

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Notice and Request for Comment – Application to Vary the Recognition and Designation of The Canadian Depository for Securities Limited

APPLICATION TO VARY THE RECOGNITION AND DESIGNATION OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

NOTICE AND REQUEST FOR COMMENT

A. Introduction

The Canadian Depository for Securities Limited (“CDS”) has applied to the Commission for an order pursuant to subsection 21.2(1) and section 144 of the *Securities Act* (Ontario) (the “Act”), to vary the current recognition and designation order of CDS as a clearing agency.

The Commission is publishing for a 30-day comment period CDS’ application (the “Application”) and the following related documents (collectively, the “Related Documents”):

- (a) draft varied and restated recognition and designation order (“Draft Order”),
- (b) draft rule protocol governing the review and approval of CDS rules, and
- (c) draft reporting obligations.

B. Background

The Commission issued an order, *In the matter of the Recognition of the Canadian Depository for Securities Limited*, dated February 25, 1997, which became effective on March 1, 1997, recognizing CDS as a clearing agency pursuant to subsection 21.2(1) of the Act and designating CDS as a recognized clearing agency pursuant to Part VI of the *Business Corporations Act* (Ontario) (the “1997 Order”). CDS has applied for an order pursuant to subsection 21.2(1) and section 144 of the Act to vary and restate the 1997 Order.

The 1997 Order contains only minimal terms and conditions requiring CDS to obtain Commission non-disapproval of its rules and procedures. The 1997 Order does not specifically address other key recognition criteria, including governance, fitness, access, fees and due process standards. While many of these standards are already applied by the Commission in its general oversight of CDS, staff and CDS agreed to modernize the 1997 Order. Staff have worked with CDS to develop a comprehensive oversight regime for CDS similar to the oversight regime for self-regulatory organizations and exchanges. The Draft Order will improve the transparency of the oversight regime, codify the existing regulatory practice, and incorporate other terms and conditions that reflect international standards for central securities depositories and clearing and settlement systems.

C. Draft Recognition and Designation Order

Staff of CDS and the Commission have engaged in extensive discussions leading to the publication of the Application and Related Documents. The Draft Order establishes terms and conditions in the following areas:

1. Governance
2. Fitness
3. Access
4. Fees and Costs
5. Due Process
6. Risk Controls
7. Financial Viability
8. Operational Reliability
9. Capacity and Integrity of Systems
10. Protection of Customers’ Securities
11. Rules
12. Enforcement of Rules and Discipline
13. Information Sharing

CDS must meet each term and condition to the satisfaction of the Commission.

D. The Comment Process

You are asked to provide your comments in writing and to send them on or before **May 9, 2005** to:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario
M5H 3S8
jstevenson@osc.gov.on.ca

We request that you submit an electronic version of your submission by email or on a diskette. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Following the comment period, staff of the Commission will consider the comments received on the Application and Related Documents. If staff are satisfied that CDS meets the criteria for recognition and designation, staff will recommend that the Commission vary and restate the 1997 Order. The varied and restated recognition order will take the form of the Draft Order with terms and conditions generally in the form of those attached to the Draft Order as Schedule "A".

Questions may be referred to:

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