

### 13.3 Clearing Agencies

#### 13.3.1 CDS – Proposed Changes to CDS’ schedule of fees regarding Entitlement and Corporate Action Events (E&CA) and ISIN Issuance and CDS Eligibility Services – Notice of Commission Approval

##### CDS

#### PROPOSED CHANGES TO CDS’ SCHEDULE OF FEES REGARDING ENTITLEMENT AND CORPORATE ACTION EVENTS (E&CA) AND ISIN ISSUANCE AND CDS ELIGIBILITY SERVICES

##### NOTICE OF COMMISSION APPROVAL

#### A. Approval

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved certain fee amendments relating to the management of **Entitlement and Corporate Action Events (E&CA)** and **ISIN Issuance and CDS Eligibility Services**, together the CDS Issuer Services Fee Proposal (**ISP**), submitted by CDS on July 14, 2016. Staff of the Commission are publishing this notice of Commission approval.

On December 20, 2016, the Commission approved, (a) the ISP, and (b) additional adjustments proposed by CDS, attached at Appendix A, subject to the following terms and conditions:

- (i) By March 31, 2017, CDS shall provide to the Commission a proposal and timeline for the implementation of a costing system or similar process that provides verifiable evidence of compliance with the prohibition on cross-subsidization between different CDS services and products and between entitlement and corporate action event categories (the “Process”). CDS shall commence utilizing the Process no later than December 31, 2017;
- (ii) CDS shall provide the Commission with a development plan and implementation timeline for an Entitlement and Corporate Actions (E&CA) processing system that is satisfactory to staff by no later than December 31, 2017. Progress against the foregoing implementation plan and timeline shall be reported to, and monitored regularly by CDS’ Board. CDS shall, at a minimum, provide the Commission with semi-annual updates against the plan and timeline, and any significant delays in implementation shall be reported immediately to the Commission, including the reason for the delay and CDS’s proposed action plan to rectify such delay;
- (iii) CDS shall provide the Commission with an audited statement of revenue and cost of the issuer fees on the delivery date of the analysis of condition (iv);
- (iv) CDS shall provide documentation providing verifiable evidence of compliance with the prohibition on cross-subsidization and shall report its findings and conclusions to the Commission at the following times:
  - i. by December 31, 2018, in respect of the requirements in Condition (i), above and,
  - ii. by no later than one (1) year after the implementation of the E&CA processing system referred to in Condition (ii), above.
- (v) CDS shall offer membership on the appropriate CDS user committees to representatives of the Issuer stakeholder group and CDS shall engage transfer agents on user committees as appropriate, within 60 days of final approval of the Issuer Service Fees; and
- (vi) CDS shall assess the commercial viability of combining CDS’s ISIN issuance and CDSX eligibility systems. The assessment shall take into account both the cost of combining the services and offsetting revenue from late fees – if any – that have been, or would have been, charged under the existing process. CDS shall provide a report of its conclusions and recommendations that is satisfactory to the Commission within six months of approval of the Issuer Service Fees.

The Commission’s approval of CDS’ fee amendments is pursuant to section 7.8 of its order recognizing CDS as a clearing agency under Ontario securities laws.

## B. Background

CDS first submitted the ISP for Commission approval in November 2014 (November 2014 Proposal). CDS articulated the reasons for the ISP in its submission, which included requiring additional revenues to replace its existing E&CA system that is at its end of life and providing on-going systems maintenance. The November 2014 Proposal was published for comment on November 13, 2014<sup>1</sup> and 15 comment letters were received. Further details including comment letters can be found on the CDS website at <http://www.cds.ca/resource/en/154>. In addition to reviewing written submissions of commenters, in the spring of 2015 staff continued to meet with CDS and discuss and analyze the comments received.

In July 2016 CDS withdrew the November 2014 Proposal and submitted revised proposals (July 2016 Proposal), which were published for comment on July 14, 2016.<sup>2</sup> The key changes made by CDS related to the proposed E&CA fees included: (a) incorporating adjustments to address public concerns, and (b) reducing prices for two of the fees proposed. In response to the July 2016 Proposal, 18 comment letters were received. The majority of these commenters had also submitted comments on the November 2014 Proposal and their letters continued to reflect similar views as those put forward in response to the November 2014 Proposal. A list of commenters is attached at **Appendix B** and CDS' summary of public comments and responses is attached at **Appendix C**. Individual comment letters can be found on OSC website at [http://www.osc.gov.on.ca/en/Marketplaces\\_cds\\_20161005\\_comments-received.htm](http://www.osc.gov.on.ca/en/Marketplaces_cds_20161005_comments-received.htm)

## C. Principles and Approach to Reviewing Fees

As noted in the OSC staff notice of request for comment published with the July 2016 Proposal,<sup>3</sup> staff followed the approach outlined in Multilateral CSA Staff Notice 24-313 *CSA Staff's Review of Proposed Amendments to Fee Schedule of The Canadian Depository for Securities Limited (CDS Limited) and CDS Clearing and Depository Services Inc. (CDS Clearing) (collectively, CDS)* (Staff Notice) in its review of the July 2016 Proposal before making its recommendation to the Commission.

The Staff Notice articulates the key principles underlying the Commission's expectations about how CDS sets its fees. The key principles that CDS is expected to follow when setting fees include: fair access to its services; equitable allocation of fees and costs; commercially reasonable fee structure, on a non-discriminatory basis; and generation of sufficient revenues to remain economically viable. These key principles underlie the terms and conditions in the CDS Recognition Order. The Staff Notice also notes that while the Commission recognizes that CDS must have sufficient resources to provide clearing, settlement and depository services, given the centrality of its functions to the Canadian capital markets, it must do so in a fair, equitable and appropriate manner. The Staff Notice sets out a list of non-exhaustive factors that staff should consider when making their recommendation to the Commission. These factors are based not only on a consideration of the key principles upon which the Commission expects CDS to set its fees, but also specific criterion and factors within, or related to the terms and conditions, in the Recognition Order.

Staff considered all of these factors in making its recommendation to the Commission. In this instance however, given that other options exist for E&CA event processing, staff's review of ISP included benchmarking CDS' proposed fees against those other options, and a consideration of whether there are other options available to issuers to process E&CA events as well as the costs of those options. In particular, in addition to considering all public comments, findings from the following were considered by staff and the Commission when assessing whether there are other options: (a) the benchmarking study of Bruce Butterill and Associates commissioned by CDS,<sup>4</sup> (b) the benchmarking study by Market Structure Partners commissioned by staff,<sup>5</sup> and (c) an informal survey to a sample of market participants (including all public commenters).

## D. Reasons for Recommendation of Approval

Staff recommended to the Commission that it approve the ISP together with the additional adjustments proposed by CDS considering the criteria set out in the Staff Notice based on the following key factors:

- (i) The adjustments proposed by CDS following its November 2014 Proposal, in the form of grandfathering, waiving of certain fees for certain types of debt issues and transition periods, representing a significant cost reduction to issuers in the first three years of fee implementation;
- (ii) The benchmarking conducted by CDS and staff suggest that (a) CDS' proposed E&CA fees are not out of line with practices of other central securities depositories (CSDs) who also charge issuers or their agents for E&CA processing, and (b) CDS' proposed fees are among the lowest relative to other CSDs; and

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<sup>1</sup> See [http://www.osc.gov.on.ca/documents/en/Marketplaces/cds\\_20141113\\_rfc-amd-cds-fee-schedule.pdf](http://www.osc.gov.on.ca/documents/en/Marketplaces/cds_20141113_rfc-amd-cds-fee-schedule.pdf).

<sup>2</sup> See [http://www.osc.gov.on.ca/en/Marketplaces\\_cds\\_20160714\\_rfc-fee-schedule.htm](http://www.osc.gov.on.ca/en/Marketplaces_cds_20160714_rfc-fee-schedule.htm).

<sup>3</sup> [http://www.osc.gov.on.ca/en/Marketplaces\\_cds\\_20160714\\_rfc-fee-schedule.htm](http://www.osc.gov.on.ca/en/Marketplaces_cds_20160714_rfc-fee-schedule.htm)

<sup>4</sup> <http://www.cds.ca/resource/en/196>

<sup>5</sup> Posted on the OSC website at <http://www.osc.gov.on.ca/en/47506.htm>.

- (iii) Based on staff's informal survey of the availability of other options to E&CA processing, respondents generally indicated that there are other options although they would be less efficient and more costly.

Certain public concerns were raised by participants including the following:

- (i) The lack of clarity to the public over how CDS determined the different fees in ISP and how the fees relate to the underlying processes and costs, and the inability of the public to determine whether the proposed fees do not result in cross subsidization;
- (ii) The lack of measures to assure CDS' commitment to replace the end of life E&CA systems with new revenues from ISP;
- (iii) The continued appropriateness of the proposed E&CA fees subsequent to the implementation of the new E&CA system that would likely increase automation and reduce costs to CDS;
- (iv) The appropriateness of the proposed late security eligibility request fee as it was not clear whether the late fees could be triggered due to inefficiency in existing CDS' processes that separate ISIN issuance from security eligibility; and
- (v) The inability of issuers and other relevant stakeholders to provide input to CDS, which is different from participants who currently participate in CDS user committees to provide input to CDS on its services, risk management and pricing.

In order to address the public concerns, Staff recommended that the approval of the ISP and proposed CDS adjustments (described in Appendix A) be subject to terms and conditions outlined in section A of this notice.

The Commission agreed with staff's recommendation that the ISP together with CDS adjustments were fair, equitable and appropriate, and the approval with terms and conditions is consistent with the underlying expectations about how CDS sets its fees.

Questions on the content of this Notice may be referred to:

Susan Greenglass  
Director, Market Regulation  
Ontario Securities Commission  
416-593-8140

Aaron Ferguson  
Clearing Specialist, Market Regulation  
Ontario Securities Commission  
416-593-3676

Cosmin Cazan  
Accountant, Market Regulation  
Ontario Securities Commission  
416-593-8211

## APPENDIX A

Approved Schedule of ISP Fees to which discount will apply  
for 2017 (50%) & 2018 (25%) & Summary of Final CDS Adjustments

Exist'g Code		Current Fee Description	Proposed Fee Description	Exist'g Fee	Proposed Fee 2014	Proposed Fee July 2016 & Effect. 2019 (Δ if Appl)	Approved Fee Dec 2016	2017 Trans'n (50%)	2018 Trans'n (25%)	Change Description
N/A	4771	No description	Event management-MM interest and maturity	No Fee	\$10		\$10	\$5	\$7.50	Charge per event
N/A		No Description	Event Management-Serial Bond interest and maturity	No Fee			\$25	\$12.50	\$18.75	Charge per event
N/A	4772	No description	Event management-NHA Interest	No Fee	\$10		\$10	\$5	\$7.50	Charge per event
N/A	4773	No description	Event management-NHA Maturity	No Fee	\$20	\$10	\$10	\$5	\$7.50	Charge per event
N/A	4774	No description	Event management-Interest	No Fee	\$100		\$100	\$50	\$75	Charge per event
N/A	4775	No description	Event management-Maturity	No Fee	\$150	\$100	\$100	\$50	\$75	Charge per event
N/A	4776	No description	Event management-Dividends	No Fee	\$100		\$100	\$50	\$75	Charge per event
N/A	4777	No description	Event management-Mandatory no option	No Fee	\$250		\$250	\$125	\$187.50	Charge per event
N/A	4778	No description	Event management-With choice	No Fee	\$250		\$250	\$125	\$187.50	Charge per event
N/A	N/A	No description	Event management-ETF	No Fee	\$250		\$250			Charge per event (e.g., Systematic Withdrawal Plans (SWP), Switches, and Pre-Authorized Cash Contribution plans (PACC))
N/A	4781	No description	Event management-Paying agent	No Fee	\$50		\$50	\$25	\$75	Charge per event where CDS manages payment release
N/A		No description	Event management-Depository agent	No Fee	\$100		\$100	\$50	\$75	Charge per event where CDS manages the event as the depository agent

NOTE: All fees are in Canadian Dollars

**Summary of final CDS Adjustments:**

The following is a complete list of adjustments (included in the July 2016 ISP proposal, as well as additional adjustments made by CDS and approved by the Commission):

- (i) CDS will provide a 50% reduction of its E&CA fees in 2017 and a 25% in 2018, based on the approved fee schedule;
- (ii) All debt instruments with E&CA event related activity prior to the effective date of the fees will not attract any E&CA fees (up to and including maturity);
- (iii) CDS will offer issuers a prepayment option which a 20% discount will apply for instruments having a predictable payment stream (only for that period where such predictability is assured);
- (iv) Agency fees will not be levied on discrete interest and maturity payments for municipal serial bonds. Agency fee will only be applied once per year;
- (v) CDS will invoice issuers directly and provide all required data to TAs to allow for accurate accounting.

**APPENDIX B**

**List of Public Commenters**

Aequitas NEO Exchange Inc.  
Canadian ETF Association  
Canadian Imperial Bank of Commerce  
Canadian Securities Exchange\*  
Invesco  
Lenczner Slaght on behalf of certain Municipalities' Ontario Financing Authority\*  
Province of British Columbia  
Province of Manitoba  
Province of New Brunswick  
Province of Nova Scotia  
Province of Prince Edward Island  
Province of Quebec  
Royal Bank of Canada  
Securities Transfer Agent Association of Canada  
TD Securities

\* These commenters provided 2 comment letters.

## APPENDIX C

## CDS' Summary of Responses to Public Comments

Comment	CDS Response
1. Clarity of model, transparency and collaboration and consultation	
Commenters noted a lack of clarity in the proposal in general.	CDS has made every reasonable effort to solicit feedback with respect to Issuer Services, and has done so continuously since we initially published our Notice and Request for Comment in November of 2014. We have provided, on numerous occasions, both in published and publicly available documents and in the context of specific requests from stakeholders, further detailed examples, and clarification of the application of the fees to particular events and to particular securities.
Commenters expressed some confusion with respect to the descriptions of certain events (e.g., Mandatory with and without choice).	CDS has provided consistent information and, where requested, clarification with respect to these events and with respect to whether, and when, fees for event management would apply to certain securities.
Commenters felt that the process to implement the proposed fee changes was not collaborative	CDS has made staff available for consultation, further information, and clarification, on a continuous basis since the outset of the process.  CDS contacted all parties who provided comments on the 2014 Notice. While it would be practically impossible to consult every single issuer, CDS has made every reasonable effort to ensure that all issuers were aware of the proposed fees and the fee approval process.
Commenters indicated that the proposed 20% fee reduction for up-front payment required more detailed process description.	CDS was explicit in the 2016 Notices that the 20% up-front fee discount will apply <i>only</i> to predictable payment streams and not to equities or securities with extendible or other features due to the lack of certainty with respect to the lifespan of the securities.
Commenters requested further detail with respect to the development of Event fees and more transparency about pricing models and methodology.	CDS has provided detailed background regarding the development of the fees themselves in the 2014 Notice, in our response to those comments (available here: <a href="http://www.cds.ca/resource/en/160">http://www.cds.ca/resource/en/160</a> ), and in the 2016 Notices.  In a competitive marketplace for entitlement and corporate action event management services, CDS is not in a position to publish an accounting of its confidential internal procedures, cost, and pricing models beyond that information which we have already provided. Where requested, this information has been provided to CDS's regulators on a confidential basis to assist in their review.
Commenters felt that the effective date (of fees) is arbitrary and speculative.	The effective date of the fees is based on the timeline of the regulatory review process and on notice periods (60 days) required by CDS's Participant Rules and the Book Entry Only Security Services Agreement.
2. Excessive nature of fees and disproportionate impact on certain groups	
Commenters highlighted what they felt was significant negative financial impact on individual issuers and on the marketplace as a whole.	CDS has made every effort to ensure that the proposed fees are fair, reasonable, and equitable in the context of the Canadian capital markets as a whole; the proposed fees do not impose undue financial burden on issuers or prevent access to CDS services or to the capital markets generally.
Serial debenture issuers cited what they felt was a disproportionate impact as a result of the structure of their securities.	CDS has modified its original – 2014 – proposal to account for the feedback from issuers of serial debentures and intends to waive all but one agency fee for each interest payment made on such securities. The proposed waiver will result in a single agency fee for a payment associated with multiple distributions related to a series of debentures issues in keeping with CDS's underlying principal of equal treatment for similar services, and addresses disproportionality concerns.

Comment	CDS Response
<p>Commenters asserted that the proposed fees are higher than global peers/comparators.</p>	<p>CDS has provided multiple iterations of the global benchmarking which was undertaken during the development of the proposed fees. These benchmarks show that CDS is amongst the lowest-cost providers of Issuance and Entitlement and Corporate Action event management services worldwide. Pursuant to CDS's regulatory requirements, CDS has also completed a fee review study and provided this information to our regulators.</p>
<p>Commenters asserted that CDS does not provide value to Issuers, including both government and commercial issuers.</p>	<p>CDS disagrees. CDS has demonstrated the value of the services which it provides to issuers of all types of securities, and for which it is seeking only to be fairly compensated. Commenters have, in fact, noted the critical nature of CDS to the robust and efficient operation of the Canadian securities market, and must be willing to contribute to the system's ongoing viability. Requests for clarification of <i>marginal</i> value, however, are not a factor in the evaluation of the proposed fees. Issuers who continue to feel that CDS does not provide value to their operations and to their relationships with their investors have multiple commercial alternatives, including an array of transfer agents.</p>
<p>Commenters specifically referred to the difference between fees for processing of money-market securities entitlements and for the processing of longer term fixed income securities entitlements. (\$10 vs \$100)</p>	<p>CDS has consistently stated that the proposed fees were developed in consideration of the resources, time, and system capacity which CDS must dedicate to a particular process. Where a process is more automated, or involves activities <i>not</i> performed by CDS, the proposed fees are, consequently, lower. Where appropriate, issuers may wish to consider becoming a CDS Participant. Participation would facilitate collaboration with CDS to automate an issuer's entitlement and corporate action events in order to lower their prospective fees.</p>
<p>3. Fair and equitable pricing and difference between the stakeholder groups</p>	
<p>Commenters noted that CDS is in the process of renegotiating certain specific contracts with particular stakeholder groups at the expense of other groups.</p>	<p>The process of updating and harmonizing CDS's contractual documentation is unrelated to, and independent of, the fees, or the fee approval process.</p>
<p>Commenters asserted that "Grandfathering" should apply to all securities and "investment products".</p>	<p>As far as possible, CDS has balanced the dichotomous requirements of treating every issuer the same and the need to account for specific security types. Commenters have, for example, suggested both that government securities <i>should</i>, and <i>should not</i>, be treated in a different way, and asserted that the private sector is equally entitled to special treatment. Where appropriate, CDS incorporated feedback from several comments made with respect to the 2014 Notice in our most recent filings. CDS has agreed to grandfather fixed income securities deposited prior to the implementation of the new fees up to and including their maturity.</p>
<p>Commenters asserted that, in particular, concessions related to serial bond interest fees should apply to all constituencies.</p>	<p>CDS currently processes serial bond entitlements only for municipal issuers; If the industry were interested, however, CDS would be open to extending this service to other issuers who would like to issue debt in serial form. The addition of such a service offering would be subject to regulatory pre-approval pursuant to our oversight framework.</p>
<p>Commenters asserted that issuers should not have to pay for "largely" automated processes.</p>	<p>While many of CDS's processes are automated, even in the event that entitlements and corporate actions events were entirely processed automatically the proposed fees also defray system operating costs, which need also be covered.</p>
<p>Commenters questioned whether efforts to further automate entitlement and corporate actions event processing will result in future reduction of fees?</p>	<p>CDS is not in a position to speculate as to the net impact of automation efforts, and any such change would be effected through the transparent regulatory fee review process.</p>

Comment	CDS Response
Commenters asserted that CDS is double charging Participants and Issuers for the same service.	CDS disagrees, and has consistently demonstrated that the services for which we currently charge our Participants (ledger adjustments and management, depository services) are <i>not</i> the same services (receipt and disbursement of entitlements, corporate actions event management, etc.) for which we are proposing to charge issuers.
Commenters noted that there is no need to insert an intermediary – CDS (in respect of payments on municipal securities) in the payment process	Issuers are able, in the current system, to engage the services of an agent, or use CDS as its agent, to make entitlements payments which CDS currently does at no charge to the Issuers.
Commenters asserted that the effect of the proposed fees is to reallocate costs from CDS Participants to the Issuers.	CDS disagrees, and has consistently stated that the proposed fees are intended to defray the approximately 50% deficit in the provision of entitlements and corporate action event management services.
Commenters suggested that CDS provide the proposed 50% discount for a period of 12 months.	CDS has agreed to discount the proposed fees at a rate of 50% for 2017 and 25% for 2018, which transition period allows for issuers' budgetary and other documentary constraints.
<b>4. Regulatory oversight, public interest and competition law</b>	
Commenters requested that Regulators undertake a "value-for-money" audit.	CDS is not a government agency or crown corporation. The requirements for prior regulatory approval of CDS fees do not include a value-for-money audit. CDS is required to complete a triennial benchmarking study for our core services. This study has been completed and has confirmed the relatively low cost of CDS's services.
Commenters asserted that issuers, as a stakeholder group, do not have representation on the board.	CDS's Board of Directors, the composition of which is mandated by our regulatory framework, is representative of our various stakeholders, includes independent directors and, further, some of the issuers who will be most impacted by the proposed fees do, in fact, sit on CDS's Board of Directors.  CDS's Participant committees, including the Risk Advisory Committee, the Strategic Development Review Committee and its subcommittees, and the Legal Drafting Group, do not limit membership or participation. Subject to regulatory approval of amendments to the mandate of the Fee Committee, CDS is prepared to open the Participant Fee Committee to the issuer stakeholder group.
Commenters asserted that under-represented issuers must rely on Regulators to protect the "public interest".	CDS believes that the public interest includes the continued viability and security of CDS operations, and that the public interest is well protected by regulatory oversight of our operations. CDS would however, be amenable to extending an invitation to join CDS's Participant Fee Committee to a non-Participant representative of the issuer stakeholder group.
Several commenters asserted that CDS's dominant position must be checked against monopolistic pricing.	CDS disagrees. CDS is the licensed provider of ISIN/CUSIP numbers and is Canada's Central Securities Depository and National Numbering Agency, and we have accounted for that position in the proposed fees. We are not, however, the sole provider of entitlement and corporate action event management services, a fact acknowledged by several commenters. Finally, establishing reasonable and thoughtfully developed fees does not constitute monopolistic or predatory pricing.
Commenters assert that the imposition of the proposed fees amounted in government sector subsidizing private sector, which was in contravention of CDS's Recognition Orders.	CDS disagrees. Payment for services rendered to a government or one of its agencies does not amount to a subsidy, and fundamentally omits the benefits of the use of CDS's services which accrue to governments.
Commenters assert that the proposed fees will entice issuers to raise funds in other jurisdictions.	CDS has consistently demonstrated that the proposed fees are considerably less than those levied by CDS's closest comparators.

Comment	CDS Response
Commenters have suggested that the grandfathering should be contractually enshrined.	CDS's regulatory framework is sufficiently robust to ensure that CDS acts in the best interests of the marketplace and of our stakeholders. The fee schedule itself, once approved, will reflect the restriction as described in the 2016 Notices.
Commenters cite the need to protect the retail investor from increased costs.	CDS has made every reasonable effort to minimize the effects of the proposed fees on CDS stakeholders and the clients to whom they pass on fees, either directly or indirectly.
Commenters assert that CDS has not clarified whether the proposed fees are in respect of clearing and other core services.	For clarity, entitlement and corporate action event management services are <u>not</u> considered core services; they are ancillary services that are open to competition and that can be provided by other intermediaries.
Commenters assert that certain issuers (Exchange Traded Funds) have no choice but to deal with CDS.	<p>While ETFs listed on TMX and other marketplaces must be cleared through CDS, ETF issuers are not required to process their entitlement and corporate action events through CDS if they choose to use a third party. ETF issuers can engage the services of their custodian or transfer agent to process events.</p> <p>CDS will set-up up, at no cost, SWP and SWITCH programs on existing ETF securities for 2017. Transactions, including those for DRIPs, <u>will</u> attract fees, subject to the discounts applicable for 2017 and 2018.</p>
5. Special status of particular issuer stakeholder groups	
Commenters asserted that CDS accepts the municipal issuers' particular status amongst the issuers.	While CDS acknowledges that historical obligations to certain municipal issuers preclude CDS from charging fees in respect of outstanding securities, we do not accept municipalities as having a special status as a result. Such status would be contrary to the letter and spirit of CDS's recognition orders. CDS, has, in response to feedback from the municipalities, grandfathered existing municipal securities, consistent with the obligations noted above, and undertaken to apply agency fees only once per payment.
Commenters asserted that structured notes should be accorded particular treatment under the proposed fees, as the terms cannot be changed.	<p>CDS has reviewed publicly available documentation for several structured note products, each of which contains language substantively similar to the following: <i>"AMENDMENTS TO THE NOTES: The terms of the Notes may be amended by the Bank without the consent of the Noteholders if, in the reasonable opinion of the Bank, the amendment would not materially and adversely affect the interests of the Noteholders."</i></p> <p>Publicly available documentation also generally states that expenses of the offering will be borne by the issuer. Structured note issuers are contractually obligated to pay fees, where applicable.</p>
Commenters asserted that ETF issuers should be accorded particular status and that fees for certain specific transactions (SWPs and Switches) should be subject to regulation.	CDS disagrees. The transactions to which the commenters refer are not corporate actions, are not subject to regulation, and are not addressed in the 2016 Notices.
6. Late fees/disincentive fees and industry standard timelines (change to include eligibility administration)	
Commenters asserted that issuers were not consulted with respect to Eligibility Request fee timelines.	CDS disagrees. In fact, based on consultation with both issuers and their agents subsequent to the 2014 Notice, CDS extended the timeline for the submission of eligibility requests; CDS now accepts requests until 12h00 ET on closing date minus 2. Longstanding time lines and service levels are described on the CDS website and highlighted on the request application - submission of complete requests must be made 2 full days prior to closing of a new issue. These timelines are more flexible than those of CDS's comparators in the United States and elsewhere. The introduction of a fee for late eligibility requests is intended to discourage such late requests and their associated costs and risks.

Comment	CDS Response
Commenters asserted that timelines do not account for market reality or market practice.	CDS disagrees. New issue trades are not impacted by the shortening of settlement cycles. In an industry document published by the CCMA, T+2 Asset List (as of July 14, 2016), identifies that “new issue transactions are not ‘regular way’ settlement today and are not expected to be subject to shortened settlement unless agreed to as ‘special terms’”, and will not be impacted by the move to T+2. Similarly, the US industry steering committee for T2 (UST2) refers to new issues as “when issued” settlements and notes no adjustments are required for T+2 as these trades are made conditionally since a security has been authorized but not yet issued and will continue to have settlement dates that are “days, weeks or months in the future”.
Commenters asserted that delays are the responsibility of CDS.	<p>CDS disagrees. While the majority of requests are received within prescribed timelines, when a Depository Eligibility request is received less than 48 hours before a closing, the result is a priority processing effort at substantial resource opportunity-cost and risk for CDS. The successful processing of these late requests inevitably delays other activities for which CDS is responsible, and the risk and consequences of any processing delays fall on CDS. Additional manual intervention is often required, since some automated processes can no longer be used.</p> <p>Requests for ISINs may be submitted well in advance of the new issue closing date and can be submitted with draft documents. The ISIN number is then available when the decision is made to bring the issue to market.</p> <p>CDS also offers the medium term note program which is characterized by a series of notes with maturities usually ranging from three to 10 years. Issuers or their agent can purchase a block of ISINs which are preassigned to the notes of their program and submit eligibility requests on a specific ISIN when the issuer chooses or when market conditions warrant. This allows issuers to have ISINs available and assist with meeting the eligibility deadlines.</p>
Commenters asserted that the implementation of late fees assure increased revenue for CDS.	<p>CDS has consistently stated that the late fees are being proposed in order to encourage timely delivery of documents to CDS, and are not proposed for the purpose of increasing revenue. The standard turnaround of 24 hours, introduced in 2009, for an ISIN request begins on receipt of the completed application and submission of appropriate documentation and may be longer if submitted after 4PM EST. This timeframe is similar, and in some cases shorter to other numbering agencies, such as CUSIP Global Services in the US, where express turnaround of one hour would also entail a surcharge over the regular fees and regular turnaround is approximately one to two business days.</p> <p>If issuers choose to shorten their settlement times for new issues then it is incumbent on the issuer or its agent to plan accordingly to ensure all information is provided to CDS within the timeframes to minimize their costs or account for additional late charges.</p>
Commenters asserted that it is not appropriate for CDS to implement certificate disincentive fees.	CDS disagrees. Explanatory Note 3.3.6 of the CMPI-IOSCO Principles for Financial Market Infrastructures, to which CDS is required to conform, states, in part, that: <i>“In establishing risk-management policies, procedures, and systems, an FMI should provide incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the FMI. There are several ways in which an FMI may provide incentives. For example, an FMI could apply financial penalties to participants that fail to settle securities in a timely manner or to repay intraday credit by the end of the operating day.”</i>
Commenters asserted that eligibility late fees are excessive.	CDS has consistently demonstrated that global comparators levy similar, if not higher, fees for late processing.

Comment	CDS Response
Commenters requested clarification with respect to CDS' treatment and acceptance of global certificates	CDS does not indicate any intent to stop accepting Global Certificates in the Notices. Fees for <i>definitive physical certificates</i> are already levied, and CDS consistently encourages issuers to discontinue issuance of definitive certificates; other alternatives exist, including BEO global certificates, uncertificated issues, or non-certificated inventory.
Commenters asserted that CDS should not have the right to deny eligibility for the depository.	CDS disagrees. Pursuant to the CMPI-IOSCO PFMLs, specifically Principal 11, a Central securities depository <i>must</i> have established criteria for eligibility and the ability to deny or revoke eligibility. Eligibility for deposit at CDS is based on compliance with established criteria contained in our Rules, Procedures and specific services Agreements, and issues are reviewed for compliance prior to being made eligible for deposit to CDS. Issuers are also expected to agree to certain obligations and if these obligations cannot be met or potentially introduce risk to CDS systems then the securities may not be made eligible for deposit to CDS or may be made ineligible (for breach of contract, for example).
Commenters suggested combining the issuance and eligibility processes for all securities.	CDS acknowledges the recommendation for specific enhancements to the ISIN issuance and eligibility processes, and will assess the value proposition, timing, costs, and resource requirements necessary for such an implementation. Impacts to issuers or issuers' agents processing flows would also need to be reviewed.
Commenters asserted that the proposed Eligibility Fee is excessive.	<p>The eligibility fee covers the analytical, administrative, risks and system costs associated with making securities depository-eligible and is similar to fees charged by CDS's global peers. The process is a critical element in managing marketplace systemic risk.</p> <p>Requests for eligibility of securities are not straight-forward and cannot be differentiated between high-volume issuers and issuers who require more guidance. Structured notes, for example, have features and processing requirements that do not meet CDS standards and require extra review and mapping to ensure compliance without special handling by CDS (e.g., where rates required for entitlement payments are not available until payable date, where the CDS requirement is 2 days prior to payment date).</p> <p>Government securities are Book Entry Only (BEO) issues subject to additional restrictions, debt-limits, and regulation, and require additional documentation and additional resources (personnel &amp; systems) dedicated to the eligibility review chain and event management process.</p>
Commenters felt that the discrepancy between the \$475 eligibility fee and the \$20 money-market activation fee was unwarranted.	<p>As described in detail in CDS's rules and procedures, the issuance of ISINs and eligibility processing of money market securities is significantly different from that for non-money market securities, and the risks and the resources assumed by CDS in respect of the former are far less than for the latter.</p> <p>Money market issuers are required to submit an application to determine if they qualify and if accepted are expected to perform <u>all</u> of the roles and tasks associated with processing a money market security and assume all of the obligations, representations and warranties with respect to such roles. CDS does not execute these processes; all of the processes are performed by CDS Participants.</p> <p>The setup and generation of ISINs, a service which CDS still provides, is automated only to the extent that the requestor and the security meet specific criteria.</p> <p>The proposed fee for Money-Market activations, therefore, reflects CDS's involvement, resources, time, and the risk we assume, all of which are less than in the case of a standard eligibility request.</p>

Comment	CDS Response
<p>Commenters asserted that a single eligibility fee amounts to cross-subsidization of CDS's services</p>	<p>CDS disagrees. Where there is a material difference in the actual processing of eligibility requests (e.g., Standard vs. Money-Market requests), the proposed fee reflects that difference.</p>
<p>Commenters asserted that event fees are excessive relative to administration fees.</p>	<p>CDS has based the proposed prices on the principles first stated in the 2014 Notice and repeated in the 2016 Notices; these fees are reasonable, fair, and equitable, and align remuneration with the service provided. One example provided was the cost of domestic/international wire payments. The commenter notes the \$6-15 and \$25-50 range per wire; this comparison omits the fact that an issuer will be required to issue <i>multiple</i> wires to multiple recipients (both domestic and international, as the case may be) rather than making a single payment to CDS. Where a security is more broadly held (i.e., by more than ten participants), the wire costs to the issuer immediately exceed those which CDS has proposed.</p>