



Securities Transfer Association of Canada

Lara Donaldson
President

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Dear Sirs / Mesdames:

Re: Notice and Request for Comment – Proposed Material Amendments to CDS Participant Rules and External Procedures and Fee Schedule (the “Notice”)

The Securities Transfer Association of Canada (STAC) appreciates the opportunity to provide the following comments on the above noted Notice. STAC is a non-profit association of Canadian transfer agents that, among others, has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To provide membership to firms engaged as transfer agents or registrars in the field of the issuance, transfer and registration of securities and associated functions;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To assist members with problems of a technical or operational nature;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities;
- To provide members and others with information and comments of an educational and technical nature relating to the securities transfer and corporate trust industry;
- To exercise any and all powers required to meet the needs and the obligations of this Association; and
- To ensure that its activities in relation to these purposes are communicated to all members.

In Canada, transfer agents are retained by public and private companies to maintain records of the registered securityholders, specifically, those who hold securities directly in their name. Our records contain the securityholder's name and address, securities held, and, in some cases, email address. We process transfers, mail disclosure material, such as proxies, annual financial statements, quarterly reports, and management information circulars, and distribute dividends and related tax slips.

The Securities Transfer Association of Canada (STAC) appreciates the opportunity to provide the following comments on the above noted Notice.

Definition of "Electronic Form"

All public issuers have shares registered to CDS & Co, and in certain instances physical certificates are issued representing these shares. The Notice proposes that CDS will consider a Security Certificate held in an electronic form to be the official required document. Furthermore, CDS has proposed that they will no longer accept delivery of a physical certificate, leaving the issuer or their agents to determine treatment of the certificate that is issued, either retaining or destroying it. We would appreciate further clarity around the definition of "electronic form" in this context. For example, does this refer to a PDF scan of the document? Or an image? We are unable to locate a definition of an "electronic form" of Security Certificate in the Canadian Business Corporations Act (CBCA) or any of the provincial counterparts. We would also note that the definition of a security certificate under the Ontario Securities Transfer Act, 2006 specifically excludes electronic form, as follows: "*Security Certificate*" means a certificate representing a security, but does not include a certificate in electronic form. Other provincial Transfer Acts contain the identical or similar language.

As background, Transfer Agents currently have the ability to issue shares in certain ways, specifically:

1. A physical share certificate, typically either banknote or generic, although on occasion a paper form of certificate. This is a negotiable instrument, and a physical representation of the securities. In instances where the physical certificate is lost, stolen or destroyed, there are very specific requirements around replacement of the securities, including an affidavit of loss and purchase of an insurance bond to protect the agent and the issuer in the event the original certificate is ever presented by a bona fide owner and transfer is demanded.
2. Direct Registration, where a Direct Registration Statement (DRS) issued to the owner of the securities. The DRS is a statement, and not representative of the asset, which is held in electronic form by the transfer agent. A reprint of the DRS can be issued at any time, or
3. Book position, sometimes referred to as NCI (No Certificate Issued). The account on the Transfer agents record is electronic.

Transfer Agents do not have the concept of issuing an electronic form of certificate. Once a physical share certificate is issued, the certificate is delivered to the shareholder, or, in some cases where an agreement has been executed, held in safekeeping under the terms of an escrow agreement or other form of safekeeping agreement.

Providing discretion for the agent or issuer to either safekeep or destroy a physical share certificate registered to CDS & Co, is not a viable solution for the following reasons:

1. As a recordkeeper, a transfer agent and registrar cannot destroy a share certificate without also cancelling the record of the certificate on our system. A cancelled certificate cannot represent an active position.
2. Transfer agents or issuers do not have agreements in place with CDS & Co to allow for safekeeping of share certificates.

We recognize that certain actions were taken through the pandemic as a result of necessity, however if solutions are now being proposed to be formalized, we believe they must be supported by Canadian regulations and not leave gaps in processes that impacted parties do not have the ability to rectify.

Changes in Issued and Outstanding Capital during the Lifecycle of the Securities

The Notice proposes that *"During the life-cycle of the security, Issuers and/or their Transfer Agents submit a new Security Certificate in electronic form, for any changes to the Issue, such as in the case of an increase or decrease in the principal denomination. All expired or matured issues are withdrawn from our online inventory and signed withdrawal instructions are sent to the Issuer/ Transfer Agent for acknowledgement."*

As stated previously, a transfer agent and registrar cannot destroy a certificate without also cancelling the related position on our share register. If the total number of issued and outstanding securities changes, the issuer must complete a treasury direction authorizing the issuance or cancellation of securities, which is then provided to the transfer agent and registrar to take the related action. In the case of an increase in capital, transfer agents can take the following actions:

1. Issue a new certificate representing the increased amount of shares and deliver the certificate to the registered shareholder;
2. Accept delivery of the current outstanding certificate, cancel it, and issue a new certificate representing the new number of outstanding securities;
3. In the case of a Global certificate, accept delivery of the certificate, update the schedule on the reverse of the certificate and return the Global Certificate.

In all cases, the records of the issuer must be updated to reflect the change, and, in all cases the issued and outstanding securities must reconcile to the security register details and securities balance. If a new security certificate is issued with each change, the issued and outstanding securities on the official securities register would no longer balance with the securities trading in the market, which is in direct conflict with our responsibilities as a transfer agent and registrar.

Misalignment with CDS BEO Securities Services Agreement and Issuer Procedures

The proposed amendments in section 3.2.4 of the participant rules state that a book entry issue issued after the window closure will be in electronic format. The eligibility criteria for book-entry-only issues include a Book-Entry-Only (BEO) Securities Services Agreement and a BEO Acknowledgement.

The current version of the Issuer Procedures related to the CDS BEO Services Agreement states the following:

2(c) **Form of Securities** - All Securities shall be registered in CDS Name on the register of Issuer. Securities delivery to CDS for book entry only services shall be in one of the forms set out below:

- (i) **Uncertificated Security** If the securities registered in CDS Name are not represented by a certificate deposited at CDS ("**Uncertificated Security**"), then subject to compliance with section 2(h), Issuer shall delivery or cause to be delivered to CDS if, as and when requested by CDS, a written statement containing any information required by law to be stated on a security certificate.
- (ii) **Certificated Security** If the Securities are to be represented by a certificate registered in CDS Name and deposited with CDS ("**Certificated Security**") then Issuer shall deliver or cause to be delivered to CDS for each specific issue of Securities being deposited at CDS, one original, fully registered global certificate (or in limited circumstances acceptable to CDS, one or more Global Certificates) registered in CDS Name bearing signatures authorized by the Authority (defined in section 4(a)) as a book entry only security ("**Global Certificate**", which includes any schedules).

All issuers who issue a BEO security must execute the BEO Agreement and related Issuer Procedures with no amendments. The documents do not currently contemplate the concept of an "electronic format" certificate, and do, in fact, require any certificated security to be delivered to CDS. Section 8(f) in the Issuer Procedures also requires the issuer to deliver a certificate to CDS.

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We also note that section 5(g) of the Issuer Procedures allows the Issuer to request delivery of the Global Certificate, implying that CDS will be retaining physical certificates.

STAC appreciates the opportunity to provide these comments. We would be pleased to discuss the contents of our letter, or provide any further feedback as CDS may require.

Sincerely,

Lara Donaldson
President, Securities Transfer Association of Canada