

TO:	CHAIR AND MEMBERS FINANCE AND ADMINISTRATIVE SERVICES MEETING ON DECEMBER 6, 2011
FROM:	MARTIN HAYWARD CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	BOOK ENTRY ONLY SECURITIES-SERVICE AGREEMENT

RECOMMENDATION

That, on the recommendation of the City Treasurer, Chief Financial Officer the following actions **BE TAKEN** regarding the Book Entry Only Securities – Service Agreement between the Corporation of the City of London and CDS Clearing and Depository Services Inc. (“CDS”):

- a) The attached proposed by-law (Appendix A) **BE INTRODUCED** at Municipal Council on December 6, 2011, to approve requiring a bond of indemnification from CDS as a condition of issuing replacement debentures;
- b) The attached proposed by-law (Appendix B) **BE INTRODUCED** at Municipal Council on December 6, 2011, to authorize the Book Entry Only Securities – Service Agreement and Rider 1 (Municipalities) between the Corporation of the City of London and CDS; and
- c) The Mayor and City Clerk **BE AUTHORIZED** to execute the Book Entry Only – Securities Services Agreement and Rider 1 (Municipalities), attached as Schedule 1, and any associated documents with CDS.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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2011 Debenture Issuance
(June 15, 2011 meeting of the Finance and Administration Committee, Agenda Item #8)

BACKGROUND

In general, municipalities as well as other levels of government, issue debt to raise capital to fund projects, such as sewer replacement, road works and upgrades to recreation facilities. The most common practice is issuing debentures through the capital markets, such debentures are typically issued in global fully registered form. Book entry is a system of tracking ownership of securities where no certificate is given to investors. Book-entry-only (BEO) issues are issues in which investors do not receive certificates and a custodian holds one or more global certificates.

CDS Clearing and Depository Services Inc. (CDS) provide the only clearing service for issuers of Canadian debt securities. This arrangement allows issuers of debt such as the Corporation of the City of London to deal with only one agency, which, through its participants, deals with many investors as they buy and sell the City’s debt securities in the capital markets. This reduces administrative complexity and potential transactional errors.

The City is currently using the services of CDS and has for many years. As of December 31, 2010 the City has approximately \$160 million of outstanding debentures deposited in the CDS system with issue dates ranging from 2001 – 2007 and maturity dates ranging from 2011 - 2024. CDS has introduced changes to its book entry only services system and effective August 1, 2009, CDS requires Ontario municipal issuers who desire to deposit debentures in the CDS

system as book entry only securities to enter into new arrangements with CDS which, amongst other things, requires them to enter into a Book Entry Only Securities – Services Agreement (“BEO SSA”) (attached as Schedule 1). The BEO SSA is in a standard form containing terms applicable to all issuers wishing to use the book entry services of CDS. The BEO SSA incorporates by reference the Issuer Procedures (attached as Schedule 1) which are posted on CDS’ website.

Borden Ladner Gervais LLP (BLG) represented many Ontario municipalities in dealing with CDS in respect of the proposed new form of the BEO SSA. BLG found several of the provisions to be heavily weighted in favour of CDS and in some instances to be onerous and not appropriate for Ontario municipalities. After lengthy discussions with CDS, the following improvements have been negotiated:

- **CDS permits Ontario municipalities to enter into Rider 1** (Municipalities) (attached Schedule 1) to the BEO SSA (the “Rider”) which modifies certain terms of the BEO SSA to make such terms more favourable to those who enter into the Rider;
- The Rider continues the ‘old’ arrangement that contemplates CDS providing a bond of indemnity in the event of the disappearance, loss, theft, etc. of a global debenture held by CDS **provided the issuer’s by-laws require a bond of indemnity as a condition of issuing replacement debentures** and provided the principal amount of any one specific global debenture does not exceed \$50 million CAD at maturity;
- The Rider specifies that the notice provisions are accompanied by an escalation provision (similar to the amendments requested by the provincial issuers) in the event that changes are made to the BEO SSA and Issuer Procedures that an Ontario municipal issuer disagrees (under the BEO SSA, CDS adopts a “take it or leave it” approach);
- The Rider provides for the amendment of the assignment provision to limit assignments by CDS and to require issuer approval if CDS wishes to assign the agreement to a party that is not a recognized clearing agency under applicable Canadian or provincial securities legislation (under the BEO SSA, CDS is not subject to such limitations);
- The Rider specifies that CDS must provide 30 days notice to the issuer in the event that CDS discontinues the eligibility of the debentures on deposit (although less favourable than the ‘old’ regime, absent the Rider, CDS under the BEO SSA can discontinue such eligibility by providing “notice” without any indication of the length of such notice);
- The Rider provides that for Uncertificated Securities, the issuer need only confirm the end-of-day closing balance on the closing date and on any day that such closing balance is increased or decreased (absent the Rider, a daily confirmation is required under the BEO SSA); and
- The Rider provides for the termination of the BEO SSA on 60 days prior notice to be given by CDS to the issuer (absent the Rider, CDS may terminate by notice given in accordance with the Issuer Procedures).

Changed provisions (from the ‘old’ regime) in respect of which CDS was not prepared to negotiate include the following:

- Municipalities will be required to notify CDS of impending maturity dates of issues; and
- Payments will be required by electronic transfer of funds, not by cheque as has been the past practice.

Based on the foregoing, BLG suggests that before passing a by-law to authorize the entering into of the BEO SSA and the Rider the City consider passing a by-law to authorize the issue of replacement debentures conditional on the City receiving a bond of indemnity.

FINANCIAL IMPLICATIONS

There are no financial implications arising from the recommendations in this report.

CONCLUSION

CDS is the only agency that provides a clearing service for issuers of Canadian debt. Agreeing to the provisions of CDS's new service arrangements for their book only entry system will ensure that CDS accepts new issues of debentures and maintains existing securities issued by the City as book entry only securities in the CDS System.

ACKNOWLEDGEMENTS

This report and the attached proposed by-laws were prepared with support from the law firm of Borden Ladner Gervais LLP (BLG) in Toronto, Ontario.

PREPARED BY:	REVIEWED BY:
Annette Ripepi Manager of Financial Forecasting, Modelling, and Systems Control	Ian Collins Manager of Financial Planning & Policy
CONCURRED BY:	RECOMMENDED BY:
Larry Palarchio Director of Financial Planning & Policy	Martin Hayward City Treasurer, Chief Financial Officer

Attach.

cc. M. Turner, Deputy City Treasurer

APPENDIX A

Bill No. 20
2011

By-Law No. A.-6761-13

A by-law to authorize the issue of replacement debenture certificates

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

WHEREAS the *Municipal Act, 2001*, as amended (the "Act") provides that a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures and prescribed financial instruments and enter prescribed financial agreements for or in relation to the debt;

AND WHEREAS The Corporation of the City of London (the "Municipality") has issued and continues to issue debentures to provide financing for its capital works pursuant to the provisions of the Act from time to time in connection with various long term financing transactions;

AND WHEREAS when the Municipality from time to time issues debentures in the capital markets, such debentures are typically issued in global fully registered form (individually a "Global Debenture" and collectively the "Global Debentures") in the name of CDS & CO. as nominee of CDS Clearing and Depository Services Inc. ("CDS") as book entry only securities;

AND WHEREAS CDS has introduced changes to its book entry only services system and, effective August 1, 2009, requires Ontario municipal issuers who desire to issue debentures in the CDS system as book entry only securities to enter into new arrangements with CDS, including CDS' Book Entry Only Securities – Services Agreement and as part of the new arrangements, Ontario municipalities may enter into Rider 1 (Municipalities) to CDS' Book Entry Only Securities – Services Agreement (the "Rider");

AND WHEREAS the Rider, amongst other things, provides in section 3.3 that if the statute or by-laws binding the issuer require a bond of indemnity as a condition of issuing a replacement certificate in the event of a defacement, loss, mysterious or unexplainable disappearance, theft or destruction or other instance, then CDS may at its option, either give an indemnity to the issuer for losses incurred by the issuer by reason of a claim in respect of the defaced, lost mysteriously or unexplainably disappeared, stolen or destroyed global certificate, substantially in the form required by the issuer and acceptable to CDS, or deliver a bond of indemnity, lost document bond or similar instrument each of which is issued by a surety or insurer, in a form acceptable to both the issuer and CDS, and issuer shall have no right to require a fee of any kind, whereupon the issuer shall, if requested by CDS, issue a new global certificate to replace such defaced, lost, mysteriously or unexplainably disappeared, stolen, destroyed or dematerialized global certificate;

APPENDIX A - continued

AND WHEREAS the Rider also provides in section 3.1 that the issuer shall deliver or cause to be delivered to CDS for each specific issue of debentures being deposited at CDS, one original, fully registered global certificate or if the aggregate principal amount of the debentures at maturity exceeds \$50 million CAD and if the statutes or by-laws binding the issuer require a bond of indemnity as a condition of issuing a replacement certificate, then with respect to each \$50 million of principal

amount, the issuer shall deliver or cause to be delivered to CDS an additional original, fully registered global certificate;

AND WHEREAS it is expedient to authorize the issuing of replacement debenture certificates, including Global Debentures, in the event of a defacement, loss, mysterious or unexplainable disappearance, theft or destruction or other instance (such as dematerialization) and establish certain conditions in respect thereof;

NOW THEREFORE the Council of The Corporation of the City of London hereby enacts as follows:

1. In the event of the defacement, loss, mysterious or unexplainable disappearance, theft or destruction or other instance (such as dematerialization) of debenture certificates, including Global Debentures, the Mayor and the City Clerk on behalf of the Municipality are hereby authorized to issue replacement debenture certificates in respect of any such debentures on the provision of a bond of indemnity, lost document bond or similar instrument each of which is issued by a surety or insurer, in a form acceptable to both the Municipality and the entity that has requested the replacement debenture certificate.
2. In the case of a request for a replacement debenture certificate by CDS, the Municipality shall have no right to require a fee of any kind, although the Municipality, may, at its discretion, in other cases require the payment of a fee to cover the cost of issuing a replacement debenture certificate.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council

, 2011

Joe Fontana
Mayor

Catharine Saunders
City Clerk

APPENDIX B

Bill No. 21
2011

By-Law No. A.-6762-14

A by-law to approve the Book Entry Only – Services Agreement and Rider 1 (Municipalities), both with CDS Clearing and Depository Services Inc. (“CDS”) and both in respect of the deposit in the CDS System of debentures as Book Entry Only Securities and to authorize the Mayor and City Clerk to execute the agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

AND WHEREAS the *Municipal Act, 2001*, as amended (the “Act”) provides that a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures and prescribed financial instruments and enter prescribed financial agreements for or in relation to the debt;

AND WHEREAS The Corporation of the City of London (the “Municipality”) has issued and continues to issue debentures to provide financing for its capital works pursuant to the provisions of the Act from time to time in connection with various long term financing transactions;

AND WHEREAS when the Municipality from time to time issues debentures in the capital markets, such debentures are typically issued in global fully registered form (individually a “Global Debenture” and collectively the “Global Debentures”) in the name of CDS & CO. as nominee of CDS Clearing and Depository Services Inc. (“CDS”) as book entry only securities;

AND WHEREAS CDS has introduced changes to its book entry only services system and, effective August 1, 2009, requires Ontario municipal issuers who desire to issue debentures in the CDS system as book entry only securities to enter into new arrangements with CDS, including CDS’ Book Entry Only Securities – Services Agreement and as part of the new arrangements, Ontario municipalities may enter into Rider 1 (Municipalities) to CDS’ Book Entry Only Securities – Services Agreement (the “Rider”);

AND WHEREAS it is expedient to authorize the entering into new arrangements with CDS to ensure that CDS accepts new issues of debentures and maintains existing securities issued by the Municipality as book entry only securities in the CDS system;

NOW THEREFORE the Council of The Corporation of the City of London hereby enacts as follows:

1. The “Book Entry Only – Services Agreement” and Rider 1 (Municipalities), both with CDS and both in respect of the issuance of debentures of the Municipality, with such changes thereto as may be required by CDS and as such authorized officials of the Municipality may, at their discretion, approve.

APPENDIX B - continued

2. The Mayor and the City Clerk are authorized to execute the Book Entry Only – Service Agreement and the Rider Agreement approved under number 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council

, 2011

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First Reading – December 6, 2011
Second Reading – December 6, 2011
Third Reading – December 6, 2011