

13.1.7 CDS Application Regarding Restructuring of The Canadian Depository for Securities Limited

Cindy Petlock
Manager, Market Regulation
Ontario Securities Commission
20 Queen Street West, Suite 800
Toronto, Ontario
M5H 3S8

May 14, 2007

Dear Ms. Petlock:

Re: Corporate Governance Amendments for The Canadian Depository for Securities Limited ("CDS Ltd.") and CDS Clearing and Depository Services Inc. ("CDS Clearing")

CDS Ltd. and CDS Clearing (referred to jointly as "CDS") hereby make application to the Ontario Securities Commission ("Commission") for an order of the Commission pursuant to section 144 of the Ontario Securities Act varying the recognition order of CDS dated October 17, 2006 (the "Current Order").

Current Order

Section 2 of the Current Order provides as follows:

2.0 GOVERNANCE

- 2.1. CDS Ltd.'s governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholders.
- 2.2. Without limiting the generality of the foregoing, CDS Ltd.'s governance structure shall provide for:
- (a) fair and meaningful representation on its board of directors and any committee of the board of directors;
 - (b) appropriate representation of persons independent of the shareholders on the board of directors and any committees of the board of directors, and, for such purpose, a person is "independent" if the person is not:
 - (i) an associate, partner, director, officer or employee of a shareholder of CDS Ltd.,
 - (ii) an associate, partner, director, officer or employee of a participant of CDS Ltd. or its affiliates or an associate of such director, partner, officer or employee, or
 - (iii) an officer or employee of CDS Ltd. or its affiliates or an associate of such officer or employee; and
 - (c) appropriate qualifications, remuneration, conflict of interest guidelines and limitation of liability and indemnification protections for directors, officers and employees of CDS Ltd.
- 2.3. CDS Ltd. shall not, without the Commission's prior written approval, make significant changes to its governance structure or constating documents.
- 2.4. CDS Ltd. shall not, without the Commission's prior written approval, enter into any contract, agreement or arrangement that may limit its ability to comply with the terms and conditions contained in this Schedule "A".

Section 10 is in identical terms for CDS Clearing.

This application for a variation of the Current Order is being made in compliance with sections 2.3 and 10.3 of the Current Order and to request the amendment of the Terms and Conditions of the Current Order by the addition of new sections 2.2.1 in the following terms:

"CDS Ltd's governance structure shall provide for;

- (a) at least 5 (33%) independent directors on the board of directors,
- (b) a quorum of directors shall be 60% of the number of directors;"

Section 10.2.1 is requested to be in identical terms for CDS Clearing.

Governance Amendments

The Board of Directors at their meeting on February 2, 2007 approved the amendments to the By-laws of CDS and the Shareholders Pooling Agreement for recommendation to the shareholders of CDS at their meeting on April 4, 2007, where such amendments were approved with minor changes, subject to regulatory approval, which has been received from the Autorité des marchés financiers and the Bank of Canada. The Board of Directors also approved changes to the Board Committees Guidelines and Terms of Reference and a form of indemnification agreement to be entered into by the directors and officers of CDS.

The major amendments are highlighted below for your reference:

CDS By-laws

- Previously, CDS by-laws were silent in respect of the requirement for directors outside of the securities industry. "Independent director" is defined now in the proposed by-laws, as required by the Current Order (s. 1.1)
- A new section has been added in order to prevent spillover of risk to the regulated companies; CDS Limited and CDS Clearing are permitted to extend guarantees only to wholly-owned subsidiaries subject to the same regulation (s. 3.1(c))
- Existing quorum rule required one director from each of the original "industry groups", banking, trust and investment dealer to be present for a valid quorum and Board and Committee meetings. The previous quorum rule will be replaced by the requirement for 60% of directors to be present (s. 4.1)
- Audit Committee terms of reference moved from By-laws to Board Manual to be consistent with other committee mandates and permit more expeditious updating (s. 5.3)
- Addition of a new requirement for CDS to enter into indemnification agreement with directors and officers of CDS Limited and CDS Clearing (s. 7.3)

Shareholders Pooling Agreement

- Current agreement (signed October 31, 1996) updated for changes in shareholders (s. 3); since 1996 TSX has acquired the Montreal Exchange's shares in CDS and the Canadian Venture Exchange being the successor to the Vancouver and Alberta Stock Exchanges; the shareholder banks have acquired the trust industry's share in CDS.
- The Recitals have been amended to reflect the corporate restructuring of CDS on November 1, 2007, to form a holding company, CDS Limited, with three operating subsidiaries (Recitals C, D)
- Number of directors established at 15, unless otherwise resolved by shareholders; if less than 15, then shareholders must advise whose nominee position is being reduced (s. 2)
- Vancouver/Alberta Stock Exchange/TSX Venture Board seat deleted (s. 4)
- Requirement added to pooling agreement for not less than five independent directors as defined in by-law (s. 4)
- New section giving pre-emptive right to shareholders in the event of the issuance of additional shares (s. 11)

Committees Guidelines and Terms of Reference

- Powers of committees to "act on behalf of full Board between Board meetings" deleted
- No less than five members on each committee, including at least one independent director as defined in by-law
- Existing quorum rules replaced by requirement for 60% of committee directors to be present at meeting

Clean and blacklined copies of these documents have been submitted to the Commission for review. Appendix A to this letter excerpts the primary amendments which are proposed to the corporate governance documents for your convenient reference.

Submission

CDS respectfully requests the Commission to vary the Terms and Conditions to the Current Order in the form attached hereto as Appendix B.

Yours truly,

“Toomas Marley”

Toomas Marley
Chief Legal Officer

APPENDIX A

Excerpts of Primary Amendments to
Corporate Governance Documents for
The Canadian Depository for Securities Limited ("CDS Ltd.") and
CDS Clearing and Depository Services Inc. ("CDS Clearing")

CDS By-laws

1.1 Definitions (additional text)

"independent director" means a person who is not:

- (i) an associate, partner, director, officer or employee of a shareholder of the Corporation;
- (ii) an associate, partner, director, officer or employee of a participant of the Corporation or its affiliates or an associate of such director, partner, officer or employee; or
- (iii) an officer or employee of the Corporation or its affiliates or an associate of such officer or employee;

3.1 (c) Borrowing Power (additional text)

Without limiting the borrowing powers of the Corporation as provided by the Act, but subject to the articles and any unanimous shareholder agreement, the Board may from time to time on behalf of the Corporation, without authorization of the shareholders: ...

- (c) give a guarantee on behalf of the Corporation to secure performance of any present or future indebtedness, liability or obligation only in favour of a wholly-owned subsidiary which is subject to regulation by the same authorities and subject to substantially the same terms as the Corporation;

4.1 Number of Directors and Quorum (substantially revised text)

Subject to the articles, the Board shall consist of the number of directors specified in the articles, except that if the articles provide for a minimum and maximum number of directors, the Board shall consist of the number of directors determined from time to time by the shareholders within such minimum and maximum. Subject to Section 4.8, a sixty (60) percent majority of the number of directors so specified or determined shall constitute a quorum at any meeting of the Board.

5.3 Audit Committee (new text shown)

The Board shall elect annually from among its members an Audit Committee to consist of not less than five members, of whom a majority must be resident Canadians and at least one of whom shall be an independent director as defined in section 1.1 of this by-law.

7.3 Indemnity Agreement (additional text)

Subject to the Act, the Corporation shall be required to enter into an agreement with each director and officer of the Corporation, the purpose of which shall be the indemnification of such director or officer as referred to in section 7.2, above.

Shareholders Pooling Agreement

2. Number of Directors (substantially revised text)

The number of the directors of CDS from time to time shall be determined by unanimous resolution of the Shareholders. Until resolved otherwise by the Shareholders, the number of directors of CDS shall be 15. If the Shareholders resolve to decrease the number of directors, the Shareholders will advise CDS at the same time which Shareholder nominee(s) will be decreased in section 3 below.

4. At Least Five Independent Directors (substantially revised text)

The board of directors of CDS may nominate one officer of CDS for election as director. The board of directors of CDS shall nominate for election as independent directors not less than five individuals who satisfy the definition of

“independent director” in the by-law of CDS. Each nominee must be an individual who is not disqualified under the Act from holding office as a director.

11. Issuance of Additional Shares (additional text)

- (a) **Pre-emptive Right to Shareholders.** CDS shall not issue any additional shares of CDS or its Subsidiaries, including but not limited to common, preferred, voting or non-voting shares, or any options or rights to purchase or subscribe for any such additional shares (“Additional Securities”) without having first made an offer to all of the Shareholders in accordance with this section 11.
- (b) **Notice to Shareholders.** If the CDS proposes to issue Additional Securities, CDS shall give notice (an “Issue Notice”) to the Shareholders of the proposed issuance. The Issue Notice shall constitute an offer for subscription by each of the Shareholders of that number of the Additional Securities (“Proportionate Entitlement”) which bear the same relationship to the total number of Additional Securities as the number of issued and outstanding common shares held by each such Shareholder bears to the total number of issued and outstanding common shares at the date of the Issue Notices (“Notice Date”), at the subscription price determined by the Board of Directors for the Additional Securities. Each Issue Notice shall:
 - (i) be made by CDS in writing and delivered concurrently in person or by facsimile transmission to all Shareholders to the address of each Shareholder as recorded in the securities register of CDS;
 - (ii) contain a description of the terms and conditions relating to the Additional Securities, the price at which the Additional Securities are offered and the date on which the purchase of the additional securities by the Shareholders is to be completed; and
 - (iii) state that any Shareholder that wishes to subscribe for less than its Proportionate Entitlement shall, in its notice of subscription, specify the number of Additional Securities (up to its Proportionate Entitlement) that it wishes to subscribe for.

The offer constituted by each Issue Notice shall be irrevocable and shall remain open for acceptance by the Shareholders for a period (“Offer Period”) of ten days after the Notice Date.

- (c) **Exercise of Right.** Each of the Shareholders shall have the right, exercisable by notice given to the CDS within the Offer Period, to accept the offer constituted by the Issue Notice to subscribe for its Proportionate Entitlement of the Additional Securities or, if it wishes to subscribe for less than its Proportionate Entitlement, to indicate how many Additional Securities (up to its Proportionate Entitlement) it wishes to subscribe for. If no notice is given by a Shareholder within the Offer Period, that Shareholder shall be deemed to have rejected the offer made available to it to subscribe for Additional Securities.
- (d) **Unsubscribed Securities.** If any of the Shareholders does not agree to purchase all of its Proportionate Entitlement of the Additional Securities or is deemed to have rejected the offer made available to it to subscribe for Additional Securities (“Declining Offeree”), then CDS shall forthwith so notify in writing (“Additional Notice”) each of the other Shareholders which has accepted the offer to subscribe for not less than its Proportionate Entitlement of the Additional Securities (“Purchasing Shareholder”). Each of the Purchasing Shareholders shall have the right to subscribe for that number or any part thereof, of the Additional Securities that have not been accepted for subscription by the Declining Offerees (the “Unsubscribed Securities”) which bears the same relationship to the total number of Unsubscribed Securities as the number of common shares held by each such Purchasing Shareholder bears to the total number of common shares by all Purchasing Shareholders (as reflected on the securities registers of CDS) at the date of the Additional Notice. Any Purchasing Shareholder that receives an Additional Notice shall have the right, exercisable by notice given to CDS within a period of five days after deemed receipt of that Additional Notice, to agree that it will purchase the number of Unsubscribed Securities which it is entitled to purchase or any lesser number thereof specified by it in that notice. If no notice is given by a Purchasing Shareholder within that five day period, that Purchasing Shareholder shall be deemed to have rejected the offer made available to it to purchase any Unsubscribed Securities. If there remain Unsubscribed Securities after the expiry of the period for the Purchasing Shareholders to accept the offer in the Additional Notice, then CDS will repeat the process set out in this clause (d) until there are no more Unsubscribed Securities or all Shareholders have become Declining Offerees. No Shareholder shall be obliged to purchase any Additional Securities in excess of the number indicated in its subscription.
- (e) **Remainder.** If there remain any Additional Securities which are not subscribed for after the expiry of the last applicable period pursuant to clauses (c) and (d) above, then CDS may offer those unsubscribed for Additional Securities within a period of 90 days after the expiration of the last applicable period pursuant to

clauses (c) and (d) above to any person, but the price at which those Additional Securities may be issued shall not be less than the subscription price offered to the Shareholders, the terms of payment for those unsubscribed for Additional Securities shall not be more favourable to that person than the terms of payment offered to the Shareholders and the terms of the subscription shall require any such person, who subscribes for Additional Securities which are common shares, to agree to be bound by and observe the terms of this agreement by execution of an amendment in the form attached as Schedule A with necessary changes.

APPENDIX B

IN THE MATTER OF
THE *SECURITIES ACT*
R.S.O. 1990, CHAPTER S.5, AS AMENDED (the "Act")

AND

IN THE MATTER OF
THE *BUSINESS CORPORATIONS ACT*
R.S.O. 1990, CHAPTER B.16, AS AMENDED (the "OBCA")

AND

IN THE MATTER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
AND
CDS CLEARING AND DEPOSITORY SERVICES INC.

ORDER
(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (the "Commission") issued an order dated February 25, 1997, which became effective on March 1, 1997, recognizing The Canadian Depository for Securities Limited ("CDS Ltd.") as a clearing agency pursuant to subsection 21.2(1) of the Act and designating CDS Ltd. as a recognized clearing agency for the purposes of Part VI of the OBCA (the "1997 Order");

AND WHEREAS the Commission has varied 1997 Order from time to time;

AND WHEREAS the Commission issued an order dated October 17, 2006 pursuant to section 144 of the Act and Part VI of the OBCA varying and restating the 1997 Order, as amended (the "Recognition Order") and recognizing and designating each of CDS Ltd. and CDS Clearing and Depository Services Inc. ("CDS Clearing") (CDS Ltd. and CDS Clearing referred to collectively as "CDS") as a clearing agency pursuant to subsection 21.2(1) of the Act and as a recognized clearing agency for the purposes of Part VI of the OBCA;

AND WHEREAS CDS has applied for an order pursuant to section 144 of the Act to vary certain terms and conditions of the Recognition Order in connection with certain changes to CDS's governance structure;

AND WHEREAS the Commission has received certain representations from CDS in connection with its application to vary the Recognition Order;

AND UPON the Commission being of the opinion that it is not prejudicial to the public interest to vary the Recognition Order;

IT IS ORDERED pursuant to section 144 of the Act that the Recognition Order be varied by:

1. inserting after section 2.2 the following:
 - 2.2.1 CDS Ltd's governance structure shall provide for;
 - (a) at least 5 (33%) independent directors on the board of directors, and
 - (b) a quorum of directors shall be 60% of the number of directors; and
2. inserting after section 10.2 the following:
 - 10.2.1 CDS Clearing's governance structure shall provide for;
 - (a) at least 5 (33%) independent directors on the board of directors, and
 - (b) a quorum of directors shall be 60% of the number of directors.

DATED _____, 2007