

13.3 Clearing Agencies

13.3.1 CDS Clearing and Depository Services Inc. – Amendments to CDS Participant Rules – Clean-up Review – Request for Comments

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS)

AMENDMENTS TO CDS PARTICIPANT RULES (the “RULES”)

CLEAN-UP REVIEW

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

Material Rules

The following proposed amendments (“**Rule 5 Amendments**”) to CDS Participant Rules (the “**Rules**”) fall within the meaning of material rules (“**Material Rules**”), as defined under Appendix A of the Recognition Order issued by the Ontario Securities Commission on July 4, 2012, as amended (the “**Recognition Order**”):

In Rules 5.10.11, 5.10.15, and 5.12.4(a), the involvement of the Canadian Bankers Association (“**CBA**”) in the adjustments of the System-Operating Cap of an Extender has been replaced by the Extenders’ Council. These proposed amendments are to reflect the passive nature of the current role played by the CBA in relation to the participation and activities of Extenders, who are members of the CBA, in CDSX.

Appendix A contains the text of the proposed Rule 5 marked to reflect the Rule 5 Amendments as well as clean text of the proposed Rule 5 reflecting the adoption of the Rule 5 Amendments. For the avoidance of doubt, the technical changes as outlined below are incorporated in the text of the proposed Rule 5 in Appendix A but are not, except for the rule numbering, marked in Appendix A.

Technical Rules

CDS is of the view that, except for the Material Rules outlined above, the other proposed amendments to the Rules are:

- (a) matters of a technical nature in routine operating procedures and administrative practices relating to the CDS services;
- (b) consequential amendments intended to implement a material rule that has been published for comment which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule;
- (c) the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing; and
- (d) stylistic formatting, including changes to headings or paragraph numbers.

These proposed amendments fall within the meaning of a technical rule (“**Technical Rule**”), as defined in the Recognition Order.

Materials Available for Review

1. The clean versions of Rules 1 to 13, which have incorporated all the proposed amendments (the “**Revised Rules**”);
2. The blacklined versions of the Revised Rules, which track all the proposed amendments made from the current Rules; and
3. An Amendment Map for each of Rules 1 to 13, which provides:
 - (i) a mapping of the current Rule numbering to the Revised Rule numbering that indicates where the content of the current Rule is located under the Revised Rule; and
 - (ii) additional commentaries in respect of some of the proposed amendments;

are made available by CDS for review at the following link to CDS’s website:

<https://www.cds.ca/newsroom/publications/proposed-changes-to-cds-participant-rules>

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

The Rules, in their current form, were enacted when CDSX was implemented (2003-2004), and have been expanded and amended significantly since their original implementation. The ongoing Post-Trade Modernization (“PTM”) project will result in certain amendments to the Rules (“PTM Changes”). In advance of the foregoing, however, CDS proposes to remove outdated provisions, to correct typos, and to improve the clarity and readability of the Rules (the “Clean-Up”). The objective of the Clean-up is to improve the quality of the Rules from a technical perspective without materially or adversely affecting the rights of CDS and of Participants generally.

CDS is circulating the proposed amendments from the Clean-up under this Notice (the “Clean-up Changes”), prior to and separate from the PTM Changes. CDS believes that such an approach will meaningfully facilitate the preparation, review and approval of both the current proposed amendments and, subsequently, of the PTM Changes by all stakeholders.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS ON CDS AND CDS PARTICIPANTS

Under the Rule 5 Amendments, the Extenders’ Council will replace the CBA in coordinating the request of an Extender to temporarily increase its own System-Operating Cap, and the request of an Extender to decrease the System-Operating Cap of another Extender. It is noted that members of the Extenders’ Council are members of the CBA. Hence, despite the replacement of the CBA by the Extenders’ Council, the constituents of the party coordinating such a request remain the same.

Other than as outlined above, CDS is of the view that the Rule 5 Amendments will have no material impact on CDS, Participants, other market participants and the securities and financial markets in general.

C.1 Competition & Conflict of Interest Analysis

The Rule 5 Amendments will apply to all Participants in that category of Participant. As concerns for fair access and conflict of interest issues, no Participants will be disadvantaged or otherwise prejudiced by the introduction of the proposed amendments.

C.2 Risks and Compliance Costs

The Rule 5 Amendments are not expected to result in any direct compliance costs for CDS, Participants, or other market participants.

C.3 Comparison to International Standards – (a) The Committee on Payments and Market Infrastructures of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

Observance of PFMI standards is a requirement under CDS’s Recognition Order as well as under National Instrument 24-102 (Clearing Agency Requirements) and related Companion Policy 24-102CP. The Rule 5 Amendments have been evaluated against, and do not affect CDS’s observance of and compliance with, these standards.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

The Clean-up Changes were prepared by CDS Legal.

D.2 Rule Drafting Process

During the drafting process, CDS consulted different functions within CDS, including Risk Management, Operations and Finance.

The Clean-up Changes were presented to CDS’s Legal Drafting Group (the “LDG”) in four (4) tranches from early February to early April, 2020.¹ Four (4) meetings were convened to review the proposed amendments to the Rules, discuss feedback received from LDG members and address any questions or other comments that LDG members may have had.

¹ The LDG is an ad hoc advisory committee composed of legal and business representatives of Participants.

D.3 Issues Considered

In drafting the Clean-up Changes, CDS's primary purpose is to conduct a housekeeping review of the existing Rules to ensure that they remain reflective of the CDS's practices and processes.

D.4 Consultation

The Clean-up Changes were presented to the LDG over the course of four (4) meetings in Q1 2020. Please refer to Section D.2 above. CDS presented the proposed amendments to the CDS Board of Directors (the "**Board**") in the second half of April 2020, and obtained its approval at the Board meeting on May 7, 2020.

D.5 Alternatives Considered

In light of the nature of the Clean-up Changes, no alternatives were considered.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the *Securities Act* (Ontario), by the British Columbia Securities Commission pursuant to Section 24(d) of the *Securities Act* (British Columbia) and by the Autorité des marchés financiers ("AMF") pursuant to section 169 of the *Securities Act* (Québec). In addition, CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act*. The Ontario Securities Commission, the British Columbia Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "**Recognizing Regulators**".

The Clean-up Changes will come into effect on a date to be determined by CDS, such date (expected to be in Q4 2020) will be after the required public notice and comment period, approval of the proposed amendments by the Recognizing Regulators, and publication of notice of approval to Participants.

E. TECHNOLOGICAL SYSTEM CHANGES

The Rule 5 Amendments are not expected to have an impact on technological systems, or require changes to such systems for CDS, Participants, or other market participants.

F. COMPARISON TO OTHER CLEARING AGENCIES

The Rule 5 Amendments and its purpose do not deviate from the standards and practices of [other] international clearing agencies that are comparable to CDS, such as the Depository Trust & Clearing Corporation ("**DTCC**") and its subsidiary National Securities Clearing Corporation ("**NSCC**") in the United States.

G. PUBLIC INTEREST ASSESSMENT

CDS believes that the Rule 5 Amendments are not contrary to the public interest.

H. COMMENTS

Comments on the Clean-up Changes must be made in writing and submitted by July 31, 2020 to:

CDS Clearing and Depository Services Inc.
Attn: Legal Department, Tony Hoffmann, Senior Legal Counsel
100 Adelaide Street West – Suite 300
Toronto, Ontario, M5H 1S3
Email: tony.hoffmann@tmx.com

with a copy to Paula Jon, Legal Counsel
Email: paula.jon@tmx.com

SROs, Marketplaces, Clearing Agencies and Trade Repositories

Copies should also be provided to the Autorité des marchés financiers, British Columbia Securities Commission and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

Philippe Lebel
Corporate Secretary and
Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640 Laurier boulevard, suite 400
Québec (Québec) G1V 5C1
Fax : (514) 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

Aaron Ferguson, Market Regulation
Market Regulation Branch
Ontario Securities Commission
Suite 2200
20 Queen Street West
Toronto, Ontario, M5H 3S8
Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

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Manager, Market and SRO Oversight
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C. V7Y 1L2
Fax: 604-899-6506
Email: dmackay@bcsc.bc.ca

Zach Masum
Manager, Legal Services
British Columbia Securities Commission
701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, B.C., V7Y 1L2
Fax: 604-899-6506
Email: zmasum@bcsc.bc.ca

CDS will make available to the public, upon request, all comments received during the comment period.

APPENDIX A

The Rule 5 Amendments

~~5.10.5.4.~~ SYSTEM-OPERATING CAP~~5.10.11.5.4.5.~~ Voluntary Adjustment of System-Operating Cap(i) Extenders

At any time during a Business Day, an Extender may request a temporary increase in its System-Operating Cap to an amount not greater than 125% of its existing System-Operating Cap. The request shall be made in writing by an authorized officer of the Extender, delivered to all the other Extenders and to the ~~duly appointed officer of the CBA~~ Extenders' Council, setting out the reason for the request and the amount of increase requested, and such other information as required by CDS in the prescribed form in effect at the time. Within a reasonable time after receiving the request in proper form, each Extender shall inform the ~~CBA~~ Extenders' Council in writing whether it approves or disapproves of the requested increase. If all the Extenders approve the increase, the ~~CBA~~ Extenders' Council shall immediately inform CDS and Bank of Canada of the amount of the temporary increase to be permitted to the requesting Extender and the required increase of Collateral Pool Contribution, which shall be not less than 15% of the increase in its System-Operating Cap. CDS shall increase the Extender's System-Operating Cap in accordance with the communication from the ~~CBA~~ Extenders' Council, provided that the corresponding increase in its Collateral Pool Contribution required pursuant to Rule 5.10.4 has been made. CDS shall return the System-Operating Cap of the Extender to its normal level before the start of business on the next Business Day. Any excess Collateral Pool Contribution shall be returned in accordance with Rule 5.10.8.

~~5.10.15.5.4.6.~~ Mandatory Adjustment of System-Operating Cap(i) Extenders

At any time during a Business Day, an Extender may request the ~~CBA~~ Extenders' Council to consult with the Members of its Category Credit Ring regarding a decrease in the System-Operating Cap of another Extender. The ~~CBA~~ Extenders' Council shall immediately inform all Extenders other than the affected Extender of the proposed decrease. Each Extender so informed shall, within reasonable time, inform the ~~CBA~~ Extenders' Council in writing whether it approves of the proposal. If all Extenders other than the affected Extender approve the decrease, the ~~CBA~~ Extenders' Council shall immediately inform CDS of the amount and duration of the temporary decrease. CDS shall decrease the System-Operating Cap of the

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affected Extender immediately upon receipt of the communication from the ~~CBA~~Extenders' Council, and shall inform the affected Extender of the decrease in its System Operating Cap pursuant to the communication of the ~~CBA~~Extenders' Council.

~~5.12.~~5.10. COLLATERAL POOL

~~5.12.4~~5.10.4. Increased Collateral Pool Contribution by Extender

~~(a)~~(i) System-Operating Cap Increase

If, at the request of an Extender, its System-Operating Cap is temporarily increased, then for the Business Day on which its System-Operating Cap is increased:

- (a) the amount of its Collateral Pool Contribution shall be increased by the amount specified in the communication from the ~~CBA~~Extenders' Council; and
- (b) in the event that the Extender is suspended prior to Payment Exchange, CDS and the Survivors of the Extender's Category Credit Ring shall be entitled to realize only a proportionate amount of the increase in the Collateral Pool Contribution, in the same proportion that the used amount of the Extender's increase in its System-Operating Cap is of the total increase in its System-Operating Cap.

communication from the Extenders' Council, and shall inform the affected Extender of the decrease in its System Operating Cap pursuant to the communication of the Extenders' Council.

5.10. COLLATERAL POOL

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- (a) the amount of its Collateral Pool Contribution shall be increased by the amount specified in the communication from the Extenders' Council; and
- (b) in the event that the Extender is suspended prior to Payment Exchange, CDS and the Survivors of the Extender's Category Credit Ring shall be entitled to realize only a proportionate amount of the increase in the Collateral Pool Contribution, in the same proportion that the used amount of the Extender's increase in its System-Operating Cap is of the total increase in its System-Operating Cap.