

13.1.2 Notice of Commission Approval - Application to Vary the Recognition and Designation of The Canadian Depository for Securities Limited

APPLICATION TO VARY THE RECOGNITION AND DESIGNATION
OF THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

NOTICE OF APPROVAL

On July 12, 2005, the Commission issued an order (the "Recognition Order") pursuant to subsection 21.2(1) and section 144 of the *Securities Act* (Ontario) (the "Act") varying and restating the current recognition and designation order of The Canadian Depository for Securities Limited ("CDS") as a clearing agency.

The Commission published the CDS application for a variation on April 8, 2005 at (2005) 28 OSCB 3481. Three commenters responded to the request for comments. CDS' summary of the comments and its responses is attached as Appendix "A" to this notice.

In response to the comments received, the Commission and CDS have agreed to amend the Rule Protocol Regarding the Review and Approval of CDS Rules by the Commission as follows:

Section 3 Classification of Rules

Section 3 relating to classification of rules is amended by inserting a new clause (a)(ii) as follows:

(a) **Technical/Housekeeping Rules**

For the purpose of this protocol, a rule will be classified as "technical/housekeeping" if the rule involves only:

- (ii) consequential amendments intended to implement a material rule that has been published for comment pursuant to this protocol which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule;

Section 6 Immediate Implementation of a Material Rule

The process for immediate implementation of a material rule has been amended by shortening the notice period from 7 to 5 business days. Clause 6(b) and (c) have been amended as follows:

(b) **Prior Notification**

Where CDS determines that immediate implementation is necessary, CDS will advise Commission staff in writing as soon as possible but in any event at least ~~7~~⁵ business days prior to the implementation of the rule. Such written notice will include an analysis to support the need for immediate implementation.

(c) **Disagreement on Need for Immediate Implementation**

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement will be as follows:

- (i) Commission staff will notify CDS, in writing, of the disagreement, or request more time to consider the immediate implementation, within ~~35~~ business days of being advised by CDS under subsection (b).
- (ii) Commission staff and CDS will discuss and resolve any concerns raised by Commission staff.
- (iii) If no notice is received by CDS by the ~~3rd~~^{5th} business day after Commission staff received CDS' notification, CDS may assume that Commission staff does not disagree with their assessment.

The prior notification period has been shortened from 7 to 5 business days in order to expedite the notification and disagreement process. Commission staff have three business days to respond to the notice and indicate any disagreement with the need for immediate implementation. However, in situations requiring implementation in less than 5 business days, staff may waive the requirement for a 5 business day notice period to ensure that implementation will proceed as the circumstances require.

No other revisions have been made to the CDS Recognition Order.

APPENDIX "A"

CDS' Summary of Comments Received

The public comment period in respect of the CDS application to vary the current recognition and designation order expired on May 9, 2005. Three comment letters were received during the public comment period:

1. Computershare Trust Company of Canada ("Computershare") (April 21, 2005);
2. Pacific Corporate Trust Company ("Pacific") (April 22, 2005);
3. Canadian Bankers Association ("CBA") (May 5, 2005).

The following is a summary of the material comments received during the comment period and CDS' response to those comments.

1. Recognition and Designation Order

Comment

Computershare and Pacific noted that the recognition order makes some reference to financial matters and specific reference to "Protection of Customer Securities", but no reference at all to the rights, entitlements and obligations of CDS as a registered holder. Computershare and Pacific are concerned about the integrity of voting, specifically, the so-called "over-voting" issue.

CDS' Response

We acknowledge that the "over-voting" issue is of importance to issuers, transfer agents and, indeed, the whole securities industry. However, CDS does not have the power nor authority to resolve this. CDS has participated actively in the initiatives of the Canadian Securities Administrators relating to communications with beneficial shareholders, in particular, the committee involved with National Instrument 54-101, and will continue to do so. Accordingly, CDS is of the view that the recognition order is not the appropriate regulatory forum to deal with this.

2. Rule Protocol Regarding the Review and Approval of CDS Rules by the OSC (the "Rule Protocol")

Comment

The CBA noted that the Rule Protocol states that CDS must provide no less than 7 days business notice to the OSC in urgent situations. The CBA is concerned that in some circumstances the delay caused by a seven business days notice period could be too long.

CDS' Response

CDS and Commission staff have agreed to amend subsections 6 (b) and (c) of the Rule Protocol by shortening the notification period from 7 to 5 business days for rule amendments in urgent situations.

Comment

The definition of rule includes "a proposed new or amendment to or deletion of a participant rule, operating procedure, user guide, manual or similar instrument or document of CDS which contains any contractual term setting out the respective rights and obligations between CDS and participants or among participants." The CBA noted that in some cases rules that are material will be accompanied by related changes to operating procedures or other documentation that reflect the same changes and, accordingly, raise the same material issues, and it would significantly assist CDS and its participants if the related procedures and documentation accompanying a package of material rule amendments could be treated as "technical/housekeeping" rules.

CDS' Response

CDS and Commission staff have agreed to amend the definition of "technical/housekeeping" to include consequential amendments intended to implement a material rule that has been published for public comment pursuant to the Rule Protocol and which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule.

Comment

The CBA is concerned that the cost of compliance with documentation requirements for material CDS Rules under the Rule Protocol could be high, in some cases, in relation to the benefits to be gained. Specifically, sections 4 (b)(iii) (D) requires CDS to provide a description of the issues considered, consultation done, alternative approaches considered, and reasons for rejecting alternatives. Section 4(b)(iii)(F) requires CDS to refer to rules of other clearing agencies where other agencies have a counterpart to the rule etc. The CBA is of the view that section 4(b)(iii)(F), in particular, imposes onerous documentation requirements on CDS that would likely not be productive.

CDS' Response

In order to improve transparency in the rule making process, CDS has been advised that sufficient information and background must be published in order for the Commission and any member of the public to understand the proposal and impact of a proposed rule. The information requirements in section 4 of the Rule Protocol are intended to set out what information is relevant. CDS understands that similar disclosure requirements apply to clearing corporations and depositories in other jurisdictions, notably in the United States. Further, these requirements have been applied to other entities regulated by the Commission in Ontario. No change is proposed to the Rule Protocol.

Comment

The CBA suggested that the Rule Protocol should be reviewed within six months or one year following its adoption, to assess its effectiveness, including its impact on systems implementations.

CDS' Response

The Board of Directors of CDS shares the concerns of the CBA and has requested management to report back to the Board on the costs and experience in relation to compliance with the rule making process within a year after the issuance of the Recognition Order. CDS and Commission staff will consider reviewing the effectiveness of the Rule Protocol on a periodic basis.