

13.3 Clearing Agencies

13.3.1 The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. – Variation of Recognition Order – Notice of Commission Issuance of Variation Order

**VARIATION OF THE RECOGNITION ORDER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED (CDS LTD.)
AND
CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS CLEARING)**

NOTICE OF COMMISSION ISSUANCE OF VARIATION ORDER

The Ontario Securities Commission (**Commission**) issued an order pursuant to section 144 of the *Securities Act* (Ontario) on February 28, 2018 (**Order**) varying the current recognition order of CDS Ltd. and CDS Clearing (collectively, **CDS**) (**Recognition Order**) to replace the definition of “independent” in section 4.3(a) of Schedule “B” of the Recognition Order for the limited purpose of permitting the same individuals to be considered “independent” for the boards of directors of both CDS and the Canadian Derivatives Clearing Association (**CDCC**); an affiliate of CDS; subject to a term and condition. This would have the effect of enabling CDS and CDCC to have a mirror Board and, consequently, mirror Board committees.

The Commission issued the Order to CDS subject to the following term and condition:

CDS shall actively consider any conflict of interest or potential conflict of interest that arises as a result of the CDS/CDCC mirror board structure, and if CDS identifies any conflict of interest or potential conflict of interest that arises as a result of the CDS/CDCC mirror board structure, CDS will notify the Commission as soon as possible and provide the Commission with (a) a written summary of the relevant facts relating to the conflict of interest, or potential conflict of interest; (b) a detailed description of how the conflict of interest will be resolved; and (c) timing to resolve the conflict of interest. A conflict of interest includes, without limitation, the following:

- (a) **Rulemaking:** CDS shall identify in its notice of publication for any material rule change (any rule not defined as technical/ housekeeping) per Appendix A of the CDS Rule Protocol, the specific impact of the rule change, if any, on CDCC and its activities as a participant of CDS, and whether CDCC is impacted in a different manner than any other CDS participant and if it is, the reason for and an explanation of the difference; and
- (b) **Suspension:** An appeal of any decision of CDS management relating to the suspension of CDCC's participation in CDS will be directly made to the Commission pursuant to section 21.7 of the *Securities Act* (Ontario).

The Commission published CDS' application and draft order for comment on October 12, 2017 on the OSC website at http://www.osc.gov.on.ca/en/Marketplaces_cds_20171012-recognition-order.htm and at (2017), 40 OSCB 8476. No comment letters were received.

In issuing the Order, no substantive changes were made to the draft order published for comment.

The [Order](#) is published in Chapter 2 of this Bulletin.