

ALBERTA SECURITIES COMMISSION

**EXEMPTION ORDER
CLEARING AGENCY RECOGNITION**

Citation: Re Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc., 2016 ABASC 283 **Date: 20161125**

**Canadian Depository for Securities Limited and
CDS Clearing and Depository Services Inc.**

Background

1. The Canadian Depository for Securities Limited (**CDS Ltd.**) and CDS Clearing and Depository Services Inc. (**CDS Clearing**, and collectively with CDS Ltd. the **Applicants**) seek from the Alberta Securities Commission (the **Commission**) an order pursuant to section 213 of the *Securities Act* (Alberta) (the **Act**) exempting the Applicants from the clearing agency recognition requirement of section 67 of the Act.

Interpretation

2. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined herein.

Representations

3. The Applicants represent as follows:
 - (a) the Applicants are each incorporated under the *Canada Business Corporations Act* and have their head office in Toronto, Ontario;
 - (b) the Applicants function as a central securities depository and operate a clearing and settlement system, CDSX, for transactions in equity and fixed income securities within Canada;
 - (c) CDSX was designated by the Bank of Canada as a clearing and settlement system subject to Part I of the *Payment Clearing and Settlement Act* by notice dated March 27, 2003 and continued by notice dated October 30, 2006;
 - (d) CDS Clearing is a wholly-owned subsidiary of CDS Ltd. and CDS Ltd. is a wholly-owned subsidiary of TMX Group Limited, a public company incorporated under the *Business Corporations Act* (Ontario);
 - (e) the Applicants are each recognized as a clearing agency in Ontario, Québec and British Columbia pursuant to orders or decisions of the Ontario Securities Commission (**OSC**), the Autorité des marchés financiers (**AMF**) and the British Columbia Securities Commission (**BCSC**) respectively;

- (f) the OSC is the Applicants' home regulator and co-lead regulator with the AMF and BCSC;
- (g) the Applicants
 - i. provide clearing and settlement services to the exchange operated by TSX Venture Exchange Inc., headquartered in Calgary, Alberta, and
 - ii. permit Alberta residents to become clearing participants (**Clearing Participants**) with the Applicants if those residents meet the Applicants' participation criteria; and
- (h) as a result of conducting the activities described in paragraph 3(g), the Applicants are considered to be carrying on business as a clearing agency in Alberta, requiring the Applicants to be recognized by the Commission to carry on business as a clearing agency in Alberta or to be exempted from the requirement to be so recognized.

Undertakings

4. The Applicants undertake to:

- (a) maintain their recognition as a clearing agency pursuant to Ontario securities laws;
- (b) comply with the terms of any clearing agency recognition order issued by the OSC and any restatement, variation, or amendment of such order;
- (c) comply with the reporting requirements set out in the Appendix to this order (the **Reporting Requirements**);
- (d) file a document evidencing the Applicant's submission to the non-exclusive jurisdiction of the courts and administrative tribunals of Alberta in any proceeding arising out of, related to, concerning, or in any other manner connected with, the Applicant carrying on business as a clearing agency in Alberta;
- (e) maintain a valid and binding appointment of an agent for service in Alberta upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, relating to, concerning, or in any other manner connected with, the Applicants carrying on business as a clearing agency in Alberta; and
- (f) promptly provide to the Commission any information that a Commission representative may request related to the Applicants carrying on business as a clearing agency in Alberta.

Decision

5. Based on the above representations and undertakings, the Commission exempts the Applicants from the clearing agency recognition requirement of section 67 of the Act for so long as the Applicant satisfies the undertakings herein.

For the Commission:

"original signed by"

Tom Cotter
Vice-Chair

"original signed by"

Stephen Murison
Vice-Chair

APPENDIX
Reporting Requirements

Event reporting

1. The Applicants will notify the Commission promptly:
 - (a) of any material change to the Applicants' business or operations as described in the Applicants' application for exemption from the clearing agency recognition requirement of section 67 of the Act;
 - (b) if the OSC, AMF or BCSC revokes, suspends or materially changes the conditions of the Applicants' recognition as a clearing agency; and
 - (c) of any investigation of the Applicants of which the Applicants have knowledge, or disciplinary action against the Applicants, by any regulatory authority to which they are subject.

Quarterly reporting

2. The Applicants will provide to the Commission, within 60 days of the end of each calendar quarter:
 - (a) if different from the list reported in the previous quarter, a current list of all Alberta-resident Clearing Participants;
 - (b) a list of all Alberta-resident Clearing Participants against whom sanctions have been imposed, or against whom any proceedings have been commenced that may result in such sanctions, in the last quarter by the Applicants or, to the best of the Applicants' knowledge, by the OSC, AMF or BCSC with respect to clearing activities undertaken with the Applicants, all to the extent that such disclosure is not prohibited by the relevant regulatory authority;
 - (c) if applicable, a list of all persons or companies located in Alberta that had sought, but during the quarter were denied, clearing participant status by the Applicants, together with the reasons for each such denial.