

June 7, 2012

Ontario Securities Commission
20 Queen Street West
Toronto, ON M5H 3S8

Attn: Secretary of the Commission

Delivered via email: comments@osc.gov.on.ca

Dear Members of the Commission,

**Notice & Request for Comment
Proposed Recognition Order for CDS**

We are pleased to provide comments on behalf of Computershare Trust Company of Canada and Computershare Investor Services Inc. in relation to the proposed Recognition Order for CDS. Please accept our apologies that we were unable to submit this to you by the requested June 4th deadline; however we trust that you will accept our comments and find them useful in relation to the impact on issuers and transfer agents of the proposed Recognition Order for CDS.

Computershare Limited (ASX: CPU) is a global market leader in transfer agency and share registration, employee equity plans, proxy solicitation and other specialized financial, governance and communication services. The Computershare group employs over 12,000 employees worldwide. It services more than 17,000 clients and 100 million shareholder and employee accounts, from its international network spanning 17 countries on five continents. As a leading transfer agent in Canada, Computershare provides complete securities transfer processing, security holder record keeping, mailing, meeting, and internet based services for over 60% of the corporations listed on the TMX.

Our comments below specifically address the proposed governance arrangements for CDS in the Recognition Order, and the need for representation of issuers and transfer agents.

Governance Criteria under Proposed Recognition Order

The proposed Recognition Order sets out the required makeup of the Board of Directors of CDS at section 4.2. At section 4.4, it also requires the use of Participant committees to provide advice, comment and recommendations to assist the board of directors, and establishes membership requirements for such committees. In Maple's letter to the Commission, schedule 1 to the Notice and Request for Comment, Maple explains the intended application of the criteria for the board of directors as follows:

"Clearing and Settlement Expertise:

At least 50% of the directors of CDS will be required to possess expertise in clearing and settlement of the instruments cleared and settled by CDS (including risk management and the technology requirements related to clearing and settlement). Sources of directors with such expertise will include the chief executive officer of CDS and the Participant Directors. In addition, Maple and TMX Group expect that

other directors (including independent directors) who may be expected to have clearing and settlement expertise would include, but are not limited to, (i) persons who developed clearing and settlement expertise in foreign jurisdictions, (ii) former employees of regulatory authorities and government agencies (such as a central bank) with responsibility for oversight of clearing and settlement or systemic risk, (iii) members of academia, (iv) current or former employees, officers or directors of CDS, and (v) persons who are former directors, officers or employees of participants.

Pro Forma Initial Board Composition

With an eleven person board at CDS, this proposal would result in:

- (a) four independent directors;
- (b) four Participants Directors;
- (c) one Unaffiliated Marketplace Director;
- (d) the chief executive officer of CDS; and
- (e) one additional director.”

Under this structure Maple will nominate four directors to the board of CDS – three of the Stakeholder Directors and one additional director.

In section 4.4, the proposed Recognition Order requires membership on the Participant committees to be open to all participants of CDS and marketplaces that access the services provided by CDS.

Stakeholder Representation in CDS Governance

The proposed structure as set out in the draft Recognition Order for CDS attempts to ensure representation of a range of stakeholders that use its services, specifically Participants and marketplaces (including those unaffiliated with Maple). We are concerned that there is no provision for representation of issuers of securities that are cleared and settled within CDS, and for transfer agents that interact with CDS daily to facilitate the recording and administration of those securities.

It is essential that all major stakeholders in the services provided by CDS are adequately represented, especially where CDS is moving from a member-owned central utility servicing the Canadian market to a institution-owned ‘for profit’ entity.

We understand the Commission’s focus on the clearing and settlement functions of CDS, in relation to managing systemic risk and ensuring market efficiency. However, it is necessary to not lose sight of the fact that the core function of CDS are to facilitate clearing and settlement of the securities of those **issuers** listed or traded in Canadian marketplaces.

Indeed, CDS is the legal owner of a substantial majority of the securities issued in the Canadian market. It immobilises ownership of those securities as a means of facilitating the recording of entitlements by CDS’ participants and the settlement of market transactions in the securities. As such, CDS interacts with the transfer agents to facilitate the movement of immobilized securities in and out of CDS, and also in relation to all corporate actions.

It is recognised that the role of issuers is limited in the pure settlement process of secondary market transactions but the role becomes active in primary market transactions and corporate actions, and these are important transactions that need to be considered.

The proposed governance structure being put in place for CDS must ensure that CDS remains accountable and responsive to **all** its key stakeholders in the provision of its services, including:

- the intermediaries and investors;
- other stakeholders including issuers and transfer agents; and
- the relevant regulatory authorities.

Providing representation to only a subset of stakeholders creates a greater risk of skewing the provision of access, service offerings and pricing in favour of the represented stakeholder groups. We therefore strongly recommend that issuers and transfer agents should be specifically represented on the Board of CDS.

We note that some CDS Participants are also corporate issuers of securities. Representation of such participants should not be considered adequate representation of the issuer community as a whole, given the dual role that such entities perform. It is necessary to achieve representation by non-Participant issuers.

We also note that the Recognition Order provides for the continuation of Participant committees to advise and provide input to the CDS board. This is an important additional governance safeguard. However, again we are concerned to note that membership of the committees would be open only to representatives of CDS Participants (the definition of which does not include issuers, nor do we believe it includes transfer agents¹) or marketplaces. In order to ensure proper corporate governance of CDS it is important that membership is not so restricted. Issuers and transfer agents are key stakeholders that interface with CDS and thus are equally concerned with its governance and management. Transfer agents are an essential part of the market infrastructure, interfacing with CDS to facilitate movements of securities and the administration of corporate actions, and offer an important broader perspective on marketplace developments.

Over the past decade CDS has kept the overall cost of clearing, settlement and depository services flat at approximately \$ 469 million per year notwithstanding the twelve-fold increase in volumes over this period. (Source: CDS Annual Reports 2001-11). This is due to the fact that CDS has operated on a not-for-profit basis.

In addition CDS has chose to reduce the fees charged for clearing items, while at the same time either introducing new fees, or kept existing fees high in connection with depository services. (Source: CDS Fee Schedules 2001-11). This was perhaps in recognition by CDS of the potential for the TMX to compete in the clearing services offering to Issuers.

¹ While transfer agents are considered to be limited participants in CDS, it is not clear that transfer agents would be considered Participants for the purpose of Board and Committee membership. Further, this does not ensure adequate independent representation of issuers and transfer agents.

It is also worth noting that CDS and transfer agents have over the years implemented a number of mutually beneficial services that are not subject to the CDS fee schedule. These cooperative arrangements have benefited the efficiency and integrity of the Canadian marketplace. We are keen to continue this collaborative approach between CDS and the transfer agents.

The potential competition for clearing services will be eliminated if the proposed Recognition Order is granted. CDS Ltd and CDS Clearing as for-profit entities can potentially engage in other cross-subsidy practices which would unfairly impact Issuers and their Transfer Agents.

Representation of Issuers and Transfer Agents

Accordingly, we urge the Commission to reconsider the proposed governance arrangements for CDS under the Recognition Order, to ensure representation of issuers and transfer agents as key stakeholders in CDS. Specifically, we propose that the Order be amended to provide that:

- Up to two seats on the CDS Ltd and CDS Clearing Boards be allocated and reserved exclusively for representatives of **Issuers** and their **Transfer Agents**.
- The membership criteria for Participant committees are broadened to permit representation by issuers and transfer agents.

In this way, Issuers and their Transfer Agents will have an opportunity to directly contribute their perspective on matters of good governance of the central service provider, CDS.

Computershare respectfully submits these comments and extend our appreciation to the OSC for providing this opportunity.

Yours truly,

COMPUTERSHARE TRUST COMPANY OF CANADA



Wayne Newling
President & CEO