

By email

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Re: PROPOSED AMENDMENTS TO CDS RECOGNITION ORDER AND RECOGNITION DECISION - FEES FOR ENTITLEMENTS AND CORPORATE ACTION EVENTS

CNSX Markets Inc. ("CNSX") is submitting its comments regarding CDS Clearing and Depository Services Inc.'s ("CDS") proposal to amend:

- Appendix C of the CDS Recognition Order, as approved by the Ontario Securities Commission ("OSC"),¹ and
- Annexe D of Décision N° 2012-PDG-0142, as approved by the Autorité des marchés financiers ("AMF").²

CNSX operates the Canadian Securities Exchange ("CSE"), an exchange with a focus on early stage companies seeking to access the public markets for funding. The CSE currently lists 321 securities from 300 different issuers. Seventy-four IIROC-regulated investment dealers trade on the CSE.

All trades occurring on the CSE must be reported to, and settle through, a clearing agency. This is the case for

¹ http://www.osc.gov.on.ca/documents/en/Marketplaces/cds_20150306_unofficial-consolidated-cds.pdf

² https://www.lautorite.qc.ca/files/pdf/bourses-oar-chambres/Decision_reconnaissance_CDS_2012-PDG-0142.pdf

all marketplaces under National Instrument 21-101 *Marketplace Operation*. The only cash market clearing agency is CDS, giving it a monopoly in this space.

CNSX was one of 15 commenters on the original 2014 CDS proposal to amend its OSC Order and AMF Decision to add and raise its fees. CNSX strongly encourages all interested parties to review its 2014 comment letter: <http://www.cds.ca/resource/en/141>.

Virtually all of the issues identified in the CNSX comment letter dated December 12, 2014 apply to the present application. Furthermore, with the TMX Group revenues increasing 9% and net income increasing 111% for Q2-2016 versus Q2-2015, and CDS revenue increasing 2% over the same period, the rationale for CDS to impose new fees seems unjustifiable.

Under CDS's recognition order, a "significant change" is required in order for CDS to be permitted to seek fee increases and add new fees on clearing and other core CDS services:

*"Maple shall **not** seek approval for fee increases on clearing and **other core** CDS services **unless** there is a **significant change from current circumstances**".³ (emphasis added)*

The OSC and AMF mandated this requirement as there was significant concern expressed during the Maple hearings (and associated comment periods) that the TMX Group would use its monopoly power in the equities clearing space to introduce new fees, increase existing fees or reduce services.

The new entitlement fees appear to be categorized by CDS as applying to non-core services. Despite describing entitlement services as "ancillary", CDS notes that in 2015 it processed \$3.15 trillion in entitlements and corporate action payments. It is difficult to consider these "trillions of dollars" of payments as anything but core depository services.

Notwithstanding the fact that CNSX raised the need for CDS to demonstrate a "significant change from current circumstances" in the 2014 proposal, CDS has reissued its proposal to add and raise fees, ignoring this requirement. CNSX submits that the regulatory requirement must be respected. CDS has instead chosen not to discharge the burden of demonstrating that there has been indeed a "significant change from current circumstances".

Based on this factor alone, the proposal by CDS should not be approved.

As discussed at length in the CNSX 2014 comment letter, securities held in the depository become a captive market. CDS suggests that self-processing by issuers is an alternative. Since immobilized securities are registered in CDS & Co., and held in CDS participant accounts, only participants can withdraw securities. So, this is really not an option for issuers. CDS also suggests direct participation in CDS. However, CDS did not point out in its notice there would be sizable associated fees in becoming a direct participant in CDS. Again, this is not a viable option for issuers.

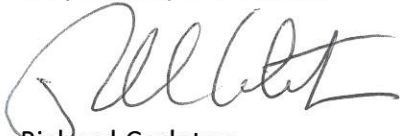
³ See s. 2 of appendix "B" to the CDS Recognition Order:

http://www.osc.gov.on.ca/documents/en/Marketplaces/cds_20150306_unofficial-consolidated-cds.pdf

CDS goes to some length to enumerate “pricing principles” that apply to its new and increased fees; these self-declared “pricing principles” are not related back to the requirements established in the recognition order.

The only concessions that CDS has made to the negative comments provided in response to the 2014 proposal are to either postpone or reduce the impact of fees that were to be levied on its largest and most influential clients. For public companies, the vast majority of whom are micro- and small-cap issuers, the fees sought to be imposed by CDS represent another increase in their cost of capital. Although the fees would represent a miniscule charge when measured against market capitalization for a large issuer, this would not be the case for micro- and small-cap issuers. It appears to CNSX that the burden of the proposed fees will fall most heavily on those companies in the least position to bear them.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard Carleton', written in a cursive style.

Richard Carleton
Chief Executive Officer