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August 14, 2016

VIA EMAIL: snagy@cds.ca

Mr. Stephen Nagy
Managing Director, SIES
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Dear Sirs:

Re: CDS Clearing and Depository Services Inc. – Proposed Amendments to CDS Fee Schedule Re ISIN Issuance and CDS Eligibility Services ("Issuance Services")

CDS Clearing and Depository Services Inc. – Proposed Amendments to CDS Fee Schedule Re Entitlements & Corporate Action Events Management ("E&CA Services")

Notice and Request for Comments

In 2014, we commented on CDS' initial fee increase proposal that was published in the OSC Bulletin on November 13, 2014 (the "2014 Fee Proposal"). As a result of our comments, we engaged in discussions with CDS, facilitated by Staff of the Ontario Securities Commission. We are pleased to now comment on the newest fee proposals, published on July 15, 2016 (the "2016 Fee Proposal").

Invesco Canada Ltd. is an investment fund manager registered in the Province of Ontario, among others. We offer a range of investment fund products that rely on CDS, including exchange-traded funds ("ETFs") and a special series of mutual fund securities, Series PTF. As such, the 2016 Fee Proposal, like the 2014 Fee Proposal, affects us directly.

In our view, the main difference between the 2014 Fee Proposal and the 2016 Fee Proposal is that the latter is split into 2 proposals and makes a greater attempt to justify the increases. It is not clear from the form of notice what issues were specifically addressed as a result of comments on the 2014 Fee Proposal. We are disappointed by the lack of summary of the comments and issues discussed over the past year and a half between publications of the proposals. Our concern when a proposal is split into two is to create the illusion that there have been substantive changes when there have not been. On balance, we believe the latter view applies to the 2016 Fee Proposal.

Background

Historically, CDS was a not-for-profit entity that operated the depository and the clearing and settlement system for equities and fixed income securities in Canada. It was user-owned and operated on a cost recovery basis. That is, there was no objective of profit in its undertaking. This changed in 2012 with the acquisition of the Toronto Stock Exchange by the Maple Group Acquisition Corporation, which acquisition included CDS. With the acquisition, CDS became a for-profit undertaking. This raised regulatory issues because, prior to the acquisition, CDS effectively acted as a utility for clearing, settlement and depository services. No competitors were created likely for two reasons: first, as CDS was a not-for-profit enterprise, a for-profit competitor would have difficulty competing; and second, the barriers to entry into this business are very high. The regulatory issues arise because these services, essential to the proper functioning of capital markets, would as a result of the acquisition be delivered with a view to making a profit. As the sole provider of the services, this put CDS in a monopoly position which, in theory, gave them the ability to (a) raise prices in its discretion and (b) exclude persons from using the system. As a result, the OSC and the Autorité de marchés financiers issued new recognition orders (the "Recognition Orders") which sought to address these issues. The Recognition Orders were clear on the second concern, exclusion, and effectively prohibited the practice. The Recognition Orders were arguably less clear on the first concern, the ability to raise prices, and sought to address that by, among other things, requiring that the process for setting fees is fair and appropriate and that the fee model itself is transparent.

CDS has sought to address the requirement for a fair and appropriate fee setting process by setting up the CDS Participants Committee, issuing the 2014 Fee Proposal for comment, consulting with securities regulators and meeting with stakeholders who commented. In our view, CDS consulted appropriately. However, it is not clear that CDS addressed the concerns raised, especially by issuers.

We do not believe that the fee model itself is particularly transparent. To this end, we look to the example of public utilities and the rate-setting process to which they are subject. Public utilities are, typically, for profit enterprises that provide a good or service often that is required by most residents of a jurisdiction and the provision of that good or service is characterized by extremely high barriers to entry making competition unlikely, if not impossible. Because of the lack of competition, the utility is able to act as a price-setter, without regard to the broader market. As a society that values competition and accepts that many services provided by utilities should not be available only to the wealthy, we have determined that it is appropriate to regulate utilities and, as part of that, for the government or specific regulator to approve prices set by the utility.

This system has developed over a lengthy period in Canada and there are three main elements to the price of a good or service set by the utility and approved by its regulator:

1. The actual cost of providing the good or service.
2. Additional amounts that may be needed to reinvest in the good or service itself or in the delivery process for such good or service to increase efficiency.
3. A reasonable corporate profit.

Utilities typically make presentations to their regulatory body on all three of these elements in order to gain approval of their prices, or rates. These presentations are open to public scrutiny and assumptions may be challenged as part of the rate-setting process.

The Recognition Order issued by the OSC, contains the following provisions with respect to fees:

"PART 2 FEES
2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent."

In our view, the foregoing requirements are tantamount to requiring the utility model to be employed in determining CDS' pricing structure. This has not been achieved simply because CDS has not publicly released the methodology by which it has arrived at its proposed fee schedule. We respectfully request that these materials be publicly released, with the opportunity for the public to comment on them, prior to the Canadian Securities Administrators ("CSA") approving the 2016 Fee Proposal.

The 2016 Fee Proposal is split into two separate proposals: one relating to fees for Issuance Services (as defined in the 2016 Fee Proposal) and one relating E&CA Services (as defined in the 2016 Fee Proposal). While we believe that the Recognition Order applies to both sets of services, because E&CA Services can be provided by a competitor firm, the application of the Recognition Order will vary between the two types of services.

Fees Relating to Issuance Services

In the 2016 Fee Proposal for Issuance Services, CDS appears to acknowledge its monopoly and utility like character:

> "CDS acknowledges that in its capacity as the National Numbering Agency (NNA) for Canada, requests for ISINs must flow through CDS. Likewise, eligibility to use CDS's clearing and depository services must be administered by CDS. CDS's proposed Issuance Services fees recognize this and are priced to meet its ongoing operational needs, to deliver fair and equitable treatment to all issues, and to provide sufficient margin to enable CDS to invest in development and on-going maintenance of its issuance systems."

The Issuance Services provided by CDS, both on its face and by its own words fall within the ambit of utilities. There is one important difference, however, that is relevant to Issuance Services fees. Unlike other utilities, CDS did not start off as a for profit enterprise. Rather, market participants, realizing the need for certain services to ensure the proper functioning of Canadian capital markets, joined together to create CDS and offer the necessary services, without a view to a profit. This was a rational approach because the CDS participants, typically full service brokers who also assist clients in raising capital, would view the Issuance Services as part and parcel of raising public equity. As such, it was in the direct economic interests of the

participants to create CDS and provide what are now known as the Issuance Services. The relevance of this point goes to whether CDS is entitled, in respect of Issuance Services, to include corporate profitability as an element of the fee setting process.

It is not clear why the acquisition by the Maple Acquisition Group Corporation should change the fee-setting approach from that of cost recovery.

Because of the lack of detail in the 2016 Fee Proposal relating to Issuance Services, we cannot determine if the proposed fees follow the model set out above. If the model was that of a for-profit utility, then we submit that the corporate profit element should be removed from the proposed fee schedule. We agree that an element for reinvestment is appropriate.

We are skeptical that the model for utility pricing has been followed. When a new issuer is created, typically the issuer pays only the "One-time ISIN fee" which is currently $325. Under the 2016 Fee Proposal, this is lowered to $268. Therefore, on its face, this looks like a wonderful fee reduction of 17.5%. But as one scratches the surface, it is clear that this is misleading.

Virtually every new issue requires an eligibility assessment, a service that is essential to the operation of the system but for which, historically, CDS did not charge. Rather, it was included in the ISIN fee. Under the 2016 Fee Proposal, the charge will now be $475. Therefore, the better view is that the $325 ISIN fee is being replaced with a $268 fee plus a $475 fee, for a total of $743, an increase of 128.7%.

The changes to the BEO Certificate Fee also merit a mention. In most cases, the BEO Certificate Fee is not chargeable. We manufacture ETFs (among other investment products) and have never been charged the BEO Certificate Fee, which has been $550. Under the 2016 Fee Proposal, this is reduced to $125, which appears significant but the significance is related only to the amount as the frequency of the charge is a fraction of the frequency of an ISIN fee. It appears that CDS has made this adjustment to enable it to say that the proposal for Issuance Services, in the base case, reduces the cost by $7, where the reality is that it will typically increase the fee by $418.

In our case, we are currently considering the creation of 9 new ETFs. Under the historic pricing model, our CDS fees would be $2,925. Under the 2016 Fee Proposal, the fees would be $6,687.

It is entirely possible that CDS has been undercharging for these services and that its infrastructure is at serious risk of falling in decline and reinvestment is required. In our view, under the Recognition Orders and under the principles of utility pricing, a price increase is justifiable in those circumstances. CDS has simply not made the factual case for a price increase and, therefore, the 2016 Fee Proposal relating to Issuance Services should be rejected.

<u>Fees Relating to E&CA Services</u>

The E&CA services present a different issue. Given alternative service providers for most, if not all, E&CA Services, it would be difficult to argue that a utility pricing model applies in this case but for the Recognition Order. The fee provisions of the Recognition Order do not apply only to Issuance Services; the provisions also apply to E&CA Services. As such, arguably, the utility pricing model applies. One of the reasons it might be appropriate to apply such a model is that most of CDS' competitors for E&CA Services lack the scale of CDS which gives CDS an inherent advantage in this market. The difference between the application of the model to

Issuance Services and E&CA Services is that, in the latter case, an element of corporate profitability is appropriate.

Our concerns with the E&CA Services, however, stem from a more practical perspective. Invesco Canada currently offers 13 exchange-traded funds that pay dividends monthly, 11 exchange-traded funds that pay dividends quarterly, 8 platform-traded funds that pay dividends monthly and 35 platform-traded funds that pay dividends annually. This constitutes 331 single payments per year through CDS. The relationship with CDS was created for convenience (since we had to deal with CDS anyway for the Issuance Services) and on the basis of the cost at the time, effectively nil. As a result, the 331 dividend payments will cost Invesco Canada $33,100, an expense that it has not historically had. In the low margin world of the aforementioned exchange-traded products, this amount is not insignificant. Furthermore, faced with a significant expense for a service previously provided for free seems inherently unfair.

CDS has tried to address the latter criticism with its 6 month transition period during which the new E&CA Services fees will be cut in half. The transition period is to "relieve budgetary and planning pressures which stakeholders noted in their feedback to CDS [from the 2014 Fee Proposal]." It is not clear how that assists with respect to existing products, many of which do not have the ability to pass on these new fees.

CDS has asserted that it "is not currently, and will not be, the sole-source provider of E&CA event management services." CDS gives examples of this and implies that if CDS holds 100% of the securities issue, then the issuer really has no choice but to deal with CDS, either through the present system or as a Registrar & Paying Agent. That is, currently, you can deal with CDS or you can deal with your Transfer Agent for these services. Note that the Transfer Agent would still need to deal with CDS and execute a CDS Transfer Agent Agreement and, presumably, thereunder, E&CA Services fees would be assessed and ultimately charged back to the issuer. As such, this option is illusory and, regardless, dividend-paying issuers will be faced with a new fee or fee increase, as the case may be. A more appropriate transition would be to phase in these fees, if they have been set appropriately, over a number of years.

On balance, we disagree with the assertion that these services were historically provided for free. In our view, the cost of these services was included in the ISIN fee. It is also likely that, in part, this cost was subsidized by CDS Participants as they saw the benefit to their core revenue generating activity of assisting issuers raise capital. As shown above, the ISIN fee on its own is increasing.

Conclusion

We believe that CDS is entitled to fee increases where warranted. However, CDS must follow the model of regulated utilities in applying for fee increases or changes and demonstrate the cost of providing the service, the reinvestment necessary to upgrade and maintain the system, and, where appropriate, an element of corporate profitability. Perhaps CDS has done this directly for the CSA but transparency requires the publication of this information to assist in public scrutiny and to ensure that issuers do not feel aggrieved by the process.

Thank you for providing us with the opportunity to comment on this important matter.

Yours truly,

INVESCO CANADA LTD.

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