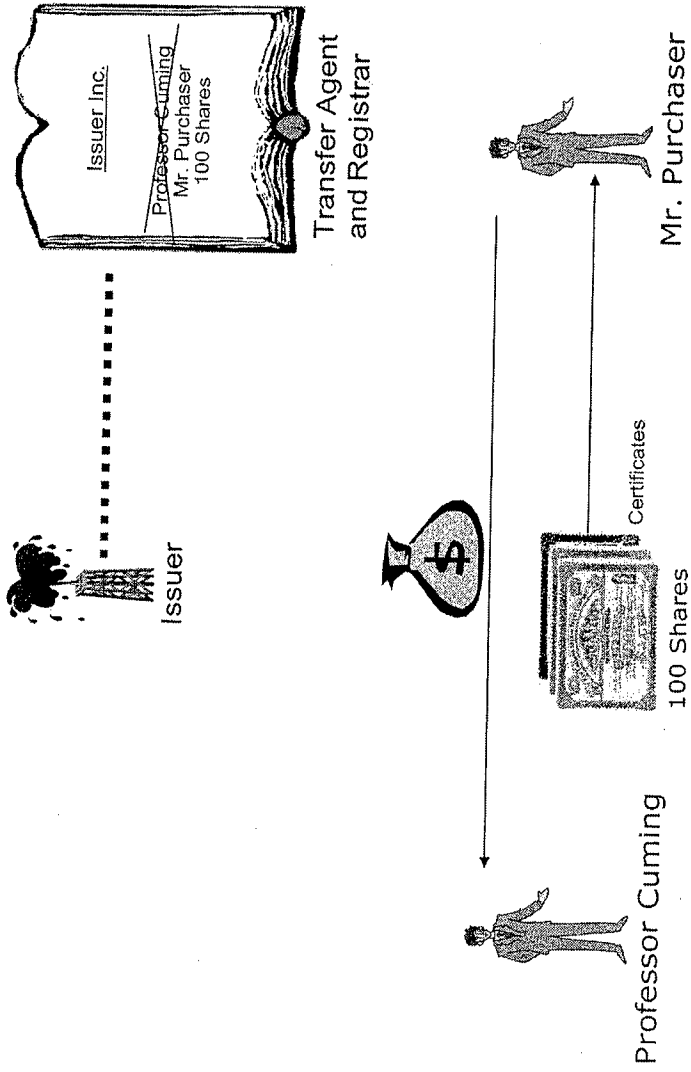
E. Today’s Law: the Direct Holding System:

- Part VI of the *Business Corporations Act* (Ontario) and like corporate statutes provide for the issuance of physical share certificates by issuer to holder
- *Personal Property Security Act* (Ontario) provides for perfection of a pledge of shares by physical possession of an endorsed certificate

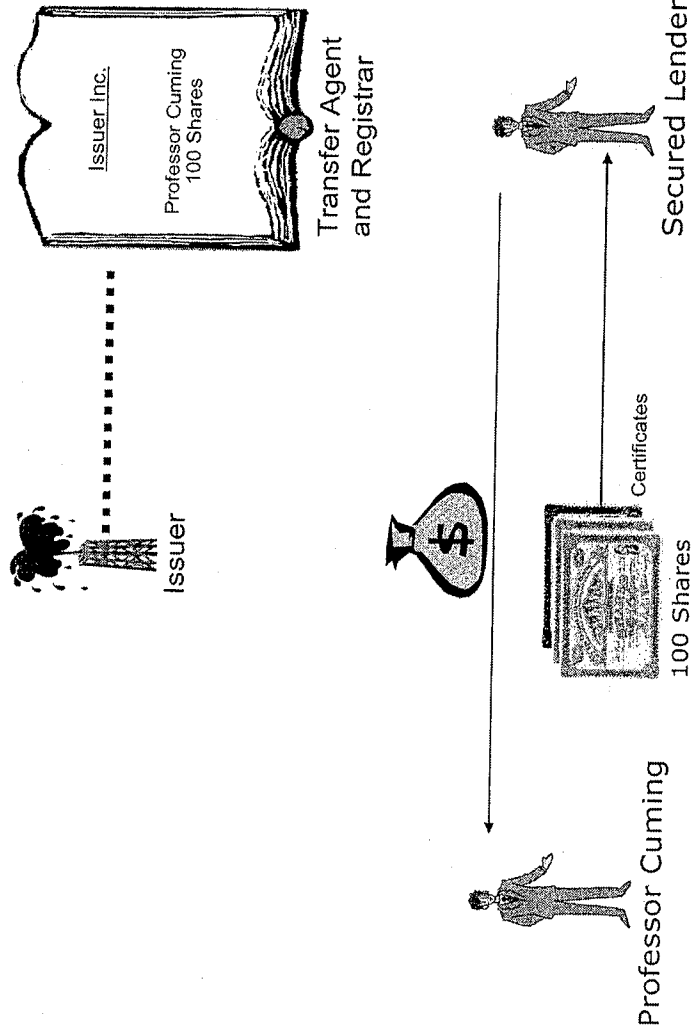
# The Direct Holding System



# Transfer in the Direct Holding System



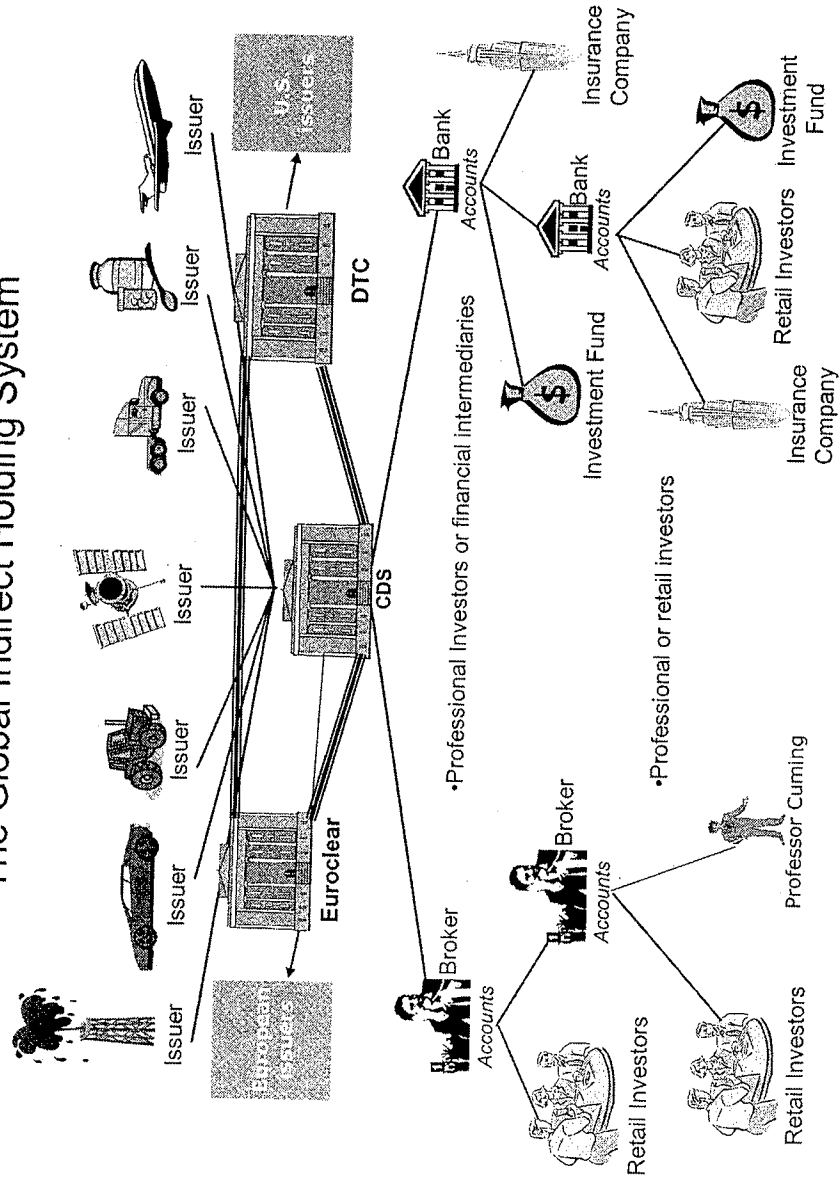
# Pledge in the Direct Holding System



F. What does the world really do?

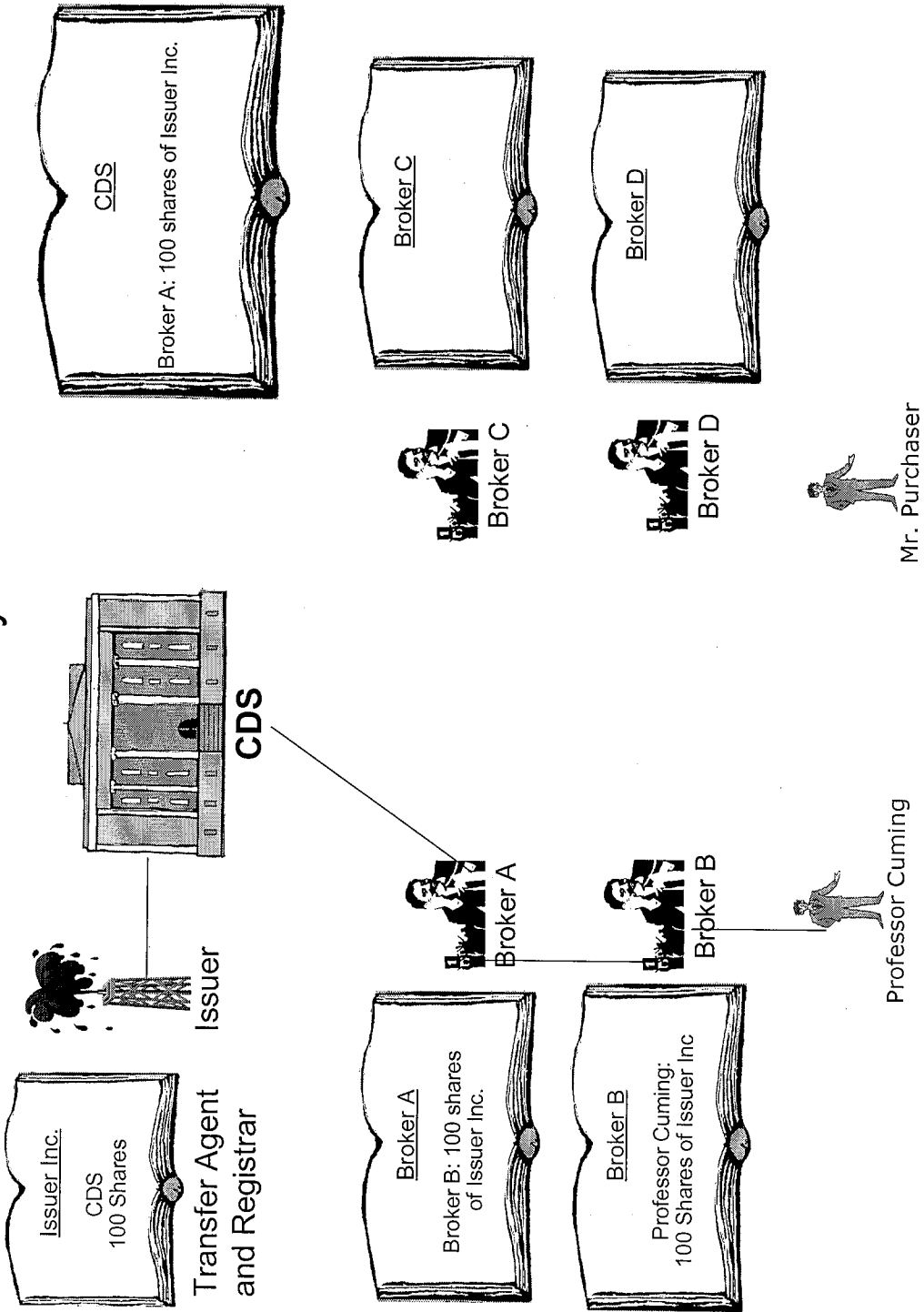
- Securities are traded today in the indirect holding system whereby the holder has a brokerage account reflecting certain credits and property rights, and the broker in turn has credits and rights at a central clearing agency recording holdings in issuers
- Most securities are “dematerialized” account entries, and settled by book entries at the central clearing agency and at the brokerage

# The Global Indirect Holding System

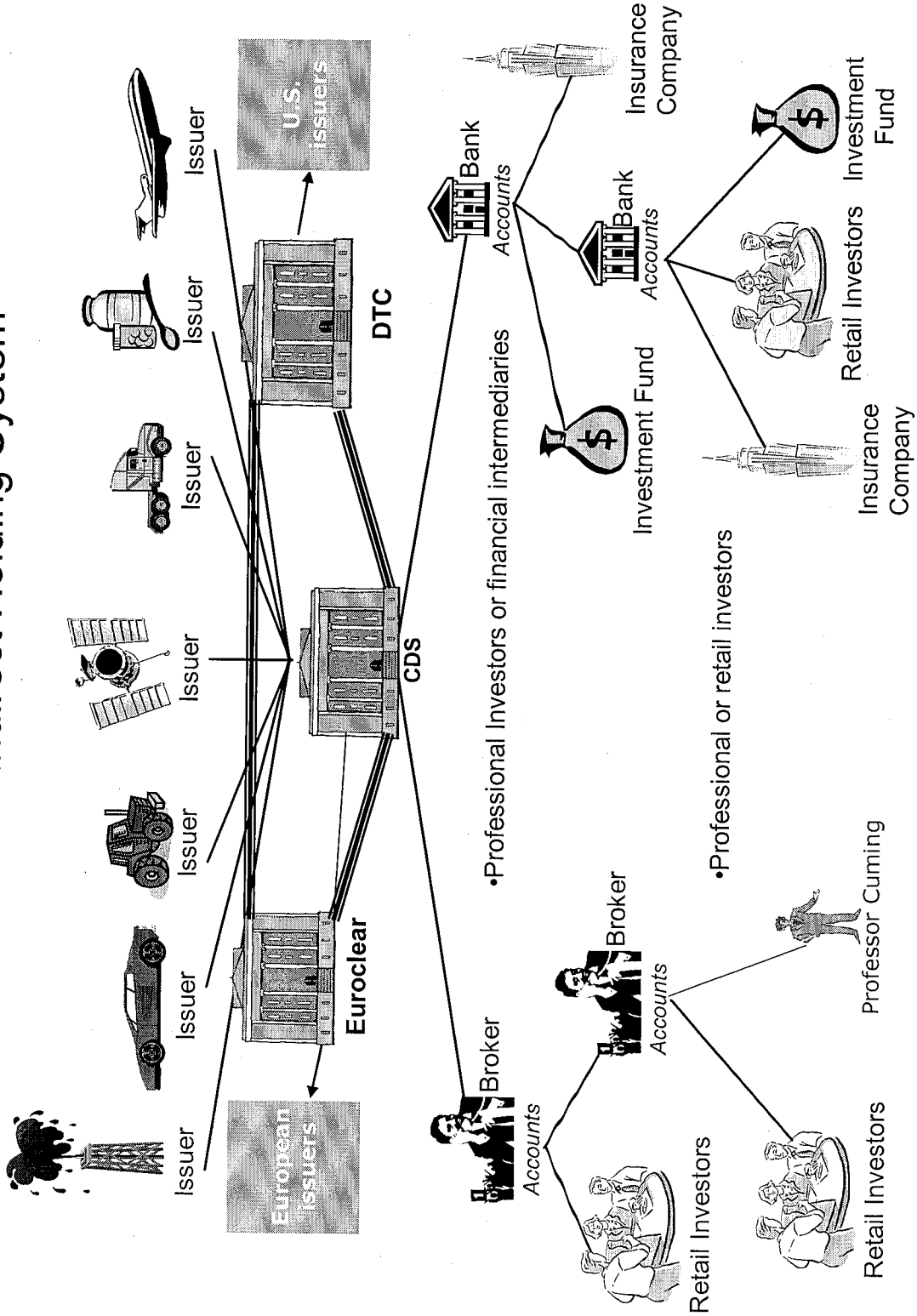




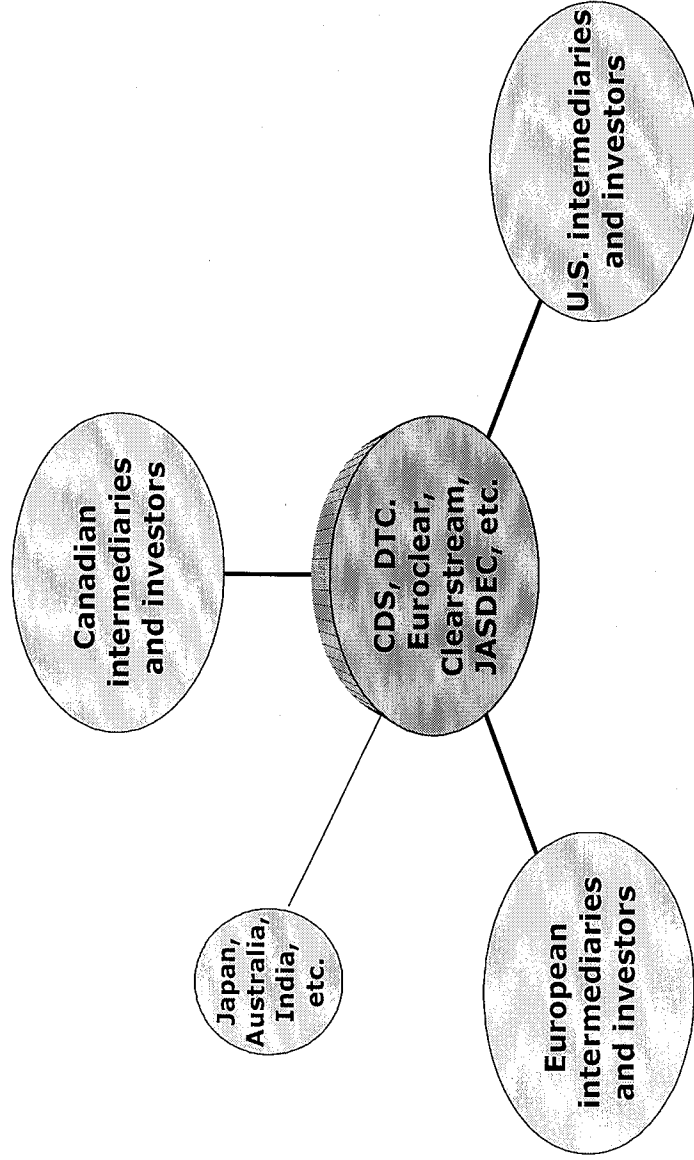
# Book-entry settlement



# The Global Indirect Holding System



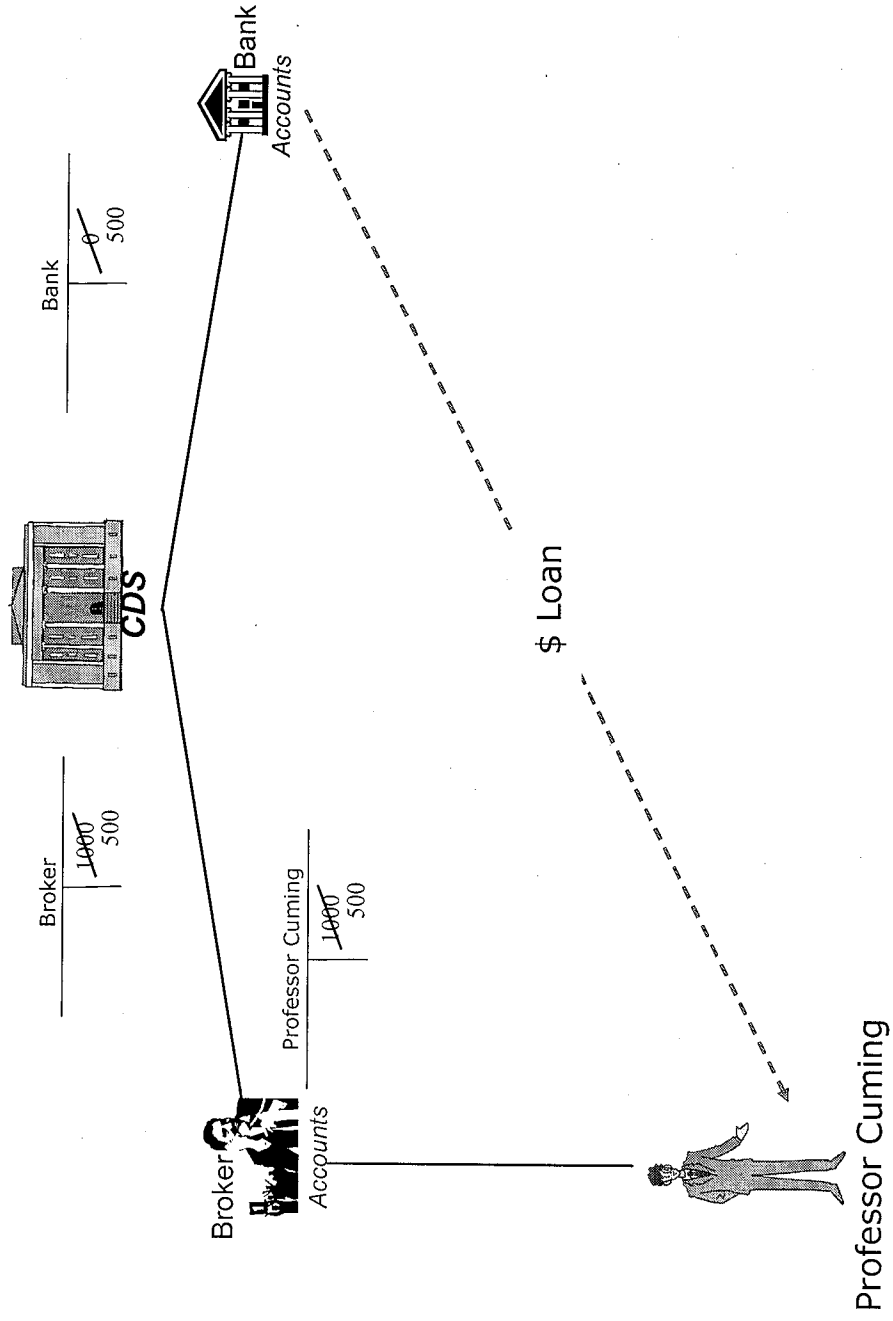
# Cross-border transactions



G. A New Class of Property: The “Security Entitlement”

- The STA creates the “security entitlement” to reflect the credits, property and rights owned by the securities holder in the brokerage account, and by the brokerage at the central clearing agency.
- The OBCA and PPSA amendments will reflect dematerialized securities, and the creation and perfection of security interest in security entitlements by possession of physical securities, or entry of the securities booked in the secured party’s name, or by way of a control agreement among the secured party, the holder as debtor and the brokerage firm
- The *Execution Act* (Ontario) amendments will enable seizure of a security entitlement by execution creditors

Control: Purchaser/secured party becomes entitlement holder, USTA 32(1)(a)



Control: by agreement with intermediary, USTA 32(1)(b)

