



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Dear Sirs and Mesdames:

RE: National Policy 12-203 Cease Trade Orders for Continuous Disclosure Defaults (NP 12-203) and the National Cease Trade Order (CTO) Database

The Investment Industry Association of Canada (IIAC) is writing on behalf of our members to express some concerns with the accuracy and consistency of the CTO database maintained by the Canadian Securities Administrators (the CSA).

Background

In December 2005, the British Columbia Securities Commission (BCSC) conducted a survey on behalf of the CSA to assess the effectiveness of the CTO database. The results of the survey were released in February 2006 and identified numerous areas of dissatisfaction with the current system as well as desired enhancements.

Subsequently, in response to the request for comments on NP 12-203 issued in March 2008, one commenter outlined some concerns relating to the data integrity of the CTO database administered by the CSA. The response by the CSA, published in August 2008, stated:

We have not made any changes to the policy in response to this comment as the comment is primarily focused on concerns with the CSA CTO database rather than the policy.

However, CSA staff will consult with the commenter and other representatives of the dealer community to consider improvement to the CSA CTO database.

The IIAC is not aware of any industry consultation that may have occurred to consider enhancements to the CTO database.

Further, in November 2009, a member firm sent a detailed e-mail outlining a list of concerns with the CTO database to the Ontario Securities Commission (OSC). To date, the issues identified by the member have not been addressed.

As such, the industry approached the IIAC to once again raise the issue with the CSA and create a dialogue to ensure improvements are made to the CTO database going forward.

Summary of Recommendations

Many members are looking to automate their existing procedures with the respect to CTOs and the accuracy and consistency of the data contained in the CSA's CTO list is critical to automating their processes. To that end, members are requesting that the CSA make the necessary changes towards improving the data integrity of the CTO database. Specifically, members have highlighted issues with:

- (i) formatting of security identifiers and CTO issue dates;

- (ii) the inability to match individuals by name; and
- (iii) updates not being made to the CTO database to reflect corporate changes (e.g. reorganizations, name changes).

Members further believe that the CSA should consider implementing an automated system to update symbols, names, and security identifiers on a daily basis and provide a delta to members. In addition, the CSA should clarify the use of temporary CTOs.

At this time, members would also like to point out policy and procedural matters to the CSA pertaining to CTOs. In particular, members would like to see an exception available in all CSA jurisdictions to sell cease traded securities under certain circumstances similar to the exception provided by the BCSC in BC Instrument 57-501 – *Partial Variation for Cease Trade Orders of Certain Issuers* (BC Instrument 57-501). In addition, members believe that the CSA should look to establish a central office where there would be a dedicated group responsible for managing both technical and policy matters pertaining to CTOs.

Alternatively, members are recommending that the CSA consider delegating the administration of the CTO database to the Investment Industry Regulatory Organization of Canada (IIROC). Given that IIROC is responsible for regulating trading and market-related activities, members believe that IIROC may be better positioned to manage the communication and implementation of the CTOs since it is a national organization and could provide timely notifications to participants by issuing a trading halt when a CTO is issued.

Outlined below are the suggested improvements to the CTO database as well as examples that illustrate some of the current challenges. In addition, members have also outlined specific policy and procedural issues for the CSA to consider related to the administration of CTOs for both firms and investors.

A. Technical Considerations

1. Inconsistencies in General

- (i) The CTO issue date should be set out in a consistent format. For example, the CTO database currently includes the issuer date in the format of both yyyy/mm/dd and mm/dd/yy, which makes it difficult to feed the CTO list into member systems.
- (ii) The company name should be set out in a manner that is consistent with the format of the company name set out in the CTO (preferably using the legal name of the company). *Beltway M&A v. Beltway M.A.*; *Castleton Group v. The Castleton Group*; and *AIRGEN CORPORATION v. Airgen Corporation* are examples of inconsistencies.
- (iii) Names of French companies on the list from the CSA appear to have the phonetic

- spelling thus a company search based on name may be difficult to match .i.e., company name “Systèmes Medicaid LMS Inc.” was changed to “Systèmes Médicaux LMS Inc.” after downloading. Furthermore, there is uncertainty at times regarding the proper identification of a security when the Autorité des marchés financiers (AMF) issues an order and firms are notified with the French name. Firms are expected to correctly translate to English as most firms’ security masters tend to be in English. It would be useful to have orders available in both official languages.
- (iv) E-mails from the CSA use the terms Non-Issuer and Issuer inconsistently when they list the CTOS on the e-mail. There have been occasions where e-mails (issuance of CTO, revocations) regarding the same company have used the reference inter-changeably.
 - (v) For non-issuer CTOs, there needs to be more information included on the individuals as it is currently difficult to identify and match people using the names provided. Details such as date of birth would be helpful.
 - (vi) When a provincial securities commission receives information for a particular issuer that a ban is lifted, it is not reflected at another securities commission. For example, the OSC may have received final information about a certain issuer who was on the CTO list. The issuer is then removed from the CTO list but the BCSC might still have the issuer under a CTO. At many member firms, a conservative approach is used and therefore would still include the issuer on their lists until the issuer is cleared with the relevant provinces.
 - (vii) The CSA should consider whether or not to include temporary CTOs of issuers. The temporary list causes confusion. Many firms place the issuer on the CTO list if there is a temporary order issued. Usually, the timeframe for such orders are 15 days. However, the issuer could come off the temporary list after a few days, making matters more complex than necessary. The CSA needs to be more consistent in sending out notifications when a temporary CTO is revoked or expired.
 - (viii) An example of general inconsistencies occurred with Global 8 Technologies, a CTO issued by the Alberta Securities Commissions (ASC). An e-mail was received on July 13, 2011 notifying the member of the CTO; however, the issued date was August 14, 2009. Upon inquiry, the firm’s CTO team was informed by the AMF that this CTO had been in effect since August 14, 2009 and that “an update to the system caused this e-mail notification to be sent out earlier this week.” There are two issues with this response. First, in most members’ experience, updates to the system do not cause CTO notices from two years prior to be reissued. Second, a member’s CTO team, when doing a reconciliation in December 2010 downloaded the entire CTO list on the CSA website and there was only a CTO by the BCSC for Global 8 Technologies. There was none by the ASC.

2. Security Identifiers and CUSIP Numbers

- (i) Security identifiers should be provided for all companies. For example, there are many instances where security identifiers are available but not provided on the CTO database. Specifically, during one firm's recent reconciliation, they discovered that more than 44% of records on the CTO database did not have any CUSIP number attached.
- (ii) Related securities, such as preferred shares, also need to be identified, which presently is challenging.
- (iii) Security identifiers should be provided in a consistent format. For example, there are many instances where the first 6 characters of the CUSIP are provided (the issuer identifier) and others where all 9 characters of the CUSIP are provided (the security identifier). If the field is identified as a CUSIP Issuer Number we ask that only CUSIP issuer numbers be populated. Currently, there is a mix of values which are not consistent with CUSIP issuer numbers.
- (iv) Often, duplicate CUSIPs were reported for different records.
- (v) Multiple security identifiers should be provided where available to ensure the accuracy of the securities identified (e.g., CUSIPs, ISINs and SEDOLs, etc.).

3. Re-Organizations, Corporate Actions and Other Updates

- (i) A number of records on the CTO database are for companies which have long since been dissolved or delisted.
- (ii) When a company has been de-listed that symbol can be re-used. Firms may end up having an override on a symbol which is not cease traded.
- (iii) With the exception of the BCSC, most provincial securities commissions do not update records when there is a reorganization or name change. The majority of companies listed with name changes reflect the outdated name.
- (iv) Very little guidance is received from provincial securities commissions with regards to reorganizations and whether or not the CTO still applies to the new company.
- (v) When a corporate action, such as a name change occurs, the CTO is amended to reflect the name change, yet members do not always receive an amendment notice when the name changes.
- (vi) When a name change occurs, the symbol also changes. This requires members to check the list of orders versus ISM or Broadridge's security master, which is a manual check.

- (vii) If the symbol of a company is changed, it must be compared to the CTO symbol list to determine if it is a cease traded company.

4. Effective Date and Posted Date

On the CSA website, there is no differentiation between the effective date of the CTO and the date the CTO was posted. We have noted on several occasions that firms are informed of the CTO on a date that was after the effective date, but because it was posted with the effective date on the CSA website, it appears that the effective date and posted date are one and the same. We suggest that there should be two columns: one for the effective date and one for the posted date.

As an example, a member contacted the OSC on June 4, 2010 regarding the CTO notice for Medra, posted on their website on April 4, 2010 to inform them that the CTO had not been added to the CTO database on the CSA website. It was subsequently added to the CSA website showing a date of April 14, 2010. For those firms or clients who do not receive the CSA e-mail, they would not know that the CTO had been post-dated.

B. Policy and Procedural Considerations

1. Communication and Contact with the CSA

- (i) The CSA should provide the name of the person that dealers can contact when errors are noticed on the CTO database to ensure the completeness and accuracy of the CTO database.
- (ii) It appears that the administration of the database shifts to different provinces to manage on a rotating schedule. As a result, numerous inconsistencies emerge. For example, it becomes unclear who the regular CSA staff contact is and often the response to inquiries can differ. A somewhat related issue is that firms have discovered that often, different guidance is given to clients and to firms when they are seeking a resolve a CTO situation. We would suggest that a CSA CTO Committee be established to help resolve these inconsistencies and provide clarity and transparency to the industry.
- (iii) There should be a better means of communicating with firms rather than simply via e-mail. A means of offering electronic alerts in addition to e-mail would be helpful.

2. Intra-Day CTOs

Firms found the intra-day CTO issued in relation to the Sino-Forest situation to be troubling and challenging. Most CTOs are issued after 5:00 p.m., which allows firms to better manage the matter before markets open the next morning. However, in the Sino-Forest case, the OSC issued the CTO before the market opened, but the CSA did not release the CTO until 12:15 p.m.

This becomes difficult for firms to manage and also results in a frustrating client experience. As a result, intra-day CTOs should be avoided if at all possible.

3. British Columbia Securities Commission – Exception

Only the BCSC currently permits the investor to sell the cease traded securities if they fulfill certain criteria as outlined in BC Instrument 57-501.¹

Some CTOs in B.C. state:

Despite this order, a beneficial shareholder of the Reporting Issuer who is not, and was not at the date of this order, an insider or control person of that Reporting Issuer, may sell securities of the Reporting Issuer acquired before the date of this order.

This exception should be uniformly applied across all provincial securities commission since the cost of filing for a partial revocation order by investors pursuant to National Policy 12-202 – *Revocation of a Compliance Related Cease Trade Order* can be expensive depending on where the CTO was issued.

4. Policy Objectives of CTOs

As outlined in NP 12-203, the purpose of CTOs is to alert investors and firms to the deficiencies and defaults by reporting issuers. Although the CSA appreciates that a CTO “imposes a burden” on investors because existing investors are unable to sell the securities, the CSA outlines in section 3.2 of NP 12-203 that it wishes investors to be able to make an “informed investment decision about the securities of the defaulting reporting issuer.”

If an existing investor cannot sell securities of an issuer deemed to be in default but instead is forced to hold it, in some cases until the company is defunct, has investor protection been achieved?

5. Foreign Markets and CTOs

Dealers are generally unable to block certain trading for issuers and individuals subject to CTOs, particularly where the issuer also trades on a foreign market, such as the U.S. OTC Bulletin Board market. However, references in Part 6 of NP 12-203 discuss the effect of a CTO issued by a regulator in one jurisdiction on trading in another jurisdiction and appear to indicate that IIROC members are not permitted to trade those securities on any marketplace in Canada, over-the-counter or on a foreign organized regulated market. Yet members find Part 6 unclear especially as compared to the practical issues of blocking trades on a foreign market.

¹ The criteria include that the sale is made through a market outside of Canada and the sale is made through an investment dealer registered in B.C.

Concluding Remarks

We look forward to participating in any consultation and review of the CSA CTO database. Our members have a great deal of knowledge and expertise in this area and would welcome an opportunity to meet with CSA staff in person to discuss improvements that can be made.

Yours sincerely,

“Michelle Alexander”

Cc. Mr. William S. Rice, Q.C.,
Chair of the CSA and Chief Executive Officer of the Alberta Securities Commission