



## BY EMAIL

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Stephen Nagy  
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Dear Mr. Nagy:

### **Re: CDS Clearing and Depository Services Inc. (“CDS”) Proposed Amendments to the CDS Fee Schedule - Notices and Requests for Comment (the “Notices”)**

We are submitting this letter in response to two recent CDS fee proposals: 1. Proposed Amendments to CDS Fee Schedule Re: ISIN Issuance and CDS Eligibility Services (“**Issuance Services Amendments**”); and 2) Proposed Amendments to CDS Fee Schedule re: Entitlements & Corporate Action Events Management (“**E&CA Services Amendments**”). Aequitas NEO Exchange Inc. (“**NEO**”) is the newest stock exchange in Canada and, as part of our mandate, we are focused on ensuring that capital raising companies and issuers of exchange traded funds, closed end funds and structured products benefit from the right market infrastructure ecosystem to ensure their success as public issuers. We are providing these comments in support of that mandate.

#### **1. General**

We appreciate that clearing and settlement services are complex but have to note that even in some of the more straightforward aspects of the proposals, the Notices are constructed in a way that makes a proper analysis quite difficult, if not impossible. While an impact analysis on different types of issuers is provided, it is not always addressed with sufficient detail. The comparisons with other jurisdictions are at a very high level making it difficult to allow for proper benchmarking.

We believe that in order to come to a proper conclusion with respect to the proposals, which represent a significant departure from the current CDS fees, CDS should be required to provide its stakeholder community with a clear and detailed analysis on a service-by-service and issuer-by-issuer basis.

The thoroughness of such analysis is particularly important in light of the concerns voiced at the time the Maple acquisition: CDS as a monopoly that could use its fees to impact competitors and create a new group of captive consumers, i.e., the issuers. The recent CDS proposal regarding CDS Marketplace Set-up Fees also provides support for these concerns.

To provide some more specific feedback, we have attempted to outline concerns related to both the Issuance Services Amendments and the E&CA Services Amendments.

## **2. Reasonableness of fee amounts**

There is very little information provided about the costs, despite the fact that the basis for the fee proposals is described generally as the need to cover costs and ensure fairness.

It would be helpful in assessing the Issuance Services Amendments to know more about how, in an automated environment, the eligibility assessment works – and, at a high level, what resources and efforts are required to process a request:

- Is a 48 hour period actually needed and, if so, are the incentive fees of \$2,000 reasonable?
- What efforts justify the \$5,000 (24 hours) and \$10,000 (same day) fees?
- Does it currently cost ~20% more than it did previously to issue an ISIN? (Since CDS benefits from a monopoly in this regard, it would be expected that it would only charge a small administration fee over the amount charged by S&P.)

For the E&CA Services Amendments:

- Do the per event fees for event management correspond to the resources and efforts required to process them?
- CDS has confirmed that a number of features associated with ETFs are not E&CA Services, however, considering that ETFs often process a large number of entitlements (as these events are typically more frequent than quarterly or bi-annually, like corporate issuers) we question whether sufficient thought has been given to the differences between ETF issuers, Structured Product issuers in general, and others.

While we would not expect a detailed breakdown of all resource costs and efforts, we do expect a level of transparency that would allow for an adequate assessment. We view this as especially important in light of:

- CDS's position of monopoly with respect to most of these services;
- the fact that CDS has heavily invested in systems and processes;
- NEO's first-hand experience regarding how technology can reduce ongoing costs to our users; and
- the impact of these proposals on issuers (without which, along with investors, our markets could not function).

## **3. Cost recovery/rebate model**

In the Notices, CDS explains the need for adopting the new fees “...to meet its ongoing operational needs, to deliver fair and equitable treatment to all issuers, and to provide sufficient margin to enable CDS to invest in development and on-going maintenance of its issuance systems” (in relation to the Issuance Services) and to charge for “value-added ancillary services to securities issuers for which it does not currently charge” (in relation to the E&CA Services). We understand that, under the CDS recognition orders, it must not seek to increase fees on clearing and other core CDS services unless there is a “significant change from current circumstances”. We could not ascertain from the Notices what constituted the significant change that prompted these proposals. It was also not clear if CDS is arguing that some of the services impacted are not considered “clearing and other core CDS services”.

To fully understand the proposals, it would be important to understand the impact on the CDS participants. If CDS has been operating on a cost-recovery basis, this means that its participants have been paying to ensure ongoing operational needs have been met. If the Issuance Services Amendments and E&CA Services Amendments are approved, does this mean that the CDS participants will receive fee reductions and/or rebates within the frame of other services provided by CDS?

#### 4. **Conflicts**

Prior to the Maple acquisition, CDS operated as a not-for-profit industry utility. The CDS recognition orders post-Maple include a number of provisions, one of which is noted in #3 above, to address the conflicts related to CDS becoming part of a for-profit exchange consortium. As participants in a clearing and settlement utility, investment dealers, banks, and trust companies have not traditionally objected to supporting an efficient and effective clearing agency, because the fees they in turn charge are based primarily on activities relating to their securities and those of other issuers whose securities are held at CDS. If, however, this has changed, then it would appear that CDS' governance structure requires an adjustment. The proposed fees place issuers squarely as direct users of the services but there does not appear to be issuer representation on the CDS board (other than by individuals whose financial institutions happen to be public issuers as well) nor, as we understand it, on participant committees. More importantly, if the current participants are those that stand to gain directly from the increases to fees paid by issuers, then the review process would be inherently conflicted.

We would also like to bring to your attention that in today's environment, as demonstrated by numerous statistics in Canada and south of our border, public listing is becoming less and less of a preferred capital-raising option. This is detrimental to our industry and, more importantly, to our economy. While many factors influence this, these fee proposals represent an additional burden that would make the public listing option in Canada less attractive. We strongly encourage CDS' principal regulators to consider this public interest issue in addition to the above when reviewing the proposals.

Thank you for your attention to this matter.

Yours truly,

*"Cindy Petlock"*

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