



# Securities Transfer Association of Canada

**William J. Speirs**  
President

August 12, 2016

## 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”)**

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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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# Securities Transfer Association of Canada

**William J. Speirs**  
*President*

## SCHEDULE A

To STAC Comment Letter re: Proposed Amendments to CDS Fee Schedules  
August 12, 2016



# Securities Transfer Association of Canada

William J. Speirs  
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December 12, 2014

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Dear Sirs and Mesdames:

**Re: Proposed Amendments to CDS Fee Schedule for Issuer Services Program**

The Securities Transfer Association of Canada ("STAC") is pleased to be able to offer our comments on the CDS Clearing and Depository Services Inc. ("CDS") proposed amendments to the CDS Fee Schedule for Issuer Services Program. 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 study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- 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.

STAC members' clients consist primarily of public and private companies for which they act as transfer agent and registrar. In the vast majority of these cases, these clients trade their securities issues on listed stock exchanges or on over the counter bulletin boards. Further, as transfer agent and registrar, STAC members' primary function is to keep records of the shareholders of its various clients.

### **Consultation and Alternatives Considered**

STAC members were able to meet with representatives of CDS on December 10, 2014 and received a presentation from CDS regarding the anticipated mechanics of the fee collection process. STAC has committed to continued discussions with CDS on the proposed Issuer Services Program in the coming weeks.

The key point we would like to stress to provide context for the comments that follow is the feedback from STAC member firms to CDS during the consultation process that there was no interest in taking on the administrative burden of levying and collecting fees on behalf of CDS through our client invoices. This point was not acknowledged in the reported comments under the Consultation section of the proposal. The administrative burden for transfer agents would include system development to facilitate the receipt and management of issuer fees levied by CDS as well as additional and perhaps dedicated, staff to deal with invoicing and reconciliation of same. STAC members also anticipate that our clients will call upon their respective account managers to field inquiries related to the CDS fees levied which is a resource drain unrelated to the services provided by the transfer agents; costs that would not be recoverable. As a result, the cost benefit of this proposal is misaligned in that transfer agents would incur ongoing costs for the benefit of CDS' increased revenue.

Furthermore, the reference in the proposal under the Alternatives Considered heading that reads "...issuers who have appointed Transfer Agents have done so for the express purpose of managing their relationships with securities intermediaries and shareholders..." is an inaccurate statement. The primary purpose of a transfer agent is to serve as record keeper of the issuer's registered holders and maintain a balanced issued and outstanding register of the company's securities. Additional services may be provided by a transfer agent; however these are based on agreements between the transfer agent and their issuer client. To state the express purpose of the transfer agent is to manage issuer relationships is misleading. Issuers do establish a relationship with CDS at the time their respective issues become CDS eligible. It stands to reason that any fees that CDS chooses to levy for issuer activities after that relationship commences, should be made directly by CDS to the issuer itself and not indirectly through the issuer's transfer agent.



### **Competition and Contractual Framework**

Based on general feedback from clients of various STAC member firms, there is concern that these activity fees are being forced upon issuers with little recourse short of ending their CDS eligibility status. This eligibility status is established for the ease of the securities intermediaries rather than a direct benefit to the issuer themselves. Given the market dominance of CDS, withdrawing eligibility is not practical without adversely impacting shareholders and their securities intermediaries. We also note that CDS services in immobilising securities ownership and centralising the administration of securities entitlements for financial intermediaries are provided primarily for the benefit of the intermediaries and their investor clients and therefore query the appropriateness of levying the entitlement and corporate actions fees on issuers in this manner.

With regard to the amendment in the TA Agreement with non-Limited Participant transfer agents that CDS intends to make, STAC cannot comment at this time as there has not yet been an opportunity to see the proposed changes. As a result, it is not possible for those non-Limited Participant transfer agents impacted by this agreement amendment to fully assess the CDS proposed fees without also reviewing the proposed contractual changes that will give effect to the fees. In addition, we understand that CDS plans no changes to the rules for Limited Participant Transfer Agents to support this service; we had assumed that there would be changes and would suggest that a change in processes like this warrants a review of the rules to assess the impact of the change and address the liability and administration of this process. For example, we understand that CDS does not propose for transfer agents to bear the credit risk of the fees if issuers do not respond to transfer agent invoices. However without reviewing the contractual changes or potential rule changes, it is not possible to affirm these will be effective protection for transfer agents and what the consequences of an issuer non-payment may be for both the issuer and the transfer agent. The proposed contract and potential rules should have been published concurrently with the proposed Issuer Services Program fees to facilitate joint review and informed feedback by transfer agents on both proposals simultaneously.

### **Nature, Purpose and Impact**

It is STAC's view 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. Although CDS has asserted that junior market issuers are largely unaffected by corporate action event management, it is the experience of our member firms that junior issuers are the most likely to have activities that fall in the scope of corporate action events. Given the resource limitations that these issuers are typically managing, we anticipate that this new fee structure could be challenging to manage depending upon the frequency of restructuring that may occur over time.

We appreciate that CDS, like any organization, needs to invest in infrastructure to meet the expectations of the market; however it has been our understanding that transactional activities performed by CDS have largely been offset by levying CDS participant fees. It is understood that CDS' assertion is that only in cases where CDS participant activity is triggered, are participant fees levied to reduce the cost gap associated with CDS resources used to set up an event. Specifically, CDS stated it is not compensated by its participants when there is no participation or distribution of cash or securities. While we question the appropriateness of charging any fee to issuers for services rendered for the benefit of CDS participants, we specifically query why CDS is proposing blanket fees versus directing fees specifically

toward these events where there is no participation or distribution. In cases where there is CDS participant activity, will both CDS participants and issuers be paying for the same event from their respective positions in the waterfall of the transaction?

CDS states that they processed 183,000 events representing \$3.35T, at a cost, per dollar distributed, of only a few 1/100ths of a basis point. How do these earnings impact the infrastructure capital that is being sought by way of implementing the new issuer fees? Is it anticipated that the new issuer fees will be a supplemental revenue source to raise capital for infrastructure reinvestment? If issuers are expected to pay for these developments, then it is STAC's opinion that issuers, and their appointed paying agents, should have input into the development to ensure that a benefit is received by them.

### Issuer Services – Fee Types

#### Entitlement and Corporate Action Event Management Fees

As noted above, we query the appropriateness of levying fees for entitlements and corporate action event management on issuers and in particular we do not agree with CDS's proposal to require the issuers' transfer agents to invoice collect these fees from their clients and remit the payments to CDS. This is an inappropriate intervention in the client relationship between issuers and transfer agents, and will impose appreciable costs on transfer agents to administer. We also have some queries on the application of the proposed fees which are outlined below.

Using the example of an Exchange Traded Fund that is making a monthly distribution through CDS that also has a DRIP component and monthly redemption option, based on the fee line items, the charges per transaction would be as follows:

Exchange Traded Fund Event	\$250
Dividend Event (for cash dividend)	\$100
Dividend Event (for DRIP)	\$100
Corporate Action event with option	\$250

Please clarify if this is the intended application of the proposed fees. If so, based on the example provided, that Fund could expect to pay \$700 per month or \$8,400 per year that would be new fees.

In those cases where an issuer funds the entitlement amounts to CDS directly rather than through a LP TA, please confirm how that issuer will be impacted by the proposed fees.

#### ISIN Issuance

The current proposal would place transfer agents as a fee intermediary between CDS and issuers for the CDS based transactions which, in STAC's view is entirely inappropriate and would not be efficient. Fees for ISIN issuance are generally levied by the ISIN Numbering Agency either directly on the issuer or on the party that is requesting the ISIN on behalf of the issuer. The ISIN issuance function is distinct from CDS's core role as central securities depository for the Canadian market, and we are concerned that a transfer agent's interaction with CDS in relation to its core role should not become conflated with CDS's ancillary activities.

We also want to be clear that a blurring of lines could occur as to what becomes the expectation of transfer agents' core function, by extension. For example, when an issuer is applying for an ISIN and fees must accompany the application, clear distinctions of responsibilities must be observed so as to not allow a creeping scope of expectations that create a perception that transfer agents become responsible for completing the applications by default rather than as an additional service that a transfer agent may agree to provide to its issuer client.

Security Eligibility Administration Fee, Certificate Fee and Late Request Fees

The security eligibility administration fee is presented as necessary to offset the manual review and transposition of offering documents for key details. This fee seems to be at least in part, the result of lack of automation in the CDS eligibility system. Would issuers be able to reasonably expect that this fee will be reduced in the future once CDS implements system automation, reducing the manual effort required of CDS? As with the ISIN eligibility fee, it is inappropriate to insert transfer agents by default into a role in the CDS security eligibility process by requiring fees to be collected by transfer agents. Such fees should be levied at the point of the eligibility application, to the applying party.

Clarity is requested regarding the certificate fees that will be levied. The proposal as written, suggests that issuers will be paying for certificates that are in CDS's vault that are required to be held in physical form, likely due to the nature of the instrument or the corporate statute that governs the issuer's securities. Is that the intended application?

The tiered late fee schedule is another topic for which clarification is sought, particularly as to how and when payment requirements will be communicated. If an issuer becomes subject to one of the late fees as described in the proposal, what is the expectation in terms of notifying the issuer of the fee being levied? A late fee of \$10,000 is a significant amount, particularly for smaller issuers that may not have the same level of cash resources available to them as mid to large issuers. Will CDS ensure that the issuer is aware of the fee prior to proceeding? In addition, does CDS take the position that the *transaction will be completed within the requested time frame even if the late fee payment has not been made up front at the time of the notice request?*

International Comparisons

CDS references several international markets where issuers are charged fees for various events by either the stock exchange or the Central Securities Depository. We have not had the opportunity to undertake a full comparison of fees across the cited markets and are therefore not commenting on the specifics. It is, however, pertinent to note that CDS does not include for comparison those markets where no equivalent fees for entitlements and corporate actions are charged to issuers. We also note, as mentioned above, that in each of the markets cited, the stock exchange or Central Securities Depository levying the fees have a direct contractual relationship with the issuer which addresses the imposition of the fees and in the majority of cases levies such fees directly to the issuer not through the issuer's agent.

In conclusion, STAC wishes to confirm the need to have a robust clearing system is understood and that new, or increased, fees are a viable method to establish the infrastructure capital. That stated, there are significant concerns about the manner in which this model has been presented, specifically that

## Proposed Amendments to CDS Fee Schedule for Issuer Services Program

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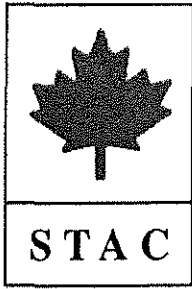
December 12, 2014

transfer agents have been identified as the party that will take on the administrative burden to levy and collect fees from issuers on behalf of CDS. STAC members were clear in their communications to CDS that this method would add undue costs to the transfer agents to manage and added no value for our clients by invoicing fees driven by CDS that are not directly related to our services. The approach comes across as contrary to the spirit of the various recognition orders that were intended to prevent market dominance as a tool to cause practice to shift due to the absence of viable alternatives. We respectfully request that the CDS proposal be further reviewed and clarified as to intended application so as to provide issuers with a clear understanding of costs they will incur based on the routine transactions involving CDS. We also request that proposed changes to the TA Agreements with CDS be published for review and discussion with the goal of agreeing upon a structure that accomplishes the best balance for CDS and issuers as it pertains to the application and collection of CDS issuer fees, and, further, that STAC members be provided additional time to consider the financial impact and appropriate compensation to collecting and remitting payments to CDS. Issuers cannot be expected to bear both the new fees, and the costs of their own agents applying the fees to them. It is a duplicative burden on issuers, but equally it cannot be expected that we, as agents, would be required to bear the costs directly.

Yours truly,



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# Securities Transfer Association of Canada

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March 20, 2015

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Dear Sirs and Mesdames:

**Re: Proposed Amendments to CDS Fee Schedule for Issuer Services Program**

The Securities Transfer Association of Canada ("STAC") was pleased to be able to offer our comments on the CDS Clearing and Depository Services Inc. ("CDS") proposed amendments to the CDS Fee Schedule for Issuer Services Program on December 12, 2014. In our comment letter, STAC committed to continued discussions with CDS on the proposed Issuer Services Program in the weeks to follow.

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## Proposed Amendments to CDS Fee Schedule for Issuer Services Program

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March 20, 2015

STAC members were able to meet with representatives of CDS on December 10, 2014 and again on January 15, 2015. At the December 10<sup>th</sup> meeting, STAC received a presentation from CDS regarding the anticipated mechanics of the fee collection process – which contemplated transfer agents assuming the administrative burden of levying, collecting, reconciling and remitting fees on behalf of CDS through our client invoices.

At the January 15<sup>th</sup> meeting, STAC submitted a presentation to CDS highlighting the issues that STAC members would face in their efforts to address this demand. The administrative burden for transfer agents would include system development to facilitate the receipt and management of issuer fees levied by CDS as well as additional and perhaps dedicated, staff to deal with invoicing and reconciliation of same. These fees would need to be tracked and reconciled separately from all other transfer agency fees and out-of-pocket expenses invoiced and collected from issuers as these would be the only fees that require subsequent remittance to an outside entity. STAC members also anticipate that our clients will call upon their respective account managers to field inquiries related to the CDS fees levied which is a resource drain unrelated to the services provided by the transfer agents; costs that would not be recoverable. As a result, the cost benefit of this proposal is misaligned in that transfer agents would incur ongoing costs for the benefit of CDS' increased revenue. Due to the above, STAC recommended to CDS that CDS should directly invoice issuers for their fees.

On February 17, 2015, CDS provided STAC with a document containing their responses to each of STAC's issues and recommendations. Based on our review of CDS' responses, STAC is of the opinion that our valid concerns are not being addressed by CDS. STAC is also concerned that our members' issues raised at these meetings may not get fully represented in CDS discussions with the regulators prior to the final ruling on the amendments.

The CDS approach is also based on the assumption that STAC Member agreements with their issuer clients give them blanket authority to charge back expenses. However that assumes that TAs can charge back expenses beyond those arising out of services they have provided as TA. Some, if not all, TA's are not legally entitled to charge back fees for services which CDS has provided. It is not reasonable to expect transfer agents to unilaterally charge expenses they are not legally entitled to.

CDS elected to arbitrarily dismiss STAC's primary recommendation that CDS should directly invoice issuers for the fees associated with this Issuer Services Program – a position also espoused by the Canadian EFT Association, BNY Trust Company of Canada and the Ontario Financing Authority in their comment letters. In their response to STAC, CDS states "As noted, CDS intends to invoice its participant issuers and can also invoice issuers with whom it has a BEO/SSA directly. Otherwise, CDS will invoice the limited participant TA or non-participant TA directly for entitlement management fees. Whether the agent passes those fees through to the issuer or otherwise incorporates the cost into their respective fee schedules is at the discretion of each TA." Issuers, not just those who are also CDS participants or BEO/SSA, do establish a relationship with CDS at the time their respective issues become CDS eligible. It stands to reason that any fees that CDS chooses to levy for issuer activities after that relationship commences, should be made directly by CDS to the issuer itself and not indirectly through the issuer's transfer agent.

We would be glad to discuss or clarify these comments, and provide additional feedback as you continue your deliberations over these proposed amendments.

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**Proposed Amendments to CDS Fee Schedule for Issuer Services Program**

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March 20, 2015

Yours truly,



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# Securities Transfer Association of Canada

**William J. Speirs**  
President

June 29, 2015

Sent via email:

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## Proposed Amendments to CDS Fee Schedule for Issuer Services Program

June 29, 2015

Dear Sirs and Mesdames:

**Re: Proposed Amendments to CDS Fee Schedule for Issuer Services Program**

The Securities Transfer Association of Canada (“STAC”) appreciates the opportunity to offer further comments on the CDS Clearing and Depository Services Inc. (“CDS”) proposed amendments to the CDS Fee Schedule for Issuer Services Program (the “Program”). Specifically, we will be addressing certain points contained in the Summary of Public Comments and CDS Responses (the “Summary”) for the Program. We will limit the scope of our comments to those matters that relate to the impact the proposed Program would have on transfer agents as well as address inaccuracies in the presentation of past interactions between CDS and STAC.

### **Consultation and Alternatives Considered**

STAC members met with representatives of CDS on December 10, 2014 and then again on January 15, 2015 to discuss the logistics of the proposed Program. STAC members described the considerable practical challenges that would be created for transfer agents based on CDS’ intended deployment for fee communication and collection. STAC committed to continued discussions with CDS and offered to work with representatives to create stronger baseline data that could assist in the invoice and fee process if the Program were to be approved. Despite the offer to work with CDS on creating records that would allow them to bill issuers directly, contact from CDS ceased shortly after the January meeting. As a result, no meaningful exchanges have occurred since early this year despite clear concerns from STAC members that the approval of the Program, as written, was fraught with administrative burdens that would trigger costs for transfer agents that were not anticipated or approved within member firms. As we had indicated in our previous comment letter, the structure of the Program creates a misaligned cost-benefit model wherein transfer agents incur the costs required to manage the process of invoicing and collecting payment from issuers only to pass along the revenue to CDS.

The question had also been raised by STAC members as to which transfer agents had advised CDS against communicating with issuers about their intentions in the Program’s preliminary stage. A clear response was not given and none of the STAC members in attendance had provided that message to CDS. In the interest of transparency, certain STAC members were approached by CDS several months earlier about attending issuer meetings with CDS to discuss the planned Program. Our view at that time, as it continues to be today, is that transfer agents should not be a party to the Program and we therefore declined to attend meetings with CDS to present it to issuer clients. However, certain STAC members assisted CDS by providing issuer contacts to allow them to facilitate a discussion directly with the appropriate individuals within the issuer’s organization, as some were very large institutions. This is a notable distinction from advising CDS against contacting issuer clients as is portrayed in the Summary

### **Administrative Impacts**

As we have commented previously, STAC member firms have been quite clear from the outset with CDS that there was no interest in taking on the administrative burden of levying and collecting fees on behalf of CDS through our client invoices. In the Summary, CDS responded to this point by stating that they

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## Proposed Amendments to CDS Fee Schedule for Issuer Services Program

June 29, 2015

collect fees from CDS participants on behalf of transfer agents without reimbursement and that transfer agents should now reciprocate by collecting fees from issuer clients on their behalf. CDS does perform this function and at first blush, this may seem like a reasonable balance. However, the scope of collection logistics is so vastly different that it is akin to withdrawing cash from a funded account at an ABM machine in the case of CDS' level of effort versus raising funds through a letter campaign for transfer agents. After a period of time, both methods will result in funds received but the latter effort is far more laborious and inefficient. To provide specific context, let's first consider what the collection processes look like for CDS collecting transfer fees for agents, and then a transfer agent collecting CDS fees under the Program.

CDS participants regularly initiate deposits, withdrawals and broker transfers from within the CDS & Co. nominee position for a variety of CDS eligible issues. These transactions are keyed to the CDSx system platform, the files are subsequently communicated electronically to the appropriate transfer agent based on issue identifiers, the transaction is completed and transfer agent fees are noted in the CDSx confirmation transmission back to the CDS participant. On a monthly basis, the transaction fees are reported by participant CUID and CDS, through a Pre-Authorized Debit Agreement which is a required part of CDS' Application for Participation, is able to directly debit all of the applicable CDS participants in full to form an aggregate amount which is then provided to the appropriate transfer agents.

In terms of scope of activity, there are 50 Investment Dealer participants in CDS which could be debited on a monthly basis with those transaction fees then distributed to five STAC member firms. STAC agrees with CDS' comment that this process is timely and reduces collection risk for transfer agents. However, the process is also beneficial to CDS participants as they too are able to mitigate risk of potential settlement transaction failures resulting from inadequate invoice management and payment turnaround. CDS participants were the initiators of this electronic process in order to replace the previous paper-based process. This debit of participant accounts and payment to transfer agents via CDS lowers the participants' overhead costs by utilizing the CDSx platform to reconcile and manage transactions and associated fees rather than sustaining paid resources to serve the same purpose.

In contrast, the process that transfer agents would be required to utilize to collect CDS Program fees as currently contemplated is much more involved. Each STAC member would have slight variations based on firm specific resources however the general process would essentially unfold as follows:

1. CDS sends the transfer agent a monthly electronic file based on client identifiers which will have a cumulative balance as well as the underlying detailed Program fees by issuer;
2. The transfer agent directs the file to an assigned internal resource to review and segregate by issuer for invoicing purposes;
3. As the fees are not related to an agreed upon transfer agent fee schedule, a separate invoice that clearly identifies the CDS Program fees as distinct from client contractual fees being invoiced by the transfer agent in its own right must be created,
4. The Program fee invoice generation may, or may not, align with the transfer agent's client specific billing cycle but in any event, the invoice is created by either a custom program developed by the transfer agent to accommodate Program fee invoice generation or manual invoice generation occurs, the necessary stationary and postage is used to mail the invoice to the client and awaits payment;

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## **Proposed Amendments to CDS Fee Schedule for Issuer Services Program**

June 29, 2015

5. The Program fees invoices must be segregated and tracked to allow reconciliation to occur for proper pass-through to CDS as distinct from the transfer agent's own fees;
6. Payments received by the transfer agent from the issuer will be applied to outstanding invoices. Payments in full for transfer agency fees and Program fees result in the pass-through of funds to CDS with an identifier as to which Program Fees are being paid; and
7. The transfer agent performs the reconciliation to reflect which invoices have been paid for each of its own records as well as CDS's including whether payment was partial or made in full. Follow up advices are sent as needed.

In terms of scope of activity, there are approximately 4,000 CDS eligible issues. Based on 2013 transactional data from five STAC members, 1,232 of those are impacted issuers under the parameters of the Program who generated approximately 108,000 discrete events that are proposed as chargeable.

Transfer agents are appointed by issuers under an agency agreement for a range of clients including, but not limited to, Corporations, Capital Pool Companies, Exchange Traded Funds and Special Purpose Acquisition Corporations. In addition to the non-recoverable staff costs and out of pocket expenses that the transfer agents would be taking on for each invoice required outside of its own billing regime, there is no equivalent process comparable to the CDS Application for Participation with a mandatory Pre-Authorized Debit agreement to collect amounts owed. Payments from clients typically arrive by mail or wire 60 days or more after the original invoice mailing. It is also common for only partial payments to be provided which creates an additional administrative burden when one party is charged with collecting fees for both themselves and a separate entity. When considering five transfer agents billing on behalf of CDS for over 100,000 events in a year that would require the above noted invoice process, it becomes undeniably clear that transfer agents managing fee invoicing for CDS is much more involved and costly and not a simple reciprocal action.

### **Self Service - Clarification**

Although the main issue for STAC members as it relates to the Program is the unsolicited, undesirable and unfair insertion of the transfer agent into the CDS invoice and collection process, there were other CDS comments within the Summary that relate to transfer agents that were not clear to our members.

Part C 4a): There is commentary suggesting that transfer agents could take a more active role through self-service options and that this could lower issuer fees. As our membership is not familiar with the self-serve options referenced, a detailed explanation is requested of CDS as well as strong examples of how this action by transfer agents would reduce fees under the Program. A similar reference to Limited Participant Transfer Agents and self-service is noted in Part D2b).

### **Summary**

While we continue to question the merit of the issuer fees themselves, the focus of our comments are those activities in the Program that relate to transfer agents. The administrative burden for transfer agents if the Program were to be approved is financially punitive not to mention highly inefficient and inconvenient to both the transfer agents as well as the issuers. To implement the invoice process described herein, transfer agents would require substantial system development to facilitate the receipt

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and management of issuer fees levied by CDS as well as additional, and likely dedicated, staff to deal with invoicing and reconciliation of same. STAC members also anticipate that their clients will call upon their respective account managers to field inquiries related to the CDS fees levied which is an additional resource drain unrelated to the services provided by the transfer agents; costs that would not be recoverable. As a result, the cost benefit of this proposal is misaligned in that transfer agents would incur ongoing costs for the sole benefit of CDS.

In conclusion, we respectfully request that the CDS proposal be amended to remove transfer agents as the unwilling intermediary for transaction fees generated pursuant to the Program.

Yours truly,



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