TRUST THE EXPERTS

We are told to “Trust the experts”,i.e., the ULC!

What kind of experts are these?

ALL of their assertions have been false!

Let’s go through them:

“You have priority.”

Except…you do not with insolvency of the intermediary! (1)

“You have property rights.

Except… You have no right to recover “your property” in the event of insolvency of an intermediary; this means it is NOT YOUR PROPERTY! (1)

“No customer lost anything in Lehman.”

Except…the clients whose assets were taken! (2)

“An agreement is required.”

Except…it is not! (3)

“Only property for which the customer has given consent is used.”

Except…ALL securities may be used as collateral by others! (3)

"Only property extended through margin lending is used."

No, all securities are used! (1) and (3)

Margin collateral [< $1T] could not possibly explain the amounts under the derivatives complex, i.e., only use of the entire global securities complex could do so [e.g., $2Q * 5% = $100T]

"Margin accounts would be prevented."

No, they are maintained by contract, which has always been the case!

"Wrongdoing is prevented under Federal and State regulation."

It is NOT, as demonstrated by Lehman, and explained by the Federal Reserve Bank of New York and by James S. Rogers, who wrote the 1994 Article 8 amendments! (2) and (4)

"You are protected by SIPC insurance."

No, Institutions are never protected, and no one is protected in systemic failure! (5)

"Financial institutions in the state are protected by the present system."

No, they have the liability, but not the property! "An Entitlement Holder's Rights Can Be Asserted Only Against Its Own Intermediary" (6)

"It's about security for clearing."

No! Clearing operated for 26 years after the so-called "paperwork crisis" before the Article 8 changes were proposed, and for 33 years before adoption by all 50 states! "The work of which the Article 8 revision project is a part might be described as 'Armageddon Planning' for the financial system." (7)

"It's about electronic trading."

No! Electronic trading (NASDAQ) operated for 23 years before the Article 8 changes were proposed, and for thirty years before adoption by all 50 states!
"The work of which the Article 8 revision project is a part might be described as 'Armageddon Planning' for the financial system." (7)

"The exceptions in 8-511 (b) and (c) inserted in 1994 were required to modernize the system."

False, same as above! (7)

"The modern system could not function if the exceptions in 8-511 (b) and (c) are deleted."

False! (8)

"The Uniform Law Commission will fix this!"

Nope!

"During the meetings and discussions over the course of work of the Task Force, there were **no indications that securities intermediaries** (including clearing organizations such as the DTCC group, banks, and broker-dealers) **saw a business case for material modifications…or…to pursue a study** of such as that recommended here. **This is not surprising. These market participants…enjoy benefits from the existing infrastructur**e…On the other hand, **investors…lack the ability to impose changes**…market participants clearly lack the ability to impose such changes…**one might expect the beneficiaries of the current infrastructure to muster a strong opposition…"** **Charles W. Mooney, Jr., Summer 2024 (9)**

So, Trust the experts, the ULC!

If they are experts at anything, it is at protecting the largest intermediaries.

These are self-regulating. They control the regulators. Not the other way around.

Those speaking on behalf of the UCC are paid to do so!

Just as we are seeing here right before your eyes,

they are not representing the interests of the public.

(1)

“You have priority.”

Except…you do not with insolvency of the intermediary!

“You have property rights.

Except… You have no right to recover “your property” in the event of insolvency of an intermediary; this means it is NOT YOUR PROPERTY!

These are the key facts:

- Ownership of securities as property has been replaced with a new legal concept of a "security entitlement", which is a contractual claim assuring a very weak position if the account provider becomes insolvent.
- *All* securities are held in un-segregated pooled form. Securities used as collateral, and those restricted from such use, are held in the same pool.
- *All* account holders, including those who have prohibited use of their securities as collateral, must, by law, receive only a pro-rata share of residual assets.
- “Re-vindication,” i.e. the taking back of one’s own securities in the event of insolvency, is absolutely prohibited.
- Account providers may legally borrow pooled securities to collateralize proprietary trading and financing without restriction.
- "Safe Harbor" assures secured creditors priority claim to pooled securities ahead of account holders.
- The absolute priority claim of secured creditors to pooled client securities has been upheld by the courts.

The documentation is absolutely irrefutable. In March of 2006, the **Deputy General Counsel for the Federal Reserve Bank of New York** provided a detailed response to a questionnaire prepared by The Legal Certainty Group, which was established by The European Commission Internal Markets and Services Director General to address problems of legal uncertainty for secured creditors. The following are excerpts from that response (a):

Q (E.U.):
In respect of what legal system are the following answers given?

A (N.Y. Fed):

This response confines itself to U.S. commercial law, **primarily Article 8** ... and parts of Article 9, of the Uniform Commercial Code (“UCC”) ... The subject matter of Article 8 is ‘Investment

Securities' and the subject of Article 9 is 'Secured Transactions.' Article 8 and Article 9 have been adopted throughout the United States.

Q (E.U.):

Where securities are held in pooled form (e.g. a collective securities position, rather than segregated individual positions per person), **does the investor have rights attaching to particular securities in the pool?**

A (N.Y. Fed):

No. The security entitlement holder ... has a pro rata share of the interests in the financial asset held by its securities intermediary ... This is true even if investor positions are 'segregated.'

Q (E.U.):

Is the investor protected against the insolvency of an intermediary and, if so, how?

A (N.Y. Fed):

... an **investor is always vulnerable** to a securities intermediary that does not itself have interests in a financial asset sufficient to cover all of the securities entitlements that it has created in that financial asset ...

If the secured creditor has "control" over the financial asset it will have priority over entitlement holders ...

If the securities intermediary is a **clearing corporation**, the claims of **its creditors have priority over the claims of entitlement holders.**

Q (E.U.):

What rules protect a transferee acting in good faith?

A (N.Y. Fed):

Article 8 protects a purchaser of a financial asset against claims of an entitlement holder to a property interest in that financial asset, by limiting the entitlement holder's ability to enforce that claim ... Essentially, unless the purchaser was involved in the wrongdoing of the securities intermediary, an entitlement holder will be precluded from raising a claim against it.

Q (E.U.):

How are shortfalls [i.e. the intermediary's position with an upper-tier intermediary is less than the aggregate recorded position of the intermediary's account-holders] handled in practice?

A (N.Y. Fed):

... **The only rule** in such instances is that the security **entitlement holders simply share pro rata** in the interests held by the securities intermediary ...

In actual fact, **shortfalls** occur frequently due to fails and for other reasons, but are **of no general consequence except in the case of the securities intermediary's insolvency.**

Q (E.U.):

Does the treatment of shortfalls differ according to whether there is (i) no fault on the part of the intermediary, (ii) if fault, fraud or (iv) if fault, negligence or similar breach of duty?

A (N.Y. Fed):

In terms of the interest that the entitlement holders have in the financial assets credited to its securities account: **regardless of fault, fraud, or negligence of the securities intermediary,** under Article 8, the **entitlement holder has only a pro rata share** in the securities intermediary's interest in the financial asset in question.

That's how it works directly from the most authoritative source possible—lawyers working for the Fed.

(a) The New York Federal Reserve's reply to the EU Clearing and Settlement Legal Certainty Group's questionnaire

POLICY PERSPECTIVES ON REVISED U.C.C. ARTICLE 8, UCLA LAW REVIEW (1996), James S. Rogers, Reporter (the writer of the amendments) to the Drafting Committee to Revise U.C.C. Article 8,

https://lira.bc.edu/work/sc/81b6ffe2-96c3-4087-b991-c70aaa870a47/reader/8609bf57-9f4c-457a-9544-bbb62195b7a3

The traditional Article 8 rules on securities certificates were **based on the idea that the paper certificate can be regarded as a complete reification of the underlying right**. The rules on transfer and the **consequences of wrongful transfer could then be written using the same basic concepts as the rules for physical chattels**. For example, a **person's claim of ownership of a securities certificate is a right to a specific identifiable physical object, and that right can be asserted against any person who ends up in possession of that physical certificate**, except to the extent that bona fide purchaser rules cut off the adverse claim.

Application of the **traditional concepts** to the modem indirect holding system gives a certain plausibility to arguments which, if accepted, could significantly **impair the operation of the indirect holding system….**

A **security entitlement is not a claim to a specific identifiable thing; it is a package of rights and interests** that a person has **against the person's securities intermediary** and its property.

The idea that discrete objects might be traced through the hands of different persons has no place in the Revised Article 8 rules for the indirect holding system. Rather, the fundamental principles of the indirect holding system rules are that an entitlement holder's own intermediary has the obligation to see to it that the entitlement holder receives all of the economic and corporate rights that comprise the security, and therefore, that **an entitlement holder can look only to that intermediary for performance of the obligations.** The **entitlement holder cannot assert rights directly against other persons, such as other intermediaries through whom the intermediary holds the positions…**

One of the attributes of a security entitlement is the fact that if the intermediary itself lacks sufficient holdings to satisfy all entitlement holders having security entitlements to the same issue, the entitlement holders share pro rata. In that sense, **it is of course true that the investor's property interest is "subject to" other claims….**

Thus, **despite the intuitive appeal of the notion that "securities a broker holds for its customers belong to them," it would be an exercise in self-delusion to suppose that we could protect investors who hold through intermediaries by adopting a commercial law regime based on simplistic property concepts** of that sort.

Thus, to assess the effect of commercial law rules on the risks the investors face in holding through intermediaries, **we must put aside the appealing notion** that we could somehow resolve all such problems simply by applying the notion **that the securities a broker holds for its customers belong to the customers.**

3. Theft Risk

…There is a risk that the intermediary will wrongfully dispose of securities that it was required to hold for its customers, dissipate the proceeds of such wrongful transfers, and fail, leaving a shortfall in the assets needed to satisfy customer claims.

It would, of course, be possible to have commercial law rules that said that if an intermediary wrongfully disposes of securities that should have been held for entitlement holders, the entitlement holders can recover those securities from the transferee. Even if there were no other **reasons for rejecting that approach**, it is worth noting that it is highly **unlikely that doing so would have any material impact in reducing intermediary theft risk.** To recover wrongfully transferred securities from the transferee, **one has to figure out which securities**

were wrongfully transferred and where those securities went. Under modem conditions, in which firms commonly carry proprietary and customer positions in a single account with a clearing corporation or other upper tier intermediary and in which all trades are settled on a net basis, **it is likely that the only way that one could identify a particular transferee as the recipient of "the customer's" securities would be by arbitrary accounting or tracing conventions**. For purposes of argument, however, **let us ignore that major factor and consider whether it would be desirable to allow recovery from transferees, assuming that one could identify those transferees…Saying that the "owners" can get "their property" back if their intermediary wrongfully transferred it just means that some other "owners" are going to get "their property" taken away….**

But, **if one were to try to change the law to create a rule that "secured lenders" to a broker take subject to the risk that the broker was wrongfully pledging securities that should have been held for customers, one would have to deal with repos.** If one really does want to have a rule that anyone who takes an interest in securities from a broker in a financing transaction has to give back those securities if it turns out that the firm was wrongfully pledging customer securities, then it is hard to see any reason not to apply that rule to repo buyers as well as to providers of financing in any other form of transaction….**If one really does think that sound public policy dictates that providers of financing to securities firms should lose to customers of the firm in the event that the firm has wrongfully transferred securities**, **then one has to bite the bullet and say that one thinks it sensible to shift the risk of loss from the customers of a failed securities firm to shareholders of a money market mutual fund…**general **rejection of the finality principle as applied to circumstances in which an intermediary wrongfully transfers securities that it should have retained to satisfy customer claims is simply not a realistic alternative for practical lawmaking**, nor is there any reason to think that such a change would be advantageous for investors.

“No customer lost anything in Lehman.”

Except…the clients whose assets were taken!

In the lead-up to the failure of Lehman, JP Morgan (JPM) had **taken client assets as a secured creditor** while being the **custodian for client assets!**

Under long standing bankruptcy law **this would have been a constructively fraudulent** preference transfer benefitting an insider. And so, JPM was sued by **clients whose assets were taken.**

Here is the decision of the court (emphasis added): ***UNITED STATES BANKRUPTCY COURT*** *SOUTHERN DISTRICT OF NEW YORK In re: Chapter 11 Case No. 08-13555*

The ***Court agrees with JPMC*** *that the safe harbors apply here, and it is appropriate for these provisions to be* ***enforced as written*** *and* ***applied literally in the interest of market stability****. The transactions in question are* ***precisely the sort of contractual arrangements that should be exempt*** *from being upset by a bankruptcy court under the more lenient standards of constructive fraudulent transfer or preference liability: these are systemically significant transactions between* ***sophisticated financial players*** *at a* ***time of financial distress in the markets*** *– in other words, the* ***precise setting for which the safe harbors were intended****. ...*

The Court first must ***consider whether JPMC is eligible for protection*** *under section 546(e). That subsection, like the safe harbors generally, applies only to certain types of qualifying entities. . . .*

JPMC*, as one of the leading financial institutions in the world,* ***quite obviously is a member of the protected class*** *and qualifies as both a “financial institution” and a “financial participant.*

Only “a member of the protected class” is empowered to take customer assets in this way.

The securities of ALL clients were encumbered in the bankruptcy instantly. Retail accounts were eventually sold.

(3)

"An agreement is required."

Except…it is not!

"Only property for which the customer has given consent is used."

Except…ALL securities may be used as collateral by others!

"Only property extended through margin lending is used."

No, all securities are used!

The **Chief Counsel** of the **Uniform Law Commission** stated **IN TESTIMONY** in ND that section 8-504 (b) assures that (1) a securities intermediary may not grant any security interests in a financial asset it is obliged to maintain in favor of its entitlement holders, and (2) may not do so without the consent of the entitlement holders.

Let's look at the code:

§ 8-504. DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN FINANCIAL ASSET.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) **Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain** pursuant to subsection (a).

(c) **A securities intermediary satisfies the duty in subsection (a) if:**
(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; **or**
(2) **in the absence of agreement**, the securities intermediary **exercises due care in accordance with reasonable commercial standards** to obtain and maintain the financial asset.

In (2) we see that the financial assets **CAN BE USED "in the absence of agreement"!**

What is, **“due care in accordance with reasonable commercial standards”**?

We have seen that demonstrated in the case of Lehman Brothers.

(d) states that, **“This section does not apply to a clearing corporation that is itself the obligor”**.

...so, for example, a swap contract or loan contract, using the financial assets as collateral.

For good measure, little (d) states that this can be an **OBLIGATION TO WHICH ITS ENTITLEMENT HOLDERS HAVE SECURITY ENTITLEMENT!**

"Wrongdoing is prevented under Federal and State regulation."

It is NOT, as demonstrated by Lehman, and explained by the Federal Reserve Bank of New York and by James S. Rogers, who wrote the 1994 Article 8 amendments!

"In terms of the interest that the entitlement holders have in the financial assets credited to its securities account: ***regardless of fault, fraud, or negligence of the securities intermediary****, under Article 8, the entitlement holder has only a pro rata share in the securities intermediary's interest in the financial asset in question."*

– The New York Federal Reserve's reply to the EU Clearing and Settlement Legal Certainty Group's questionnaire

*"claims of…****secured creditors****, to whom a securities intermediary has* ***wrongfully*** *transferred securities* ***have priority*** *over the claims of customers of a failed intermediary."*

– James. S Rogers (drafter of the Article 8 amendment), POLICY PERSPECTIVES ON REVISED U.C.C. ARTICLE 8, UCLA LAW REVIEW (1996), P. 1434, https://lira.bc.edu/work/sc/81b6ffe2-96c3-4087-b991-c70aaa870a47/reader/8609bf57-9f4c-457a-9544-bbb62195b7a3

(5)

"You are protected by SIPC insurance."

No, Institutions are never protected, and no one is protected in systemic failure!

The argument that there is insurance implies that investors could lose their assets.

SIPC is severely underfunded, it is intended to address one B-D insolvency at a time.

SIPC does not cover 'sophisticated investors' like pensions and banks.

A banker in ND is supporting the Bill because his bank lost securities when a B-D failed. The Bank held bonds with the B-D and SIPC didn't cover the bank because it was considered a sophisticated investor.

SIPC does not cover investment contracts. The investor's 'security entitlement' is essentially a contract with their security intermediary and there is case law that SIPC does not apply to or cover contracts.

The legal issue is that the investor's claim to the underlying stock or bond is subject to claims from other entities in the custody chain and the existence of those competing claims raises questions about the application of SIPC to a security entitlement.

"Financial institutions in the state are protected by the present system."

No, they have the liability, but not the property!

POLICY PERSPECTIVES ON REVISED U.C.C. ARTICLE 8, UCLA LAW REVIEW (1996), James S. Rogers, Reporter (the writer of the amendments) to the Drafting Committee to Revise U.C.C. Article 8,

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B. An Entitlement Holder's Rights Can Be Asserted Only Against Its Own Intermediary

One of the **principal advantages** of the security entitlement structure is that it makes clear a **basic feature of the indirect holding system** - that **an entitlement holder's property interest is a bundle of rights that can be asserted directly only against the entitlement holder's own intermediary.**

In a multi-tiered system of intermediaries, **only a person's own immediate intermediary knows anything about that person's interest**…the upper-tier intermediary has no way of knowing anything about its customer's customers.

"It's about security for clearing."

No! Clearing operated for 26 years after the so-called "paperwork crisis" before the Article 8 changes were proposed, and for 33 years before adoption by all 50 states!

"It's about electronic trading."

No! Electronic trading (NASDAQ) operated for 23 years before the Article 8 changes were proposed, and for thirty years before adoption by all 50 states!

"The exceptions in 8-511 (b) and (c) inserted in 1994 were required to modernize the system."

False, same as above!

The so called "Paperwork Crisis" was in 1968.
DTC was not formed until 1973.
No significant dematerialization occurred until the 1980's.
The UCC revision was proposed in 1994.
Not enacted in all 50 states until 2001.
Clearing and electronic trading operated all that time on escalating volumes.

"The work of which the Article 8 revision project is a part might be described as 'Armageddon Planning' for the financial system."

"When I was appointed Reporter for the Article 8 project and told that the project was made necessary by problems with prior law revealed after October 1987, my first task was to review these studies expecting to find a "check-list" of things that were broken and needed to be fixed. Somewhat to my surprise, I found that…there was very little specific description of problems."

-- POLICY PERSPECTIVES ON REVISED U.C.C. ARTICLE 8, UCLA LAW REVIEW (1996), James S. Rogers, Reporter (the writer of the amendments) to the Drafting Committee to Revise U.C.C. Article 8

FATHER KNOWS BEST: REVISED ARTICLE 8 AND THE INDIVIDUAL INVESTOR, FRANCIS J. FACCIOLO, FLORIDA STATE UNIVERSITY LAW REVIEW, 2000

Professor Rogers starts his defense of Revised Article 8 with an eleven-page discussion of systemic risk."' **Nowhere in these eleven pages or in the balance of his article does Professor Rogers explain the particular aspects of systemic risk that would be alleviated by Revised Article 8.** Furthermore, **Professor Rogers fails to provide any convincing examples of systemic risk that have arisen from the prior versions of Article 8**…The problem with this systemic risk argument, as applied to Revised Article 8, is the one that Professor Rogers' article exemplifies. **No one has identified exactly how Revised Article 8 alleviates systemic risk.** Some proponents of Revised Article 8 are more blunt than Professor Rogers: "The conclusion that current law creates serious risk of systemic market failure is the SEC's, not mine. I have no basis independent of the SEC studies upon which to form a judgment about the empirical claim that drastic reform of Prior Article 8 is needed."…This Article, however, taking the many systemic risk studies cited by Professor Rogers at their word, **assumes that significant risks are contained within the clearance and settlement systems for securities. Once the concerns of the studies are examined, it becomes clear that, in most respects, Revised Article 8 is unrelated to these concerns….**supporters of Revised Article 8 have focused on finality, the policy behind this recommendation, for support. The supporters of Revised Article 8 maintain that finality in securities transactions should mean that a third party could challenge a securities transfer only in the most unusual circumstances. Professor Rogers labels this as "post-settlement finality."…

Post-settlement finality concern has such a tenuous connection to the numerous studies of settlement and clearance that Professor Rogers is only able to find one study that even discusses it. This is not surprising as the experience under 1977 Article 8 lends no empirical support to the concern that Professor Rogers raises.

Professor Charles W. Mooney, Jr., the legal academic whose ideas form the intellectual underpinnings of Revised Article 8," is no more convincing on the empirical issues. In discussing "the potentially severe consequences of prevailing uncertainties in the legal regime," he cites the October 1987 market crash and the 1990 bankruptcy of Drexel Burnham Lambert Group, Inc. (DBL Group).

This Article does not purport to make a detailed survey of the sources concerning the October 1987 Market Crash. Instead, it assumes that the supporters of Revised Article 8 have found the most relevant support for their position. When these sources are examined, the argument that 1977 Article 8 had to be thoroughly revised because of a general reluctance by "bank lenders ...to extend credit necessary to provide vital liquidity because of uncertainty as to perfection and priority of security interests in collateral", turns out to be a vast overgeneralization….

Professor Mooney cites a 1988 study by the SEC as support for this generalization." When looking at the study, one finds that the SEC was not discussing general problems in perfecting security interests but rather problems identified by the Options Clearing Corporation ("OCC") with respect to perfecting security interests in options. As options exist exclusively as book entries, methods

for perfection differed between 1962 and 1977 Article 8. There were also different choice of law provisions under these two versions of Article 8, which could lead to different results. The study concluded that "allthough it is possible to perfect security interests using both methods, doing so is both cumbersome and error-prone." While these problems can be generalized to cover all securities that exist solely as book entries, the solution does not necessarily implicate the upper tier priority and finality policies for which Professors Mooney and Rogers, respectively, are the chief spokespersons. Nor do they necessarily lead to the choice to favor control lenders over individual investors.

Later academic studies have not been any kinder to Revised Article 8 supporters. **The few studies that have examined clearing and settlement during the October 1987 crash have not even mentioned problems in perfecting security interests as something of concern.**

Also, there are no contemporaneous or subsequent articles in the business press that report on problems in perfecting security interests…

The evidence from DBL Group's bankruptcy similarly does not support the notion that problems in perfecting security interests in securities present a serious danger to America's financial markets….Professor Mooney cites this history to support the proposition that "bank lenders were reluctant to extend credit necessary to provide vital liquidity because of uncertainty as to perfection and priority of security interests in collateral. The lessons to be drawn from DBLGroup's bankruptcy have been mischaracterized.

(8)

"The modern system could not function if the exceptions in 8-511 (b) and (c) are deleted."

False!

Operation of the present system continues unhindered.

Existing contracts will not be disrupted, as they continue under the place of law set by contract.

Freedom to set place of law by contract continues.

Existing margin accounts, to which the owner has explicitly granted control under a written agreement, continue unchanged.

Institutional investors will demand that investment contracts set the place of law in the state; those doing so will immediately have priority to pooled securities ahead of secured creditors of intermediaries.

The Treasurer of the state will immediately have ability to do so, protecting the pension funds and finances of the state.

Investors outside the state, indeed internationally, will seek to set investment contracts under the law of the state.

In short, change for the public good will be driven by the most powerful, sophisticated investors. Other states will seek to follow in this.

IN SHORT, THIS...

- is not difficult!

- is not complicated!

- is not costly (i.e., no expenditure whatsoever)!

- can be implemented immediately!

- requires no further change in law or regulation!

(9)

"The Uniform Law Commission will fix this!"

No, it will not!

Final Report on the Work of the Task Force on Securities Holding Infrastructure: Part Two, Charles W. Mooney, Jr. and Sandra M. Rocks, Summer 2024, https://www.americanbar.org/groups/business_law/resources/business-lawyer/2024-summer/final-report-on-the-work-of-the-task-force-on-securities-holding-infrastructure/

A. POTENTIAL OPPOSITION TO INFRASTUCTURE MODIFICATION

"During the meetings and discussions over the course of work of the Task Force, there were **no indications that securities intermediaries (including clearing organizations such as the DTCC group, banks, and broker-dealers) saw a business case for material modifications** of the infrastructure **or** for an investment of the time and expense necessary **to pursue a study of such as that recommended here**. This is not surprising. **These market participants** in general appear to view the current infrastructure as satisfactory, **enjoy benefits from the existing infrastructure**, and lack incentives to support material modifications. **On the other hand, investors** and issuers that bear many of the direct and indirect costs of the current system **lack the ability to impose changes.** Even if investors and issuers might wish changes in results, the costs for any individual investor or issuer to pursue infrastructure changes would hardly be a wise investment. Moreover, those **market participants clearly lack the ability to impose such changes**…even if a credible and concrete reform proposal were tabled, **one might expect the beneficiaries of the current infrastructure to muster a strong opposition**…Finally, there currently is no existing or likely single competitor to the DTCC organization which realistically could present a competitive driver for change."

B. "SILOED" NATURE OF PROBLEMS AND INTERESTS

"…the SEC has not demonstrated sustained interest and has not been successful in resolving the prevailing problems…Other relevant regulators or constituencies might not have sufficient stand-alone concerns, influence, or motivation to take on major infrastructure modification battles."

C. NECESSITY OF INTERVENTION

…no major initiative to study (or implement) substantial modifications of the securities holding system **will occur in the absence of powerful intervention…**one might expect an initiative by the SEC, if any were to transpire, to be both incremental and intermittent…it is **unlikely that the SEC itself would mandate specific changes** in the infrastructure that would

address holistically the fundamental problems of nontransparency and the disconnect between BOs [Beneficial Owners] and issuers.

Charles W. Mooney, Jr. has served as:

Co-Reporter, National Conference of Commissioners on Uniform State Laws and The American Law Institute, Drafting Committee for the Revision of Uniform Commercial Code Article 9 (Secured Transactions) (1993-1999).

Advisor to Drafting Committee (National Conference of Commissioners on Uniform State Laws) for **Revision of Uniform Commercial Code Article 8 (Investment Securities) (1991-1995); Advisor to Standby Committee (1995-1999).**

Committee on Uniform Commercial Code (1976 - Present): Co-Chair, Task Force on Securities Holding Infrastructure (2020 - Present)