



Securities Transfer Association of Canada

William J. Speirs
President

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Sent via e-mail

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Dear Sirs and Mesdames:

**RE: CDS Clearing and Depository Services Inc. ("CDS")
Proposed Amendments to CDS Fee Schedules**

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**Notice and Request for Comments RE: ISIN Issuance and CDS Eligibility Services (“Issuance Services”), and
Notice and Request for Comments RE: Entitlement and Corporate Action Events Management (“E&CA Services”)**

The Securities Transfer Association of Canada (“STAC”) welcomes the opportunity to provide our comments on the CDS Issuance Services and E&CA Services proposals that were published on July 14, 2016.

STAC members submitted comments on *CDS Clearing and Depository Services Inc. Proposed Amendments to CDS Fee Schedule Re: Issuer Services Program - Notice and Request for Comment*, (the “Original Proposal”) published on November 13, 2014, and, since that time have been actively consulting with CDS on the proposal and our concerns. Copies of our submissions to CDS are attached to this letter as Schedule A.

As we have stated consistently, STAC’s key point is that our members have no interest in either taking on the administrative burden of levying and collecting fees on behalf of CDS through our client invoices, or in assuming the credit risk on behalf of CDS for issuer non-payment. This administrative burden would include system development to facilitate the receipt and management of issuer fees levied by CDS as well as the requirement for additional staff to manage the issuance of invoices and reconciliation.

As stated in our previous correspondence, we also wish to reiterate the following comments:

- Based on general feedback from clients of various STAC member firms, there is concern that these fees are being forced upon issuers with little recourse short of ending their CDS eligibility status.
- We believe that the financial impact of the proposed fees will be noticeable for certain issuers, particularly those exchange traded funds that make monthly distributions through CDS as well as junior market issuers.
- Upon completion of the system automation that CDS intends to complete using the proposed fees, we question whether issuers would be able to reasonably expect a fee reduction in the future.
- STAC members have not been provided with CDS’s proposed changes to the TA Agreement for non-Limited Participant transfer agents. This was indicated as a requirement in the Original Proposal in order to allow us to review and fully understand the proposed requirements and impact for transfer agents.

E&CA Services Proposal

There are some differences between the Original Proposal and the E&CA Services proposal that CDS has specifically detailed, on which we respectfully submit the following comments:

Sending of E&CA fees chargeable in electronic form

Although we appreciate CDS's effort to streamline the process of billing, the receipt of electronic files will result in development requirements in order to automate and support any processes, with each STAC member being required to review their individual systems and processes. We also note that if discrete invoices are provided, as stated, information is passed through to the transfer agent twice. There is no indication of which information is the "official" record. STAC members will not take on the reconciliation of electronic to paper records. We continue to believe that any billing be should be completed by CDS, directly to the issuer.

CDS to invoice issuers directly

Although the new E&CA Services proposal indicates that CDS has agreed to invoice issuers directly, this is a solution that will only be effective for a segment of issuers. If an issuer does not have a direct contractual relationship with CDS through participation or via a BEO SSA, the direct billing is contingent on a third party billing agreement ("Billing Agreement") being put in place between CDS and the issuer. Based on the proposed draft of the Billing Agreement that we have reviewed, the transfer agent is not a party to the agreement. STAC appreciates that CDS has made efforts to address our previously stated concerns, however we would like to note the following in connection with the proposed Billing Agreement:

- The language provides benefit solely to CDS and places financial obligations on the transfer agent, despite the fact that they are not a party to the agreement;
- The transfer agent is not requesting CDS to provide them with "Issuer Services", as the Acknowledgements section asserts;
- An administrative burden continues to remain with the transfer agent in the form of arranging for execution and maintaining copies of the Billing Agreement, as CDS has claimed that it is for the benefit of the transfer agent. We strongly disagree with this assessment, and with the shifting of the responsibility entirely to the transfer agent;
- Given the overwhelming one-sidedness of the current form of Billing Agreement and the "any change is null and void" stance to what should be a commercially negotiated agreement, there is the material risk that an issuer may decline to execute the agreement, and the billing processes will continue to rest with the transfer agent. It is unreasonable to expect that 100% of affected issuers will execute the agreement in its current form;
- There is no indication as to what process is being considered for new issuers when applying for eligibility, or the potential for issuers to change transfer agents.

STAC would also like to reiterate that the proposed process of CDS billing transfer agents for on-billing and collection of CDS fees is based on the assumption that STAC Member agreements with their issuer clients give them blanket authority to charge back expenses, specifically beyond those arising out of services they have provided as transfer agent. Some, if not all, transfer agents, are not legally entitled to charge back fees for service which CDS has provided.

Administrative Burden

As stated above, despite the proposal that CDS will directly invoice issuers, the reality is that there will still be situations where CDS will not have this ability. Overall, the administrative burden being placed on transfer agents has not been alleviated. In addition to the newly proposed burden of development requirements for receipt of electronic billing files, and administrative requirements to collect and maintain the Billing Agreement, we note that there will continue to be a high administrative burden on transfer agents and their staff to levy fees to issuers, collect and remit payments to CDS, and manage issuer inquiries, for which they will not be compensated.

Waiving of payment if fees unrecoverable

CDS has indicated that they will waive fees in the event that a transfer agent is unable to recover fees due to issuer's subsequent bankruptcy or insolvency, which could leave the transfer agent funding this bad debt for a significant period of time. Reimbursement, however, is only provided if the transfer agent can demonstrate that they have made commercially reasonable efforts to recover such fees. The requirement to manage collections and receivables on behalf of CDS places inappropriate additional administrative responsibilities on the transfer agent; we are not the collection agency for CDS, and will not take on the liability for any unpaid fees. We would also note that there is no indication of the parameters of these standards. There is the potential for multiple interpretations as to what would be considered commercially reasonable as well as disagreements about what constitutes appropriate documentation.

Agency Fees

CDS has introduced Agency Fees for acting as paying agent or depository agent. These fees are positioned as an "economic incentive" to "promote efficient behaviour and invite issuer agents to take a more active role in managing issuers' payments through agency fees." What CDS neglects to mention in this proposal is that, for those transfer agents that do elect to take this more active role, CDS is levying monthly LU (Logical Units) and network charges on them.

The benefits of the Services accrue to Transfer Agents

Throughout these proposed amendments, CDS asserts that transfer agents benefit from CDS' Issuer Services, however none of the benefits cited in the document provide any benefit to transfer agents. The registers of issuers maintained by transfer agents contain in excess of 3.4 million registered shareholders, of which CDS counts as one. Transfer agents have developed automated systems to handle large volumes of transactions on disbursements, DRIPs and corporate actions. Reducing the volume from "up to 100 CDS Participants" to just CDS has an immaterial impact on the work effort required. It is true that this may lead to decreased out-of-pocket expenses associated with these events, but those benefits accrue to the issuers who pay for those expenses, not the transfer agent.

Issuance Services Proposal:

August 12, 2016

As noted in the Issuance Services proposal, which has been segregated from the E&CA Services proposal, these fees will not have an impact on STAC members as both ISIN issuance requests and eligibility requests, which we understand do not necessarily occur concurrently, are made by the issuer itself, or the issuer's legal counsel. As a result, CDS has indicated that these fees will be billed directly to the issuer.

As the ISIN issuance and eligibility request must occur prior to any E&CA events occurring, STAC would propose that it is appropriate for any required contracts or billing information to be gathered by CDS at this time in order to ensure that any billing for future E&CA events can be done directly by CDS to the issuer.

Although CDS has stated that "...entering into specific and individual contractual relationships with, and levying fees against, each securities issuer." would not be feasible, STAC argues that this individual contractual relationship is already commenced at the point of eligibility application. Given this fact, we believe that a minor amendment to the process that would provide the ability for CDS to bill issuers directly for future E&CA events would not necessarily be as complex, time-consuming and financially burdensome as feared. Shifting the responsibility for billing and collection to the transfer agent merely moves the complexities, time requirements, and financial responsibilities to a third party who gains no financial benefit from taking them on. The transfer agents will continue to incur ongoing costs for the benefit of CDS' increased revenue.

Summary

STAC members continue to question the merit of both the Issuance Services and E&CA Services proposed fees, however, as with past correspondence our focus continues to be on the activities that specifically relate to transfer agents. The cost benefit of the E&CA Services proposal continues to be misaligned, as transfer agents will incur initial development and ongoing administrative costs and assume the credit risk for the sole benefit of CDS. The administrative burden of the proposed process is inefficient, inconvenient, complex and financially burdensome to the transfer agent.

STAC respectfully continues to request that CDS remove transfer agents as the unwilling intermediary for E&CA Services fees.

Yours truly,



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