

# Legal, Regulatory and Tax Issues Affecting Securities Lending in Canada

2<sup>nd</sup> Annual CASLA  
Conference on  
Securities Lending

**CASLA** | Canadian Securities  
Lending Association

# Legal, Regulatory & Tax Issues Affecting Securities Lending in Canada

- Christopher Steeves, Chair  
*Fasken Martineau DuMoulin LLP, Toronto*
- Margaret Grottenthaler  
*Stikeman Elliott LLP, Toronto*
- Rom Watson  
*Ropes & Gray, Boston*
- William Young  
*State Street Bank & Trust Company, Boston*

# Agenda

- Canadian Legal Developments including Cash Collateral Proposals
  - Margaret Grottenthaler
- Recent U.S. Tax Developments in Securities Lending
  - Rom Watson & William Young
- CASLA Canadian Tax Initiatives
  - Christopher Steeves

# Recent Developments in Canada

- Election of majority government
  - Re-introduction of important technical legislation with effect likely to be retroactive to 2002.
    - Permitting certain non-arm's length loans
    - Addition of qualified trust units
    - Changes to withholding tax on compensation payments to include qualified trust units
    - Rules governing partnerships

# Recent Developments in Canada

- Administrative policy regarding withholding tax announced by the CRA on April 19, 2011
  - Amended Information Circular IC76-12 to be released
  - Declaration forms NR301, NR302 and NR303 – declaring eligibility for treaty rates for taxpayers, partners and hybrid entities
- Payers of distributions will be required to establish:
  - Identity of the beneficial owner
  - Residence of the beneficial for treaty purposes
  - Eligibility for treaty benefits (limitation on benefits)
- Some exceptions including U.S. resident individuals
- Transition period extended until December 31, 2012

# CASLA Tax Committee Initiatives

- Technical Interpretation request filed with Canada Revenue Agency in December, 2011 regarding Canadian withholding tax on dividend compensation payments on securities loans by non-resident lenders to Canadian resident borrowers
  - Confirming the meaning of “participating debt interest”

# CASLA Tax Committee Initiatives

- Request to Department of Finance to broaden the definition of “qualified security” under section 260 of the Income Tax Act (Canada)
  - Non-Canadian Exchange-Traded Funds (ETFs)
  - In process, should be submitted shortly