

## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.3 Clearing Agencies

#### 13.3.1 CDS – Request for Comment – Application to Vary the Recognition Order for The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc.

#### REQUEST FOR COMMENT

#### APPLICATION TO VARY THE RECOGNITION ORDER FOR THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED AND CDS CLEARING AND DEPOSITORY SERVICES INC.

#### A. Background

The Ontario Securities Commission (**Commission**) issued an order dated July 4, 2012, as varied and restated, pursuant to section 21.2 of the *Securities Act* (Ontario) (**Act**) continuing the recognition of The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. (collectively, **CDS**) as clearing agencies (**Recognition Order**).

CDS has filed an application (**Application**) with the Commission requesting that an order be issued varying the Recognition Order to remove the requirement that one director of the CDS Board of Directors (**Board**) be a representative of a marketplace unaffiliated with Maple Group Acquisition Corporation (now TMX Group Limited) and nominated by marketplaces unaffiliated with TMX Group Limited (**Unaffiliated Marketplace Director Requirement**) and to replace the Unaffiliated Marketplace Director Requirement with a marketplace committee established to advise on any matters the Committee deems appropriate to management and the CDS Board (**Draft Variation Order**).

Subject to comments received, staff propose to recommend to the Commission that it grant CDS an order in the form of the proposed Draft Variation Order attached at Appendix A.

#### B. Comment Process

The Commission is publishing for public comment the Application and Draft Variation Order. We are seeking comment on the Application and Draft Variation Order.

You are asked to provide your comments in writing, via e-mail and delivered on or before **September 17, 2018** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca).

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions may be referred to:

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**DRAFT VARIATION ORDER**

**APPENDIX "A"**

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

**AND**

**IN THE MATTER OF  
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED**

**AND**

**CDS CLEARING AND DEPOSITORY SERVICES INC.**

**VARIATION ORDER  
(Section 144 of the Act)**

**WHEREAS** the Ontario Securities Commission ("**Commission**") issued an order dated July 4, 2012, as varied and restated on December 21, 2012 and as varied on December 7, 2012, May 1, 2013, June 25, 2013, June 24, 2014, January 27, 2015, March 27, 2015, December 20, 2016 and February 28, 2018 pursuant to section 21.2 of the Act continuing the recognition of The Canadian Depository for Securities Limited ("**CDS Ltd.**") and CDS Clearing and Depository Services Inc. (together with CDS Ltd., "**CDS**") as clearing agencies (the "**Clearing Agency Recognition Order**");

**AND WHEREAS** CDS has filed an application ("**Application**") with the Commission to vary the Clearing Agency Recognition Order pursuant to section 144 of the Act to delete section 4.2(c) of Schedule "B" of the Clearing Agency Recognition Order (the "**Unaffiliated Marketplace Director Requirement**") for the limited purpose of removing the requirement that one director of the CDS Board be a representative of a marketplace unaffiliated with Maple Group Acquisition Corporation (now TMX Group Limited) and nominated by the marketplaces unaffiliated with Maple Group Acquisition Corporation;

**AND WHEREAS** the Application requests that the Commission vary the governance terms and Conditions in Schedule "B" of the Clearing Agency Recognition Order to include new sections 4.4.1 and 4.5.1 (the "**Marketplace Committee Requirement**") to provide for a new requirement for the use of a marketplace advisory committee by CDS;

**AND WHEREAS** the Commission has determined based on the Application and representations made by CDS that it is not prejudicial to the public interest to vary the Clearing Agency Recognition Order to remove the Unaffiliated Marketplace Director Requirement and add the Marketplace Committee Requirement;

**IT IS HEREBY ORDERED** that, pursuant to section 144 of the Act, section 4.2(c) of Schedule "B" of the Clearing Agency Recognition Order is deleted in its entirety and the following is added as section 4.4.1 and section 4.5.1:

- 4.4.1 The recognized clearing agency governance structure shall provide for the use of a marketplace committee to provide advice, comments and recommendations to management and the board of directors of the recognized clearing agency and such committee shall meet the following requirements:
- (a) membership is open to all marketplaces that access the services provided by the recognized clearing agency;
  - (b) the marketplace committee may advise on any matters that the marketplace committee deems appropriate, and shall if requested by the Commission, report directly to the Commission without first requiring board approval or notification of such reporting; and
  - (c) a staff representative of the Commission may attend any meetings of the marketplace committee as an observer.

- 4.5.1 The recognized clearing agency's board of directors shall:
- (a) as required by the Commission and in any event annually, provide a written report to the Commission that contains:
    - (i) the recommendations made by the marketplace committee and whether and why any of the recommendations were rejected or only partially implemented, and
    - (ii) a response from the marketplace committee regarding whether and why they agree or disagree with the recognized clearing agency's report; and
  - (b) file such report and the marketplace committee's response with the Commission within 45 days after each fiscal year-end of the recognized clearing agency or within 60 days of a request made by the Commission.

DATED at Toronto this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

***[Editor's Note: The CDS Application follows on separately numbered pages. Bulletin page numbers resume at the end of the Application.]***



June 28, 2018

**VIA OSC ELECTRONIC PORTAL**

Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8

Attention: Secretary to the Commission

Dear Sirs/Mesdames:

**Re: Application for an order varying the recognition order for The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc.**

The Canadian Depository for Securities Limited (“**CDS Limited**”) and CDS Clearing and Depository Services Inc. (“**CDS Clearing**”, and collectively with CDS Limited, “**CDS**”) are hereby applying to the Ontario Securities Commission (“**OSC**”) for an order varying the CDS recognition order. The variation order (the “**Requested Variation Order**”) would remove the requirement that one director of the CDS Board be both a representative of a marketplace unaffiliated with Maple Group Acquisition Corporation (now TMX Group Limited, “**TMX**”) and be nominated by the marketplaces unaffiliated with TMX (the “**Unaffiliated Marketplace Director Requirement**”). The Unaffiliated Marketplace Director Requirement significantly reduces the pool of potential directors for one of the CDS Board seats. We believe that CDS, its stakeholders and the public interest would be better served if the pool for this Board seat was not limited to marketplace representatives.

As a condition of approval, CDS is prepared to institute a committee for marketplaces to provide advice, comments and recommendations to the management and board of directors of CDS (the “**Marketplace Committee Requirement**”). This committee would give the non-TMX marketplaces an ability to participate on an equal basis with each other to bring forward matters to CDS, and would be structured to require the CDS Board to address all recommendations brought forward by these marketplaces, including by requiring the CDS Board to report annually in this regard to the OSC.

In conjunction with the above, CDS is applying to the Autorité des marchés financiers (“**AMF**”) for a similar variation order and will be seeking approval from the British Columbia Securities Commission (“**BCSC**”) to permit this change to the CDS Board structure.

**Recognition order provisions**

The OSC’s varied and restated order recognizing CDS as a clearing agency dated December 21, 2012, as amended (the “**OSC CDS Recognition Order**”), the AMF’s Decision No. 2012-PDG-0142 recognizing CDS as a clearing house, as amended (the “**AMF CDS Recognition Order**”, and together with the OSC CDS Recognition Order, the “**CDS Recognition Orders**”), contain the

## Unaffiliated Marketplace Director Requirement.<sup>1</sup>

In order to effect the governance changes in the Requested Variation Order, CDS is requesting that the OSC CDS Recognition Order be varied to remove the Unaffiliated Marketplace Director Requirement and add the Marketplace Committee Requirement. In particular, CDS is requesting that section 4, Schedule “B” of the OSC CDS Recognition Order be revised as follows (with the text to be removed struck-through and new text underlined):

4.2 The recognized clearing agency shall ensure that:

...

~~(c) one director is a representative of a marketplace unaffiliated with Maple and nominated by the marketplaces unaffiliated with Maple;~~

...

4.4.1 The recognized clearing agency governance structure shall provide for the use of a marketplace committee to provide advice, comments and recommendations to management and the board of directors of the recognized clearing agency and such committee shall meet the following requirements:

(a) membership is open to all marketplaces that access the services provided by the recognized clearing agency;

(b) the marketplace committee may advise on any matters that the marketplace committee deems appropriate, and shall if requested by the Commission, report directly to the Commission without first requiring board approval or notification of such reporting; and

(c) a staff representative of the Commission may attend any meetings of the marketplace committee as an observer.

...

4.5.1 The recognized clearing agency’s board of directors shall:

(a) as required by the Commission and in any event annually, provide a written report to the Commission that contains:

(i) the recommendations made by the marketplace committee and whether and why any of the recommendations were rejected or only partially implemented, and

(ii) a response from the marketplace committee regarding whether and why they agree or disagree with the recognized clearing agency’s report; and

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<sup>1</sup> Section 4.2(c) of Schedule “B” of the OSC CDS Recognition Order and section 23.2(c) of Part II of the AMF CDS Recognition Order.

- (b) file such report and the marketplace committee's response with the Commission within 45 days after each fiscal year-end of the recognized clearing agency or within 60 days of a request made by the Commission.

### **Rationale for removing Unaffiliated Marketplace Director Requirement**

The Maple transaction resulted in the vertical integration and alignment of CDS's cash clearing, settlement, and depository functions with "trading services" under TMX's corporate structure. The Request for Comment on the proposed Maple transaction, published in October, 2011<sup>2</sup> acknowledged the potential risk that the broader organization could engage in anti-competitive behaviour, restrict access to clearing services by unaffiliated marketplaces, or otherwise impede competition among marketplaces. The Unaffiliated Marketplace Director Requirement was put in place specifically to address this concern.<sup>3</sup>

With the benefit of more than five years of experience since the Maple transaction, CDS respectfully submits that the Unaffiliated Marketplace Director Requirement is, for several reasons, a disproportionate response to the competition law concerns raised in the Maple transaction context. In the first instance, we are of the view that multiple regulatory requirements already address the unaffiliated marketplaces' concerns. In the second instance, we believe that the Unaffiliated Marketplace Director Requirement has a measurably adverse impact on the effective operation of the CDS Board and the CDS Board's efficient oversight of CDS's operations. Both CDS, and by extension our stakeholders, are constrained by the significant and unnecessary constriction of the pool of potential directors, for a single board seat, to a stakeholder group with a tenuous need for clearing house board representation.

It is important to note that other requirements will continue to be in place that ensure that a majority of CDS Board members are not affiliated with TMX, including the requirement that at least 33% of the board is independent<sup>4</sup>, and the requirement that at least 33% of the board are representatives of CDS participants. In light of CDS's role as a clearing house that has been federally designated as systemically important financial infrastructure, the additional existing requirement that a Board seat be dedicated to a marketplace representative is an unwarranted restriction to the pool of potential CDS directors.

### ***Negative Impact on CDS***

In our view, the Unaffiliated Marketplace Director Requirement negatively impacts the CDS Board because it significantly, and unnecessarily, narrows the pool of potential directors for one of the CDS Board seats. Consistent with the CPSS-IOSCO *Principles for Financial Market Infrastructures* ("PFMIs"), CDS strives to populate its Board with members who have an "appropriate mix of skills (including strategic and relevant technical skills), experience, and knowledge of the entity".<sup>5</sup> In our view, dedicating one CDS Board seat to a marketplace representative does not assist CDS in achieving this principle. Further, the PFMIs are clear that there are various mechanisms that can be used by a board when considering relevant

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<sup>2</sup> (2011) 34 OSCB 10451.

<sup>3</sup> (2012) 35 OSCB (Supp-2) 103.

<sup>4</sup> See Part II, section 4.3(a) of the OSC CDS Recognition Order which sets out that a director is independent if the director is not (i) an associate, partner, director, officer or employee of a significant shareholder of TMX, (ii) an associate, partner, director, officer or employee of a CDS Participant or such Participant's affiliates, (iii) an associate, partner, director, officer or employee of a marketplace or such marketplace's affiliates, or (iv) an officer or employee of CDS or its affiliates.

<sup>5</sup> CPSS-IOSCO – Principles for financial market infrastructures – April 2012, section 3.2.10.

stakeholders' interests, including user committees and public consultation processes.<sup>6</sup>

Experience since the Maple transaction has also demonstrated that the unaffiliated marketplace representative is often, and unavoidably, placed in a conflicted position while discharging his fiduciary duty to CDS. This issue is particularly acute given the competitive nature of the relationship between the unaffiliated marketplace and the TMX marketplaces. The effect of having a board member conflicted out of decisions on a regular basis is the concomitant, and adverse, increase in workload and responsibility falling on the remaining board members. In the past five years, the unaffiliated marketplace representative has formally recused himself, or otherwise left during parts of a meeting, eight times.

### *Small Talent/Expertise Pool*

In Canada, there are currently seven organizations operating unaffiliated equities marketplaces, and the majority of these organizations operate with very few employees and, more critically, few senior executives. This environment results in an extremely small talent/expertise pool from which to select a board member who meets the board membership fitness criteria for a systemically important clearing house functioning as the sole Canadian cash clearing house.

Each CDS director must be a fit and proper person and his or her past conduct must afford reasonable grounds for belief that the director will perform his or her duties with integrity. Each nominee must possess the appropriate strengths, skills, expertise and experience, when complemented by the other members of the board, to guide the strategies and business operations of CDS. Some of the skills that are, therefore, required of a CDS board member would include experience and expertise:

- As a senior officer of a marketplace
- In risk management
- With governance / board operations(including any certification from a director education program)
- In a financial role
- With a regulated company
- In information technology and systems
- In corporate strategy

More specifically, since the PFMI's specifically focus on the risk management role of the board of directors, experience in the area of risk management is a particularly relevant skill for a CDS board member. In this respect, the CDS board can benefit from having individual members with relevant experience related to liquidity risk and credit risk, experiences which may not typically arise as part of a marketplace's operations. Other demographic and diversity factors that are considered when recruiting for the CDS board include age, gender, and geographic location, as well as basic qualities such as integrity, good character, and being highly regarded in his or her community or professional field.

### *Difficulty in Discharging Duties*

Certain marketplace representatives have had difficulties on the CDS Board. It is challenging for an individual to effectively separate his interests as a marketplace operator from his fiduciary responsibility as a clearing house director. In our fragmented equities market, marketplaces are

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<sup>6</sup> Ibid, section 3.2.18.

in direct competition with each other. This means that the marketplace representative operates a business that is in direct competition with CDS's equities exchange affiliates. This places the marketplace representative in a position that is different than other CDS directors.

By comparison, while the participant representatives on the CDS Board have interests with respect to their participant entity, the participant is not itself in competition with any CDS affiliate, and the participant has broader interests with respect to the clearing house than the narrow interest that a marketplace has (which is limited to access to the clearing house). Given that a participant has a broader interest in the operations of the clearing house, and is not in direct competition with any CDS affiliates, we believe this seems to be a significant distinction between a marketplace representative and a participant representative, and may help to explain the difficulty that seems to manifest in the marketplace representative role on the CDS Board. In summary, the varied roles and objectives related to this CDS board position almost de facto place the marketplace representative board member in an irreconcilable conflict position, between his fiduciary duty to the CDS board and his obligations to the marketplace that he operates.

### ***CDS Statistics: Majority of Value Traded does not come from Marketplace Trades***

We believe that it is important to recognize that a significant proportion of the value traded each day, and processed by CDS, does not result from trades executed on marketplaces (these trades are considered 'exchange trades' as defined below). In May, 2018, for example, the marketplaces collectively accounted for approximately 36.2 million securities traded (volume traded) in CDS's clearing and settlement systems and infrastructure ("**CDSX system**"), and the value of these trades was approximately \$235 billion. By contrast, non-marketplace trades in fixed income securities totaled approximately \$11.2 trillion, and non-marketplace trades in equity securities totaled approximately \$364.6 billion. We believe that the comparative activity levels resulting from marketplace activity is an important consideration in determining the need for a marketplace representative on the CDS board.

### ***Marketplace concerns are addressed by other means***

The CDSX system is agnostic with respect to the particular source of 'exchange trades' (trades which are matched and confirmed prior to their being submitted to CDSX). Trade information, in the form of a daily trade file, is received from all recognized marketplaces. Once trade details are received from a marketplace by CDS, CDSX performs clearing and settlement processes as between participant ledgers. These CDSX processes are the same for all 'exchange trades', irrespective of the marketplace on which the trade occurred.

In the depository services context, securities may be deposited by participants into their accounts (ledgers) at CDS only after CDS determines that the securities are eligible for deposit. CDS's eligibility criteria are well established, public, and standardized. These criteria, like the clearing and settlement systems, are agnostic with respect to the recognized exchange on which a security is listed. CDS's agreements with marketplaces (including listing venues) are limited to: a) a technical document (Form CDSX818) that provides CDS with the minimum information required to enable reception of trade (and, in the case of listing venues, dividend) files from the marketplace to CDS; b) in certain circumstances, a fee collection agreement pursuant to which CDS collects trading fees from participants on behalf of a marketplace; and c) a standard form MOU with listing venues that describes their role with respect to oversight of listed issuers.

### ***OSC CDS Recognition Order restrictions***



The relevant access requirements include the following:

- CDS shall not unreasonably prohibit, condition or limit, directly or indirectly, access by a person or company to services offered by it
- CDS shall not permit unreasonable discrimination among existing and potential participants and marketplaces, or impose any burden on competition that is not reasonably necessary or appropriate
- Must accept clearing of trades in securities that are eligible under its rules on a non-discriminatory basis, regardless of the marketplace of execution
- Must allow any person or company to interface or connect to any of its services or systems on a commercially reasonable basis, for the purposes of facilitating post-trade processing of securities transactions by participants
- CDS rules shall not unreasonably create an impediment to competition
- CDS shall provide its services and products, including any interface or connection to its services or systems, to any person or company, on a non-discriminatory basis and at a service level or performance standards comparable to that which would be provided to its affiliated entities
- CDS shall use Participant committees to assist the CDS Board, and membership on these committees is open to all marketplaces that access CDS's services

The relevant requirements related to fees, fee models and incentives include the following:

- CDS's fees shall not have the effect of unreasonably creating barriers to access its services or discriminating between users of CDS's services or marketplaces
- Tied selling involving CDS products/services or products/services of any affiliate is prohibited

#### *CDS OSC Rule and Fee Review Protocol*

Any change to the CDS legal documents, any new fee, and any change to a fee in CDS's posted fee schedule, must, except in extremely limited circumstances, be published for comment and approved by the OSC.<sup>7</sup> This public comment process for both rules and fees provides a critical avenue by which all CDS's stakeholders actively may participate in CDS's rule- and fee-making process.

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<sup>7</sup> Housekeeping changes are considered effective upon filing.

## *TMX OSC Recognition Order Restrictions (related to clearing services)*

### Fees, Fee Models, and Incentives

- Prohibition on tied selling involving a TMX clearing agency

### Clearing and Settlement

- Prohibition on establishing requirements relating to clearing and settlement of trades that would result in (i) unfair discrimination between marketplace participants based on the clearing agency used, (ii) an imposition of any burden on competition among clearing agencies or back office service providers that is not reasonably necessary or appropriate, or (iii) an unreasonable prohibition, condition or limitation relating to access by a person to services offered by the recognized exchange or a TMX clearing agency

## *National Instrument 24-102*

Subsequent to the Maple transaction, National Instrument 24-102 *Clearing Agency Requirements* (“**NI 24-102**”) was adopted by the Canadian Securities Administrators. NI 24-102 codified certain access provisions that are found in the CDS Recognition Orders, namely that a clearing house must not:

- Unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency
- Impose any burden on competition that is not reasonably necessary and appropriate
- Unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency’s services offered by it

NI 24-102 includes governance provisions that require a recognized clearing agency’s board of directors to include appropriate representation by individuals who are independent of the clearing agency. NI 24-102 also provides that a recognized clearing agency must establish procedures and operations designed to ensure that it meets or exceeds certain principles set out in the PFMI.

### **Adopting a CDS Marketplace Committee**

CDS believes that the existing regulatory framework, including the opportunity for marketplaces to participate on existing committees, is sufficient to address any marketplace concerns related to potential TMX anti-competitive behaviour. We understand, however, that CDS’s regulators are of the view that a new safeguard should be implemented in order to permit the removal of the Unaffiliated Marketplace Director Requirement. We therefore propose the adoption of a Marketplace Committee Requirement.

### ***Operation of the Marketplace Committee***

Any marketplace that accesses CDS’s services would be able to be a member of this committee. As with CDS’s existing participant committees, the marketplace committee would be able to advise on any matters that it deems appropriate, and any recommendation made by the marketplace committee would be brought by CDS management to the CDS Board. The CDS

Board would report annually to the OSC and AMF on the recommendations made by the marketplaces, including whether and why any of the recommendations were rejected or only partially implemented. CDS would commit to poll the marketplaces quarterly to seek interest for holding a meeting and topics to be discussed.

By providing unaffiliated marketplaces with clear means to raise competition-related concerns with CDS, and CDS's regulators, the Marketplace Committee Requirement would address the theoretical risk of TMX using its market position to engage in inappropriate behaviour. Furthermore, the participation of unaffiliated marketplaces on such a committee provides a forum to raise other concerns of unique concern, even if such concerns do not relate directly to competition. The marketplace committee affords all marketplaces the same opportunity to raise concerns to CDS, instead of relying on one individual on the CDS Board whose views may not reflect those of every marketplace. The Marketplace Committee Requirement would achieve these outcomes without adversely affecting the composition and efficient operation of the CDS Board.

### **International Benchmarking**

We have reviewed public documents from various clearing houses globally to inform our understanding of whether other clearing houses with marketplace affiliates have created governance frameworks to specifically address potential concerns from unaffiliated marketplaces. In our review, we did not find an example of a requirement that a marketplace be represented on the board of a cash clearing house and we did not find requirements that these clearing houses establish an advisory committee for marketplaces.

#### ***Australia***

The Australian Securities Exchange ("**ASX**") has clearing house affiliates that are the sole providers of clearing and settlement arrangements for Australia's cash equities market. The boards of these clearing houses are comprised of six directors, with three of these directors not also sitting on the ASX parent company board. These three independent directors are able to meet separately to determine any matters that require consideration of commercially sensitive information from an unaffiliated marketplace that is obtaining services from, or access to, these clearing houses. There are not any marketplace representatives on the ASX clearing house boards.<sup>8</sup>

#### ***England***

LCH is majority owned by London Stock Exchange Group ("**LSEG**"), which owns London Stock Exchange, Borsa Italiana, Turquoise and other trading venues. LCH Group Holdings Ltd ("**LCH Holdco**") operates LCH Limited ("**LCH**") which is the operating clearing house in the UK. LCH Holdco has 13 directors: 4 directors are independent of LCH Ltd. and LSEG, 4 are participant representatives, 4 are LSEG/LCH executives and the final board member is the Chair, who is considered to be independent although he is also a member of the London Stock Exchange board. LCH, the operating clearing house in the UK, has the same structure as LCH Holdco with two fewer participant representatives (11 directors total: 4 independent, 2 participant representatives, 4 LSEG/LCH representatives, 1 Chair (the same Chair as for LCH Holdco)). These board breakdowns are not dissimilar to the CDS structure, and focus on having an equal number of independents and LCH executives, with some participant representation, and with a Chair who

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<sup>8</sup> <https://www.asx.com.au/documents/investor-relations/AnnualReport2017.pdf>

also sits on the board of an affiliate that is not a clearing house. There are not any marketplace representatives on the LCH Holdco Board or the LCH Board.<sup>9</sup>

### **Germany**

Eurex Clearing AG is part of the Eurex Group which is owned by Deutsche Borse, the operator of many trading venues. The Supervisory Board of Eurex Clearing currently has eleven members: 5 independent, 4 participant representatives, and 2 Eurex executives.<sup>10</sup> Currently one of the independent board members is also an independent director at a US futures exchange, but this marketplace connection does not appear to be a requirement for the Eurex Clearing Supervisory Board. Eurex Clearing hosts a number of advisory committees for their clearing members<sup>11</sup>, but none specific to marketplaces.

### **United States**

Unlike the above clearing houses which are owned by public holding companies and are affiliated with trading venues, DTCC is member-owned. DTCC itself owns The Depository Trust Company and National Securities Clearing Corporation. The DTCC Board of Directors is currently composed of 19 directors. Of these, 12 are participant representatives (including representatives of broker-dealers, custodians and clearing banks, and investment institutions), 3 are independent directors, 2 are designated by DTCC's "preferred shareholders", NYSE Euronext and FINRA, 1 is a DTCC executive, and 1 (the Chair) is independent. In its "Key Provisions of Principles of Governance", DTCC lists its key constituents as being: its shareholders, participants, issuer and investor clients, and government and supervisory authorities.<sup>12</sup>

### **Conclusion**

In conclusion, CDS submits that removing the Unaffiliated Marketplace Director Requirement and adopting the Marketplace Committee Requirement will improve the functioning of the CDS Board and will benefit CDS, its stakeholders, and the Canadian capital markets as a whole. We attach, at Appendix A, a draft variation order for your consideration.

Yours truly,



Deanna Dobrowsky  
Vice President, Regulatory, TMX Group

cc: Susan Greenglass, *Ontario Securities Commission*  
Élaine Lanouette, *Autorité des marchés financiers*  
Doug MacKay, *British Columbia Securities Commission*

<sup>9</sup> <https://www.lch.com/about-us/structure-and-governance/board-directors-0>

<sup>10</sup> <http://www.eurexclearing.com/clearing-en/about-us/corporate-overview/supervisory-board>

<sup>11</sup> <http://www.eurexclearing.com/clearing-en/about-us/corporate-overview/other-committees>

<sup>12</sup> <http://www.dtcc.com/about/leadership>