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

RE: Notice and Request for Comments – Revised Proposal: Proposed Significant Change to Eliminate Fee Rebate Model and Proposed Amendments to Eliminate Network Connectivity Fees and to Eliminate Report File Transmission Fees

Dear Mr. Ralph:

Thank you for the opportunity to comment on CDS Clearing and Depository Services Inc.'s ("CDS") Notice and Request for Comment entitled "Revised Proposal: Proposed Significant Change to Eliminate CDS Fee Rebate Model and Proposed Amendments to Eliminate Network Connectivity Fees and to Eliminate Report File Transmission Fees" (the "Notice and Request for Comments").

We are writing to express our significant concerns with the proposals contained in the Notice and Request for Comment in respect of modifying CDS's existing fee model by eliminating rebates that are paid annually to participants (the "Rebates"). We are concerned that a number of the issues previously brought to CDS's attention by TD in our letter dated February 25,2020 in respect of the original proposal on the Rebates have not been adequately addressed in the Notice and Request for Comment, and that the additional components of the Notice and Request for Comments are insufficient.

We look forward to the Ontario Securities Commission, the Autorité des marchés financiers, and the British Columbia Securities Commission considering stakeholder concerns and making a decision with respect to the Rebates and providing certainty to participants.

Background

The Toronto-Dominion Bank is a clearing member of CDS.

In 2012, the TMX purchased CDS from its owners, the Canadian banks and trust companies, as part of the Maple Group Acquisition Corp's purchase of TMX Group, Alpha Trading Systems and CDS. Members of CDS supported this transaction in the belief that vertical integration of clearing and settlement within TMX would yield synergy benefits through streamlining of operations. In addition, the integration of CDS in the TMX family of companies would yield capital and margin relief when stock and bond positions in CDS were offset by positions held at the Canadian Derivatives Clearing Corp (CDCC), another wholly-owned subsidiary of TMX.

While there were clear benefits to this vertical integration, in order to ensure that the TMX did not unfairly and un-necessarily increase fees for CDS, Canadian regulators included several conditions in the approval for the transaction in order to protect the public interest. These conditions included revised lower fees, board composition of CDS that limited the number of representatives of the parent TMX to a minority position and the Rebates, which consist of a revenue sharing agreement that any increases in CDS revenues would be shared with industry participants on a 50/50 basis and a revenue sharing agreement in respect of clearing services for certain trades up to a maximum annual amount.

Over the next 7 years, the TMX operated CDS as a wholly-owned subsidiary with its own independent Board and worked to make CDS more efficient. This efficiency exercise included cost cutting and headcount reductions. In the past several years, the CDS Board began to discuss a replacement for its principal processing system known as CDSX and came to realize the cost of this modernization would be material. As a result, CDS's proposal to modernize its core technology backbone was developed ("Project Atlas – Mercury", or "PTM"). PTM was expected originally expected to cost between $55-60 million, which cost subsequently rose to $120 million for a new system with an estimated useful life of up to 15 years.

After looking over its options, CDS has proposed to cover the cost of PTM through the elimination of Rebates put in place in 2012 which currently yields CDS members approximately $10 million per year. With the cost of PTM now estimated at between $120 million and $135 million and expected useful life of 10 to 15 years, this number is close to the present value of $10 million per year for 15 years using a 3% discount rate. In other words, CDS is asking its members to fund the entire cost of PTM.

We continue to strongly object to CDS membership paying for the CDSX system modernization and set out again the following reasons as core to our position:

1) We consider the stability of our industry's core infrastructure including clearing and settlement systems as of paramount importance to Canada's capital markets and reputation globally. As such, we read with keen interest the details of CDS's PTM proposal and agree that the time is now to complete this project. However, we strongly object to the suggestion that members of CDS be responsible for paying for this system modernization. The TMX owns and operates CDS as part of a publicly traded and for-profit entity and has anticipated system modernization costs for some time. TMX should be responsible for anticipated and unforeseen capital expenditures and the assumption of financial risk required to keep its core technology current.

2) A lack of transparency and specificity around capital projects makes it impossible for participants to understand and assess the value, and implications, of the various proposals. We cannot assess whether or not the PTM project will meet current IRR as we do not have visibility into IRR under various scenarios. Our expectation is that as a utility-oriented entity with a regulated fee structure, IRR for CDS is likely to be limited. From an expense perspective, CDS has not provided a sufficient rationale for the increase in project costs from the original $60 million to approximately $125 million. In addition, we do not have visibility into the nature of the cost savings TMX has accrued on CDS since its acquisition through various expense reductions, cost sharing within the consolidated entity

and similar initiatives. With respect to revenue, CDS has indicated that volume projections used to determine potential IRR did not materialize, however CDS has not provided a sufficient breakdown of volumes and fee rebates in a manner that be used to assess the cost and value of PTM over a 15 year life. As a result, TD is unable to assess the value of PTM and CDS's justification for elimination of the Rebate. Our view is that it is not acceptable to require participants to fund the cost of PTM without providing sufficient information to enable a value analysis.

3) CDS suggests that the cost to the members of the elimination of rebates will be offset by more than 30% due to the elimination of port fees, network connectivity fees and report fees. However, in terms of the network connectivity, CDS is simply pushing out the responsibility of network connections to its Membership. Therefore, these costs will now be direct to the Members rather than charged back by CDS. CDS members will also bear the cost of upgrading their internal systems to integrate with the new CDS infrastructure. These costs have become increasingly substantial over time thus far and are and will continue to be material given the proposed upgrades and project plan. In addition, report fees were anticipated to be eliminated through PTM functionality and so we would not consider the elimination of report fees at this time a savings. As a result, due to the significant financial loss as a result of the elimination of the Rebates, which are not adequately offset by the elimination of additional fees, we continue to be of the view that the elimination of Rebates is material to participants.

4) Lastly, we continue to be of the view that comparisons of cost structures with other clearing corps are not apples to apples. The integration of CDS into a for-profit entity occurred at a time when Members were able to control costs, whereas other exchanges with monopoly businesses with vertical integration of clearing from the outset can extract higher rents for these services. In addition, the reference to CDS as having the second lowest clearing and settlement costs for equities is a bit misleading, as scale of trades over a fixed cost denominator will always make per trade costs look low.

In closing, we thank the regulators overseeing CDS for the continued opportunity to comment on this important industry initiative. We hope that a decision is made to put this project back to the parent company TMX and its Board to find an alternative funding vehicle for its infrastructure upgrade.

We would be happy to answer any additional questions should they arise.

Respectfully,

The Toronto-Dominion Bank

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Cc.

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