IIAC ACCVM
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March 29, 2021

Wayne S.M. Ralph
Chief Operating Officer
CDS Clearing and Depository Services Inc.
100 Adelaide Street West
Toronto Ontario

Sent via email: wayne.ralph@tmx.com

Dear Wayne:

RE: OSC Staff Notice of Request for Comment - Proposed Change to Eliminate CDS Fee Rebates and Proposed Amendments to Eliminate Network Connectivity Fees and to Eliminate Report File Transmission Fees

The Investment Industry Association of Canada ("IIAC") appreciates this opportunity to submit comments on CDS Clearing and Depository Services Inc.'s ("CDS") proposed change to eliminate fee rebates and proposed amendments to eliminate network connectivity fees and to eliminate report file transmission fees (the "Proposals"). While the Proposals offer CDS participants additional considerations over the prior proposals published December 19, 2019, they still fail to achieve a balanced allocation of the costs and risks of CDS's technology enhancements. Specifically, the Proposals continue to result in CDS participants shouldering the entire cost of CDS's current and future capital expenditures in technology. Furthermore, the elimination of rebates will prohibit participants from sharing with CDS in the expected continued growth of Canada's capital markets.

Maintaining Fee Rebates Provides Opportunity for Participants to Share with CDS in Canada's Growing Capital Markets

The 50/50 rebate forms part of the CDS Recognition Order issued by the CSA in connection with Maple Group's acquisition of CDS. The 50/50 rebate allows participants to share in any excess of clearing and other core services revenue of CDS over the adjusted base year. The participants' portion of the 50/50 rebate has grown from $2.5 million in 2015 to $6.1 million in 2019, representing a compound annual growth of 20 per cent. The 50/50 rebate for 2020 totaled $10.3 million – a significant 69 per cent increase from 2019's rebate.

While we appreciate that the pandemic-driven market activity of 2020 may not be representative of all future years, current market and industry trends indicate that activity in Canada's capital markets is unlikely to recede to 2016 levels. In other words, the 50/50 rebate figure of $6 million that CDS uses in its Proposals, underestimates what we believe participants will ultimately be foregoing each year from the elimination of this rebate. Furthermore, elimination of the rebate would ignore the significant role our members play in growing our capital markets and facilitating the market transactions that drive CDS's revenues. The Proposals also disregard that the clearing and settlement costs incurred by our members are likely to increase as our capital markets expand. This was very evident in 2020; our members indicated their CDS-related costs jumped significantly last year. The elimination of rebates means our members will not have any offset to these increased expenses.

CDS's Projected Industry Savings from the Elimination of Network Fees and Report Fees may be Unrealizable

We reiterate our concerns regarding network connectivity. Namely, that by pushing out the responsibility of network connections to CDS participants, the Proposals will not result in $2.84 million in annual savings to these participants, as stated in the Proposals. Participants that do not already have their own connectivity with TMX facilities will need to source, test, and pay for their own network providers to connect to CDS.

The Proposals claim to provide $1 million in further savings to participants by eliminating charges for the reports CDS generates. This may also be misleading as CDS will no longer be offering many of the file transmissions that are available currently, but instead will make the data available for participants to generate their own reports. This added functionality is presumably captured as part of the $130 million Post-Trade Modernization development costs that CDS is looking to pass on to participants. Some of our members have also enquired into which report charges CDS is proposing to eliminate, and there appears to be some confusion as to the extent of the report fees that will be covered under the Proposals. For example, while it was indicated that charges under code 6170 would be eliminated, members are being informed that only reports sent via FTP/FSTP are subject to the fee change. If correct, this would result in many of the files that some participants take in today becoming out of scope, thereby limiting their cost savings from the Proposals. We would appreciate any added clarity that CDS can provide about the elimination of report fees.

Uncertainties Surrounding Future Technology Enhancements at CDS

We reiterate our concerns regarding the Proposals' ask for participants to fund future unknown technology enhancements at CDS. It is impossible for participants to know what these future enhancements may be, whether any initiatives will in fact materialize, and if they do, to what extent the initiatives would deliver value to participants.

Furthermore, eliminating rebates to fund future technology enhancements would make it difficult to hold CDS accountable for how it directs its spending, and would ultimately require our members to place blind trust in the future actions and decisions of CDS and the TMX Group.

Given these many uncertainties, our members are not prepared to guarantee funding, via the elimination of their rebates, for CDS's potential future technology initiatives.

Conclusion

While some of our members may see a decline in their overall CDS fees resulting from the Proposals, the IIAC believes our industry collectively will be worse off from the full and permanent elimination of CDS's rebates. Though we appreciate the efforts made by CDS to amend its 2019 proposal to deliver a more palatable fee model, the current Proposals continue to lean entirely on CDS participants for funding current and future capital expenditures of CDS.

The IIAC is urging the CSA to consider the fairness of CDS's Proposals and the extent to which they achieve proper balance between the incentives of a regulated commercial enterprise and the protections required by users of its services.

Sincerely,

Investment Industry Association of Canada

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