

**13.1.2 Notice and Request for Comment - Application to Vary the Recognition and Designation Order of the Canadian Depository for Securities Limited as a Clearing Agency**

**APPLICATION TO VARY THE RECOGNITION AND DESIGNATION ORDER  
OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED  
AS A CLEARING AGENCY**

**NOTICE AND REQUEST FOR COMMENT**

**A. INTRODUCTION**

In connection with its proposed corporate restructuring (“Restructuring”), The Canadian Depository for Securities Limited (“CDS Ltd.”) has made an application (“Application”) to the Ontario Securities Commission (“Commission”) for an order pursuant to subsection 21.2(1) and section 144 of the *Securities Act* (Ontario) (“Act”), to vary and restate the current recognition and designation order of CDS Ltd. as a clearing agency. The proposed varied and restated recognition and designation order (“Draft Order”) would:

- (i) continue the recognition of CDS Ltd. as a clearing agency under subsection 21.2(1) of the Act and the designation of CDS Ltd. as a clearing agency for the purposes of Part VI of the *Business Corporations Act* (Ontario); and
- (ii) recognize a new wholly-owned subsidiary, CDS Clearing and Depository Services Inc. (“CDS Clearing”), as a clearing agency under subsection 21.2(1) of the Act and designate CDS Clearing as a clearing agency for the purposes of Part VI of the *Business Corporations Act* (Ontario).

The Commission is publishing for a 30-day comment period the Application and Draft Order.

**B. BACKGROUND**

CDS Ltd. provides clearing, settlement and depository services (“Settlement Services”) for the Canadian capital markets. CDS Ltd. has one wholly-owned subsidiary, CDS Inc., which operates the National Registration Database (NRD), System for Electronic Disclosure by Insiders (SEDI) and System for Electronic Document Analysis and Retrieval (SEDAR), and provides other services primarily related to data dissemination and ancillary services related to the Settlement Services.

**C. RESTRUCTURING**

Under the Restructuring, CDS Ltd. will be transformed into a holding company with three wholly-owned operating subsidiaries: (1) CDS Clearing, (2) CDS Inc., and (3) CDS Innovations Inc.

The holdings of common shares in CDS Ltd. will not be changed by the Restructuring. CDS Ltd. will provide to CDS Clearing the following support functions: information technology development, maintenance and operations, legal services, risk management, financial management and support, human resources, internal audit, facilities management, and executive governance and communications. Each support service will be governed by a services agreement between CDS Ltd. and CDS Clearing.

Under the Restructuring, CDS Clearing will assume responsibility for all of the existing Settlement Services; all necessary assets and liabilities will be transferred from CDS Ltd. to CDS Clearing.

The Restructuring of CDS Ltd. is intended to position CDS Ltd. and its three subsidiaries as flexible business organization while isolating and containing any risks arising out of the various independent business activities.

Upon the completion of the Restructuring, CDS Clearing will be providing the Settlement Services, and CDS Ltd., through various services agreements, will be providing the support functions necessary for the day to day operations of CDS Clearing. Both of these entities will be recognized as clearing agencies under the Act and designated as clearing agencies for the purposes of Part VI of the Ontario Business Corporations Act. CDS Inc. and CDS Innovations Inc. will not be engaged in providing any Settlement Services and will not be recognized.

**D. DRAFT ORDER**

On July 12, 2005, the Commission amended and restated CDS Ltd.’s recognition and designation order which was subsequently varied on January 9, 2006 (collectively, the “Current Recognition Order”). The Current Recognition Order is being amended to reflect the changes resulting from the Restructuring. One key change is the recognition of CDS Clearing, the proposed new entity responsible for the Settlement Services. Schedule “A” to the Draft Order is now divided into Part I which has the terms and conditions applicable to CDS Ltd. and Part II which has the terms and conditions applicable to CDS Clearing.

Set out below is a summary of the changes being incorporated into the Draft Order.

**1. Terms and Conditions applicable to CDS Ltd. – Part I of Schedule “A” to the Draft Order**

CDS Ltd. will continue to be recognized as a clearing agency and certain terms and conditions in the Current Recognition Order will continue to apply directly to CDS Ltd. A new term and condition relating to compliance, requires that CDS Ltd. shall, at all times, ensure that its wholly-owned subsidiary, CDS Clearing, meets and is able to meet, all the terms and conditions, as enumerated in Part II of Schedule “A” to the Draft Order. Another new term and condition relating to allocation of costs requires that in providing support services to each of its operating subsidiaries, CDS Ltd., must ensure that it allocates the costs of providing those services fairly and equitably. A third new term and condition addresses the allocation of resources and requires that CDS Ltd. allocate sufficient financial and other resources to CDS Clearing to ensure that it can carry out its function in a manner that is consistent with the public interest and the terms and conditions applicable to CDS Clearing.

Other terms and conditions applicable to CDS Ltd. include governance, fitness, risk controls, financial viability, capacity and integrity of systems, and information sharing.

**2. Terms and Conditions applicable CDS Clearing – Part II of Schedule “A” to the Draft Order**

All of the terms and conditions found in Schedule “A” of the Current Recognition Order currently applicable to CDS Ltd. have been incorporated into Part II of Schedule “A” of the Draft Order. CDS Clearing will now be subject to the same terms and conditions as CDS Ltd. prior to the Restructuring, which include terms and conditions relating to:

1. Governance
2. Fitness
3. Access
4. Fees and Costs
5. Due Process
6. Risk Controls
7. Financial Viability
8. Operational Reliability
9. Capacity and Integrity of Systems
10. Protection of Customers’ Securities
11. Rules
12. Enforcement of Rules and Discipline
13. Information Sharing

**3. Rule Protocol**

The Rule Protocol has been amended to reflect the fact that CDS Clearing will now be responsible for the submission of rules to the Commission in accordance with the Rule Protocol.

**4. Reporting Obligations**

The list of Reporting Requirements has been amended to clarify which entity, CDS Ltd. or CDS Clearing, is responsible for each reporting obligation.

Under the prior notification provisions, a new section 1.2 has been inserted to reflect that the activities or business of the operating subsidiaries of CDS Ltd., other than CDS Clearing, do not fall within the scope of notification requirements.

**E. THE COMMENT PROCESS**

You are asked to provide your comments in writing and to send them on or before **October 8, 2006** to:

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario  
M5H 3S8  
[jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

We request that you submit an electronic version of your submission by email or on a diskette. Confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

## **SRO Notices and Disciplinary Proceedings**

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Following the comment period, staff of the Commission will consider the comments received on the Application and Draft Order. Subject to comments received, staff will recommend that the Order be granted to CDS Ltd. and CDS Clearing. The varied and restated recognition order will take the form of the Draft Order with terms and conditions generally in the form of those attached to the Draft Order as Schedule "A".

Questions may be referred to:

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