

13.3.3 CDS Notice and Request for Comments – Material Amendments to CDS Rules – Participant Application to Use Functionality for Roles re Securities

CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS[®]”)

MATERIAL AMENDMENTS TO CDS RULES

PARTICIPANT APPLICATION TO USE FUNCTIONALITY FOR ROLES RE SECURITIES

NOTICE AND REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

Rule 2.5.1(d) requires a participant to submit an application to CDS in order to act as ISIN activator, security validator or custodian of CDSX[®] eligible securities. The application process requires the participant to demonstrate that it meets the qualifications for those roles. Two issues were discovered in the course of drafting the application form, which are corrected by the Rule amendments set out in this Notice.

The first issue is that the Rule requires all custodians to file an application. The Rules distinguish between Foreign Custodians, who may hold securities in safekeeping only outside Canada, and Domestic Custodians, who must be participants and who may hold securities in safekeeping both inside and outside Canada. A Foreign Custodian, who need not be a participant, is appointed by CDS under the terms of an agreement negotiated with that Foreign Custodian. A Foreign Custodian would not use a participant application. Therefore the requirement for a custodian to submit an application to CDS should be limited to Domestic Custodians, who are participants.

The second issue concerns the approval process for applications. The current Rule requires Board approval of applications. On consideration, it was determined that this approval was unnecessary and contrary to current practice. The Board of Directors approves each application to become a participant. Once an applicant has been accepted as a participant, CDS management determines the participant’s access to functionality in CDSX, depending on the participant’s classification and qualifications. The use of functionality by a fully qualified participant is not a matter of discretion requiring consideration by the Board of Directors. The appointment of custodians, for example, has always been a matter for CDS management. In addition, as meetings of the Board of Directors are held relatively infrequently, the need for Board approval could delay a qualified participant who wishes to begin offering services to its customers using this functionality, and could be seen as an impediment to competition in the financial market. Accordingly, it is proposed that a minor revision be made to remove the requirement for Board approval of such applications.

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

The amendments proposed pursuant to this Notice are considered material amendments as they change the process for applying to use certain functionality in CDSX.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

There should be no impact on other market participants or the securities and financial markets in general.

C.1 Competition

There is expected to be no impact on competition, except that a potential impediment to competition is removed.

C.2 Risks and Compliance Costs

There are expected to be no risk or compliance costs.

C.3 Comparison to International Standards

International standards are not relevant to internal processing of applications to use CDSX functionality.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

The drafting of the application form, and of the internal procedures to be followed in processing the application, lead to the realization that the approval process in Rule 2.5.1(d) was not in accordance with usual CDS practice for such matters.

D.2 Rule Drafting Process

Each amendment to the CDS Participant Rules is reviewed by CDS's Legal Drafting Group ("LDG"). The LDG is a committee that includes members of Participants' legal and business groups. The LDG's mandate is to advise CDS management and its Board of Directors on Rule amendments and other legal matters relating to centralized securities depository and clearing services in order to ensure that they meet the needs of CDS, its Participants and the securities industry. The LDG reviewed the proposed amendments on March 18, 2010.

These amendments were reviewed and approved by the Board of Directors¹ of The Canadian Depository for Securities Limited on April 21, 2010.

D.3 Issues Considered

CDS considered how best to integrate the new application to use this functionality with existing CDS practices.

D.4 Consultation

CDS consulted with participant representatives on the LDG, who agreed that the use of functionality by a fully qualified participant is not a matter of discretion requiring consideration by the Board of Directors.

D.5 Alternatives Considered

CDS considered the alternative of Board approval of applications and determined that the proposed amendments better reflect the CDS process for making functionality available to existing participants.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. 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 Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Rules may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. The target date for implementation is July 26, 2010.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

There are no development impacts on the CDSX system.

E.2 CDS Participants

There are no external development impacts to CDS Participants.

E.3 Other Market Participants

There are no external development impacts to other market participants within the Canadian environment.

F. COMPARISON TO OTHER CLEARING AGENCIES

The practices of other clearing agencies are not relevant to internal processing of applications to use CDSX functionality.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

¹ Pursuant to a unanimous shareholder agreement between The Canadian Depository for Securities Limited ("CDS Ltd.") and CDS, effective as of November 01, 2006, CDS Ltd., which acts under the supervision of its Board of Directors, assumed all rights, powers, and duties of the CDS Board of Directors.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Legal Department
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

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

M^e Anne-Marie Beaudoin
Secrétaire del'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Manager, Market Regulation
Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Télécopieur: (514) 864-6381
Courrier électronique: consultation-en-cours@lautorite.qc.ca

Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

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

I. PROPOSED CDS RULE AMENDMENTS

Appendix "A" contains text of current CDS Participant Rules marked to reflect proposed amendments as well as the text of these Rules reflecting the adoption of the proposed amendments.

APPENDIX "A"
PROPOSED RULE AMENDMENTS

Text of amended CDS Participant Rules marked to reflect proposed revision	Text of amended CDS Participant Rules reflecting the adoption of proposed revisions
<p>2.5 PARTICIPANT ROLES WITH RESPECT TO SECURITIES</p> <p>2.5.1 General Provisions</p> <p>(d) Application A Participant who wishes to act as ISIN Activator, Security Validator or <u>Domestic</u> Custodian shall submit an application to CDS pursuant to Rule 2.2.2. A Participant is authorized to use the functionality for such roles when <u>CDS</u> the Board of Directors has accepted its application.</p>	<p>2.5 PARTICIPANT ROLES WITH RESPECT TO SECURITIES</p> <p>2.5.1 General Provisions</p> <p>(d) Application A Participant who wishes to act as ISIN Activator, Security Validator or Domestic Custodian shall submit an application to CDS pursuant to Rule 2.2.2. A Participant is authorized to use the functionality for such roles when CDS has accepted its application.</p>