

By email

August 23, 2016

Stephen Nagy

Managing Director, SIES
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9
Email: snagy@cds.ca

M^e Anne-Marie Beaudoin

Secrétaire générale
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Courriel: consultation-en-cours@lautorite.qc.ca

Doug MacKay

Manager, Market and SRO Oversight
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C. V7Y 1L2
Email: dmackay@bcsc.bc.ca

Manager, Market Regulation

Market Regulation Branch
Ontario Securities Commission
Ste. 1903, Box 55
20 Queen Street West
Toronto, Ontario, M5H 3S8
Email: marketregulation@osc.gov.on.ca

Bruce Sinclair

Securities Market Specialist
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C., V7Y 1L2
Email: bsinclair@bcsc.bc.ca

Re: PROPOSED AMENDMENTS TO CDS RECOGNITION ORDER AND RECOGNITION DECISION - FEES FOR ISIN ISSUANCE and CDS ELIGIBILITY SERVICES

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.

Virtually all of the issues identified in the CNSX comment letter dated December 12, 2014 apply to the present application. The new fees and fee increases proposed by CDS do not meet the basic threshold that has to be met under CDS's recognition order, are inappropriate and contrary to the basis upon which the central securities depository and clearing agency was founded. CNSX strongly encourages all interested parties to review its 2014 comment letter: <http://www.cds.ca/resource/en/141>.

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.

It is important to note that in the new proposal, CDS has classified the new fees and changes to fees to be applicable to CDS Securities Management Solutions Inc. (aside from fee code 6232 for BEO global certificates) rather than CDS Clearing and Depository Services Inc. However, it is not clear how key securities services such as ISIN issuance and security eligibility would not be core services. A security cannot be brought into the depository without being made eligible; likewise ISINs are also mandatory. These services meet any reasonable definition of a core service of the organization. It appears that the services are continuing to be housed in CDS Solutions in an attempt to avoid the regulatory requirement of demonstrating "significant change from current circumstances".

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.

While 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.

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

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, there is no analysis presented by CDS in support of the assertion that the new and increased fees are “materially advantageous to all affected stakeholders”. 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,



Richard Carleton
Chief Executive Officer