

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.3 Clearing Agencies

13.3.1 Material Amendments to CDS Procedures – Automated Confirmation Transaction (ACT) Service – Request for Comments

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

AUTOMATED CONFIRMATION TRANSACTION (ACT) SERVICE

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed procedure amendments reflect changes to the Automated Confirmation Transaction (ACT) service which will introduce two new reports and eliminate the existing suite of ACT reports produced by CDS. The proposed amendments to the reports are a consequence of CDS's decision to change its role from a sponsor, service bureau and executing broker to the role of a sponsor only for the ACT service.

The ACT service is a unique arrangement that allows CDS New York Link (NYL) participants and ACT Limited participants, through CDS's sponsorship, to access NASDAQ's ACT system without having to be direct members of NASDAQ or be directly regulated by the Financial Industry Regulatory Authority (FINRA). CDS currently acts as a gateway for such participants via the CDS ACT workstations. As a NASDAQ ACT system subscriber, CDS acts as a service bureau and executing broker on behalf of its participants. The ACT service provides CDS participants with a direct, computer-to-computer interface (CTCI) link to the NASDAQ ACT system. CDS participants access the ACT service via an application developed by CDS which interfaces directly with the NASDAQ ACT system.

The ACT service enables CDS participants to report and confirm trades with U.S. dealers that use NASDAQ's ACT system. This arrangement has been possible because of CDS's oversight commitment regarding its participants' compliance with the requirements and regulations of NASDAQ and FINRA. As well, CDS's guarantee of its participants' settlement obligations as part of the New York Link service, through which participants settle their NASDAQ obligations, has provided assurance to FINRA that there is sufficient protection to the other counterparties involved in NASDAQ trades with CDS sponsored participants.

CDS has assessed the ACT connectivity application it provides to its participants in order to determine the viability of continuing to keep the application current, and has determined that providing the opportunity for its participants to have direct access to NASDAQ's WebLink ACT 2.0 application would be more beneficial to CDS and its participants. This determination was based on several factors including the cost of continuous upgrades needed to the application whenever there are changes made by NASDAQ, and the added costs for maintaining vendor-supported hardware and software. Also, the ACT service has experienced a material decline in volumes as some CDS participants have shifted their activity to other service providers. The NASDAQ WebLink ACT 2.0 application is a browser-based application (maintained and operated by NASDAQ) that electronically facilitates the post-execution steps of price and volume reporting, comparison and clearing of trades using the NASDAQ/FINRA trade reporting facility (TRF).

As part of its assessment of the ACT connectivity application, CDS conducted discussions with NASDAQ and FINRA on the alternative proposal of providing CDS participants with direct access to ACT via NASDAQ's WebLink ACT 2.0 application, with CDS still acting as their sponsor. As a result of these discussions, NASDAQ and FINRA both agreed that providing CDS participants with direct access to NASDAQ's WebLink ACT 2.0 application would not affect the existing sponsorship arrangement that is in place between CDS and NASDAQ. NASDAQ and FINRA also requested that CDS assume a more active role relative to the monitoring of its sponsored participants' trading activities and their compliance with NASDAQ's/FINRA's requirements.

Based on the above, CDS has decided to discontinue its ACT connectivity application by the end of April 2010. As a consequence, participants using CDS's ACT workstations will be migrated to NASDAQ's WebLink ACT 2.0 application. Direct access to NASDAQ's WebLink ACT 2.0 application will be provided to CDS sponsored participants by NASDAQ. The

migration of CDS's participants to NASDAQ's WebLink ACT 2.0 application is expected to take place between April 16, 2010 and April 23, 2010.

FINRA Rule Amendment – Effective – March 1, 2010

As a separate but related matter, in September 2009, FINRA released Regulatory Notice 09-54 which states that "Effective Monday, March 1, 2010, firms submitting a non-tape report (either a non-tape, non-clearing report or clearing-only report) to the Alternative Display Facility (ADF), a Trade Reporting Facility (TRF) or the OTC Reporting Facility (ORF) (referred to herein as the "FINRA Facilities") associated with a previously executed trade that was not reported to that same FINRA Facility must identify the facility or market where the associated trade was reported for dissemination purposes (the "Related Market Center")."

This FINRA rule amendment will affect CDS's ACT participants that submit locked-in trades as order entry on behalf of U.S. firms via CDS's ACT service. CDS's ACT application does not provide participants with the ability to identify the facility or market where the associated trade was reported and would require system development in order to allow users to comply with the rule amendment. However, because of the plan to transfer participants to NASDAQ's WebLink ACT 2.0 application, which will satisfy the rule amendment, CDS will not be changing its ACT application.

Consequently, participants that use CDS's ACT service to submit locked-in trades as order entry on behalf of U.S. firms will need to either migrate to NASDAQ's WebLink ACT 2.0 application prior to March 1, 2010 or make alternate arrangements, such as having their U.S. counterparties submit these types of trades on their behalf. CDS has engaged the participants that have historically submitted locked-in trades as order entry on behalf of U.S. firms and they have all agreed to either migrate to NASDAQ's WebLink ACT 2.0 application prior to March 1, 2010 or make alternate arrangements in order to comply with FINRA's rule amendment.

Interim procedures will be provided for CDS participants that migrate to NASDAQ's WebLink ACT 2.0 application in February 2010 via CDS's Web site cds.ca.

FINRA Rule Amendment – Effective Date Extension

On February 8, 2010, FINRA released a notice stating that the effective date of the rule amendment contained within Regulatory Notice 09-54 had been extended to May 3, 2010. CDS advised the participants that were scheduled to migrate to NASDAQ's WebLink ACT 2.0 application prior to March 1, 2010 of the extension to the effective date of the FINRA rule amendment and these participants agreed that they would still migrate to NASDAQ's WebLink ACT 2.0 application prior to March 1, 2010.

The migration of these participants to NASDAQ's WebLink ACT 2.0 application prior to March 1, 2010 will act as a pilot for the remaining ACT participants that will be migrating to NASDAQ's WebLink ACT 2.0 application in April.

B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed procedure amendments are designed to reflect CDS's new role as a sponsor only for its participants that use the ACT service, rather than its current role of a sponsor, service bureau and executing broker. As a result of the change in CDS's role to a sponsor only, the existing ACT Participation Acknowledgement Agreement, which describes the ACT service, CDS roles and the responsibilities of the participants that use the service, between CDS and its sponsored participants, will require some amendments to reflect this change. A copy of the revised ACT Participation Acknowledgment Agreement (ACT PAA) is attached to this Notice and Request for Comment. A blacklined copy of the ACT PAA in the English language is also attached to this Notice and Request for Comment. The existing ACT PAA was not available in the French language and as such a blacklined copy in the French language is not available.

C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS

Two reports will be added and CDS's current suite of ACT reports will be discontinued. Information contained within the reports that are to be discontinued will be available to CDS participants directly from NASDAQ. The two new reports that will be produced are the ACT Compliance report and the ACT Billing report.

NASDAQ/FINRA - ACT Compliance Report:

- CDS will receive a file from NASDAQ on a daily basis that contains information related to the previous day's activities of its sponsored participants. Based on a set of predefined criteria provided by NASDAQ that related to various FINRA rules (e.g. 90 second trade reporting rule and 20 minute trade confirmation rules) CDS will create a report that will be available via CDS's Report Management Service (RMS) of non-compliant activity and will follow up with the non-compliant participant to ensure that suitable corrective action is taken.

- If a participant is non-compliant, CDS may apply a non-compliance fee and/or suspend the participant from the ACT service. In order to determine the protocol to be followed in the event that a participant is not compliant with FINRA's rules, CDS will perform an analysis over a six month period beginning in May of 2010. The results of this analysis would allow CDS to establish the protocol for applying a non-compliance fee or the suspension of a participant from the ACT service.

ACT Billing Report:

- The ACT billing report will provide participants with a breakdown of billable items related to their activities by market participant identifier (MPID) on a monthly basis

Existing ACT Reports:

The following existing CDS ACT reports will be discontinued:

- 342 – ACT unreconciled
- 343 – ACT reconciled locked-in purchases
- 344 – ACT reconciled locked-in sales
- 345 – ACT trade day cancels
- 346 – ACT end of day audit
- 347 – ACT T+1 activities
- 348 – ACT reconciled alleged
- 349 – ACT reconciled open
- 1827 – QSR ACT unreconciled
- 1828 – QSR reconciled locked-in purchase
- 1829 – QSR reconciled locked-in sales

Reporting and other forms of ACT-related output such as files/messages will be available to participants directly from NASDAQ.

The 'ACT QSR Exception report' (RMS ID# 1890) will be renamed to the 'Locked-in Trade Exception report' as this will more accurately reflect the contents of the report but otherwise, no changes will be made to the report or the file comparison process behind the creation of the report that CDS provides to its sponsored participants.

Because of CDS's change in role to a sponsor only, CDS's ACT application will no longer be available to CDS participants. As a result, CDS participants will be required to complete a NASDAQ Front End Request Form which they will submit to NASDAQ in order to have direct access to its WebLink ACT 2.0 application. The impact to CDS participants is that they will need to ensure that their internet browser is compatible with NASDAQ's WebLink ACT 2.0 application and familiarize themselves with the use of a new application. To ensure a smooth transition, CDS will continue to make its ACT application available to its participants for one or two days in parallel with NASDAQ's WebLink ACT 2.0 application and NASDAQ will provide CDS participants with training on the use of their WebLink ACT 2.0 application.

CDS participants will also need to execute an amended ACT PAA with CDS, as referenced in Section B above.

C.1 Competition

There is no expected impact to competition as the existing alternatives provided by other service providers to CDS's ACT service will continue to be available to CDS participants.

Some CDS participants are currently routing most of their NASDAQ trades through another vendor or using a proprietary application, while others have moved some or most of their trades to a Qualified Special Representative (QSR), which eliminated the need to use the ACT service for reporting and matching of trades. Trades reported under a QSR relationship flow on a locked-in basis directly from the QSR to NSCC for settlement.

C.2 Risks and Compliance Costs

CDS participants are and will continue to be required to comply with NASDAQ's/FINRA's requirements relative to their use of NASDAQ's ACT service, and CDS as sponsor will be responsible for monitoring the compliance of its participants.

Also, participants will be required to execute amended ACT PAAs with CDS.

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

The sponsorship arrangement between CDS and NASDAQ is unique and no existing comparisons to international standards were identified.

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

CDS's participant procedures related to the ACT service were reviewed by CDS staff to ensure their accuracy and completeness. The proposed amendments related to the ACT service were identified, then incorporated within the existing CDS's participant procedures and reviewed by CDS staff. The proposed amendments to CDS's participant procedures were then approved by CDS management.

CDS internal procedures related to the ACT service were also reviewed by CDS staff and will also be amended where necessary to reflect the changes that have been proposed to CDS's participant procedures that are detailed within this notice.

D.2 Procedure Drafting Process

CDS procedure amendments are reviewed and approved by CDS's Strategic Development Review Committee "SDRC). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from CDS's participant community. The SDRC meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on February 11, 2010.

D.3 Issues Considered

In addition to the reasons cited earlier for the proposed changes to the ACT service, the connectivity limitations of CDS's current server structure have restricted CDS's ability to support additional participant subscription to the service. The removal of these connectivity limitations by migrating participants over to NASDAQ's WebLink ACT 2.0 application will allow additional CDS participants to subscribe to the ACT service.

Costs associated with upgrades required to CDS's ACT application are generally passed on to participants. Discontinuing the use of CDS's ACT application and transitioning participants to NASDAQ's WebLink ACT application, will eliminate the costs associated with maintaining and upgrading CDS's ACT application.

D.4 Consultation

Through discussions with NASDAQ and FINRA, CDS has confirmed that the proposed change would allow CDS to maintain its role as the sponsor for CDS participants using the NASDAQ ACT service, while continuing to meet NASDAQ's/FINRA's requirements. As sponsor, CDS would continue to be responsible for ensuring that sponsored participants using the NASDAQ WebLink ACT 2.0 service or other vendor's service bureau applications remain compliant with the requirements stipulated in the agreement between CDS and NASDAQ regarding trading activities and the use of NASDAQ's functionality. In order to assess compliance, CDS will monitor a data file sent to CDS by NASDAQ on a daily basis with information about all trading activities of CDS sponsored participants based on their market participant identifiers (MPID) accounts. Based on a set of predefined criteria provided by NASDAQ, CDS will create an exception report of any offside activity and will follow up with the participant to ensure that corrective action is taken to comply with NASDAQ's requirements. If a participant is non-compliant CDS may apply a non-compliance fee and/or suspend the participant from the ACT service.

ACT participants were advised of the coming changes to CDS's ACT service during a meeting/conference call of the ACT WebLink participant working group that took place on December 17, 2009. CDS has responded to specific questions that have been raised by participants and will continue to host regular meetings with the participant working group to provide updates and discuss the transition process.

A CDS bulletin describing the coming changes to CDS's ACT service was released on November 25, 2009 and a CDS bulletin related to the FINRA rule change was released on December 21, 2009. CDS plans to issue additional bulletins to participants as needed through the transition period.

D.5 Alternatives Considered

CDS has assessed whether it could sufficiently enhance its ACT connectivity application to compete with alternatives offered by other service providers. The hardware, operating environment and database used for the ACT service are no longer supported by the vendors and not used elsewhere in CDS. The absence of economies of scale and skills increases the costs and risks associated with supporting the application. As a result, it would be difficult, costly and error-prone to try to modify or change the application to improve the business functionality or to keep the application in good standing with hardware or software support levels. In addition, the investment required to offer a system that would be competitive with the systems offered by other vendors would be cost prohibitive relative to the potential volumes to be processed from Canadian broker/dealers.

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 procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. Implementation of these changes is planned for May 3, 2010.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

Technological system changes are required by CDS in order to provide a compliance monitoring facility (i.e. compliance with NASDAQ/FINRA requirements) and automate billing related to CDS's ACT service.

The required technological system changes will follow CDS's system development life-cycle (SDLC) protocol.

E.2 CDS Participants

Participants will need to find alternative solutions to any back-end programs that they or their service bureau have in place that interact with CDS's current ACT application (these solutions may or may not incorporate CDS's new outbound ACT activity file)

Participants will also need to ensure that they meet NASDAQ's WebLink ACT 2.0 application software requirements.

Microsoft Internet Explorer 5.5 is the minimum version required for NASDAQ's WebLink ACT 2.0 application, but Microsoft Internet Explorer 6.0 or greater is preferred. Netscape 6.x and above may also be used but no other browsers are supported, e.g., Firefox, AOL, etc. (no additional software is needed).

E.3 Other Market Participants

There is no anticipated impact to other market participants.

F. COMPARISON TO OTHER CLEARING AGENCIES

CDS is not aware of any other clearing agencies that sponsor their participants into NASDAQ's ACT service.

G. PUBLIC INTEREST ASSESSMENT

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

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:

Rob Argue
Senior Product Manager, Product Development
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Phone: 416-365-3887
Fax: 416-365-0842
Email: rargue@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 de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

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

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

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 PROCEDURE AMENDMENTS

Due to formatting issues, the text of current CDS Participant Procedures marked to reflect proposed amendments, as well as, text of these procedures reflecting the adoption of the proposed amendments can be accessed by clicking the following link.

Refer to <http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-blacklined?Open> to review the affected procedure amendments.

AUTOMATED CONFIRMATION TRANSACTION SERVICE (“ACT SERVICE”) PARTICIPATION ACKNOWLEDGEMENT AGREEMENT

THIS AGREEMENT is made between CDS Clearing and Depository Services Inc. (“CDS”) and _____, (the “Participant”), and if applicable, it replaces the previous such agreement executed by the parties.

WHEREAS the NASDAQ Stock Market, Inc. (“NASDAQ”) offers an Automated Confirmation Transaction Service (the “ACT Service”) which, among other things, compares trade information from ACT users and submits matched, locked-in trades to clearing;

WHEREAS the Participant wishes to have access to the ACT Service in connection with trades which the Participant has entered into with members of NASDAQ that are regulated by the Financial Industry Regulatory Authority (“FINRA”), for clearing and settlement through CDS’s New York Link Service (the “Link Service”);

WHEREAS the Participant uses the Link Service offered by CDS and is therefore bound by the New York Link Service Rules, namely Rule 10.3, or any subsequent successor rules;

WHEREAS The Canadian Depository for Securities Limited (“CDS Limited”), CDS’s parent company, entered into a Non-Member Clearing Organization ACT Participant Application Agreement (the “ACT Clearing Organization Agreement”) with NASDAQ dated May 1, 1996, which provides for access by CDS Participants to the ACT Service;

WHEREAS the FINRA Rules and Practice and Procedure for the ACT Service (the “ACT Rules”) and the ACT Clearing Organization Agreement authorize CDS, in its role as a sponsor, to allow its Participants access to the ACT Service so that they may submit trade information, as this is defined in the ACT Rules, into the ACT Service, such access is subject to CDS Participants having executed, and NASDAQ having accepted a NASDAQ Services Agreement, as well as, a NON-MEMBER FINRA/NASDAQ TRADE REPORTING FACILITY ADDENDUM TO THE NASDAQ SERVICES AGREEMENT and, if using the NASDAQ WebLink application, a NASDAQ Front End Request Form (the “Prescribed Agreements”);

WHEREAS the Participant has executed copies of the Prescribed Agreements, dated as of the date indicated in the execution page hereof, which have been accepted by NASDAQ or delivered to NASDAQ for acceptance;

WHEREAS the provisions of the ACT Rules and Prescribed Agreements require the Participant’s compliance with all applicable rules and operating procedures of FINRA, NASDAQ and of the Securities and Exchange Commission (the “SEC”), including, but not limited to, the ACT Rules, the ACT User Guide, Code of Procedure, Article III, Section 1, of the FINRA Rules of Fair Practice, the FINRA Uniform Practice Code, the FINRA Code of Arbitration Procedure, and Schedule D to the FINRA By-Laws (hereafter the “FINRA, NASDAQ and SEC Requirements”) and,

WHEREAS the ACT Rules and ACT Clearing Organization Agreement require that in the event that the Participant should fail to honor a locked-in trade that has been sent for clearing and settlement, CDS shall be obligated to honor the trade on the scheduled settlement date;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties to this Agreement do hereby acknowledge and agree as follows:

1. **CDS’s Sponsor Function:** Trade information may be supplied by the Participant into the ACT Service via NASDAQ’s WebLink application. The Participant shall ensure the timeliness, completeness and accuracy of the information submitted into the ACT Service. CDS, as the Participant’s sponsor, shall not be responsible for ensuring the timeliness, completeness and accuracy of that information.
2. **Condition Precedent:** The facilitation by CDS of the Participant’s access to the ACT Service is conditional upon acceptance by NASDAQ of executed copies of the Prescribed Agreements. CDS shall not make access available to the Participant pursuant to this Agreement until such time as CDS has received confirmation from NASDAQ in the form and manner acceptable to CDS, of NASDAQ’s acceptance of executed copies of the Prescribed Agreements.
3. **CDS Legal Documents Binding:** CDS sponsoring of the Participant’s access to the ACT Service and the Participant’s access and use of the ACT Service is accordingly governed by the CDS Participant Rules, Procedures and Users Guides and the Participant Agreement, as amended from time to time (which together comprise of the “Legal Documents”) as if and to the same extent as would be the case if the ACT Service constituted a Settlement Service under the Legal Documents, subject to the provisions of Sections 7, 8, 9 and 10 below. For greater certainty, in construing the Participant Rules governing the Link Service, the following interpretations shall apply:

- i) References to the Participant's use of a Link Service shall encompass references to the Participant's use of the ACT Service and references to NSCC and the Depository Trust Corporation ("DTC") shall likewise encompass references to NASDAQ;
 - ii) The Participant shall pay to CDS the fees related to the provision of access to the ACT Service as per the CDS Fee Schedule; and
 - iii) The Participant shall pay to NASDAQ directly, NASDAQ's own fees related to the provision of the ACT service.
4. **Participant's Warranty:** The Participant warrants and represents that it shall not make use of the ACT Service contrary to the laws of Canada and the United States of America or an applicable province, territory or state thereof, including the by-laws, rules and regulations of any self-regulatory organization of which it is a member. The Participant shall use the ACT Service in accordance with this Agreement and any agreements it may enter into with NASDAQ in regard to the ACT Service, and in accordance with FINRA, NASDAQ and SEC requirements, as amended from time to time. The Participant also acknowledges that it is bound by, and its use of the ACT Service is governed by, all agreements entered into, instruments executed, declarations made and acts done by CDS (collectively the "Other Agreements") from time to time with respect to CDS's sponsorship and the Participant's access to the ACT Service. Should the Participant cease to have access to the ACT Service or should its access to the ACT Service be suspended or terminated, the Participant nonetheless continues to be bound by this Agreement and the Other Agreements as to all matters occurring while the Participant had access to the ACT Service.
 5. **Further Agreements:** The Participant shall enter into such further agreements, execute such instruments, make such declarations, or provide such information as may be required from time to time by CDS, and/or NASDAQ, and/or FINRA, and/or the SEC in connection with the Participant's access to the ACT Service.
 6. **Participant's Status with CDS:** The Participant acknowledges that, pursuant to the ACT Rules, the ACT Clearing Organization Agreement and the Prescribed Agreements, its access to the ACT Service is contingent on its good standing with CDS. Accordingly, the Participant consents to CDS providing such information as may be requested from time to time by NASDAQ, and/or FINRA, and/or the SEC to confirm the Participant's status with CDS.
 7. **FINRA, NASDAQ and SEC Requirements:** CDS shall use reasonable efforts to make available to the Participant, upon request and for a reasonable fee, copies of documents relevant to the FINRA, NASDAQ and SEC requirements. However, the Participant acknowledges that CDS does not warrant or represent the accuracy, currency, or comprehensiveness of the documents that it may make available to the Participant, nor does CDS warrant or represent that such documents constitute a full and exhaustive description of the FINRA, NASDAQ and SEC requirements. CDS shall not be required to prepare for the Participant, any form of procedures or user guides governing access to or the use of the ACT Service. However CDS reserves the right to prepare and issue such documentation which, in conjunction with the FINRA, NASDAQ and SEC requirements, shall govern the Participant's access to and use of the ACT Service.
 8. **Non-Compliance:** The Participant shall comply with the terms of this Agreement and of all other applicable documents. The Participant acknowledges that CDS may take the necessary steps, including imposing non-compliance fees and/or suspending CDS's sponsorship of the Participant's access to the ACT Service, if the Participant is non-compliant with any of the terms of the applicable documents. The Participant further acknowledges that CDS may take any of the above actions on the direction of FINRA, NASDAQ, the SEC and/or another relevant regulatory body.
 9. **Disruption to the ACT Service:** CDS shall in no way be liable for any interruption to, delay in, or unavailability, incompleteness or inaccuracy of, the ACT Service as provided by NASDAQ, its affiliates, agents, or service providers including, without limitation, telecommunications service providers (collectively a "Service Disruption"). For greater certainty, CDS shall not be considered to be an agent or service provider of NASDAQ for the purpose of the provision of the ACT Service, nor shall CDS be liable for losses, damages or other claims in connection with a Service Disruption, including without limitation, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or for increased expenses of operation, or for indirect, special punitive, consequential, or incidental loss or damage.
 10. **Modification or Termination by NASDAQ:** The Participant acknowledges that NASDAQ may, when required to do so in fulfillment or statutory obligations, temporary or permanently, unilaterally condition, modify or terminate the Participant's right to have access to or use the ACT Service. CDS shall not in any way be liable for such conditioning, modification or termination, nor for any losses, damages or other claims associated therewith, including without limitation, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or for increased expenses of operation, or for indirect, special punitive, consequential, or incidental loss or damage.

- 11. **Intellectual Property:** CDS shall not in any way be liable for any alleged and/or actual infringement or misappropriation by the ACT Service or by the Participant's access to and/or use of the ACT Service, of any third party's intellectual property rights.
- 12. **Counterpart Execution:** This Agreement may be executed in counterparts each of which shall be deemed to be an original and both of which together shall constitute one and the same document.
- 13. **Language:** This Agreement is also available in the French language. Cete convention est egalment disposable en francaise. By executing this agreement in the English language, the parties hereto declare that it is therewith this document and any documents related to it to be in the English language only. En signant la version anglaise de la presente convention les parties aux presentes declarent vouloir que ce document et ceux qui s'y rattachent, soient rediges en langue seulement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, and the Participant confirms its execution of the Prescribed Agreements as of the date hereof or, where applicable, as of the date(s) indicated below:

_____	CDS CLEARING AND DEPOSITORY SERVICES INC
(Name of Participant)	
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Executed at: _____	Executed at: _____
Date: _____	Date: _____

- i) NASDAQ Services Agreement dated _____
- ii) NON-MEMBER FINRA/NASDAQ TRADE REPORTING FACILITY ADDENDUM TO THE NASDAQ SERVICES AGREEMENT dated _____
- iii) NASDAQ Front End Request Form dated _____

AUTOMATED CONFIRMATION TRANSACTION SERVICE ("ACT SERVICE") PARTICIPATION ACKNOWLEDGEMENT AGREEMENT

THIS AGREEMENT is made between ~~The Canadian Depository for Securities Limited~~ CDS Clearing and Depository Services Inc. ("CDS") and _____, (the "Participant"), and if applicable, it replaces the previous such agreement executed by the parties.

WHEREAS the Participant uses the ~~American and Canadian Connection of efficient Securities Settlement Service ("ACCESS Services")~~ or the ~~New York Link Service~~ or both offered by CDS and is bound by the ~~ACCESS Services Rules, namely Rule 9 (or any subsequent successor rules), or the New York Link Service Rules, namely Rule 5 (or any subsequent successor rules) or both, as the case may be (either such service being referred to hereinafter as a ("Link Service"));~~

WHEREAS the Nasdaq NASDAQ Stock Market, Inc. ("Nasdaq NASDAQ") offers an Automated Confirmation Transaction Service (the "ACT Service") which, among other things, compares trade information from ACT participants users and submits matched, locked-in trades to clearing;

WHEREAS the pParticipant wishes to have access to the ACT Service and its trade confirmation procedures, in connection with trades which the pParticipant has entered into with members of the ~~National Association for Securities Dealers ("NASD")~~ NASDAQ that are regulated by the Financial Industry Regulatory Authority ("FINRA"), for clearing and settlement through ~~one of the CDS's New York Link Services (the "Link Service"));~~

WHEREAS the Participant uses the Link Service offered by CDS and is therefore bound by the New York Link Service Rules, namely Rule 10.3, or any subsequent successor rules;

WHEREAS CDS ~~The Canadian Depository for Securities Limited ("CDS Limited"), CDS's parent company, has entered into a Non-Member Clearing Organization ACT Participant Application Agreement (the "ACT Clearing Organization Agreement") with Nasdaq NASDAQ dated May 1, 1996, which provides for access by CDS participants participating in to the ACT Service;~~

WHEREAS the ~~NASD FINRA~~ Rules and Practice and Procedure for the ~~Automated Confirmation Transactions ACT~~ Service ("the "ACT Rules") and the ~~ACT Clearing Organization Agreement~~ authorize CDS, ~~to access ACT in the role of a service bureau in its role as a sponsor, to allow its Participants access to the ACT Service so that they may submit trade information, as this is defined in the ACT Rules, into the ACT Service, such access is subject to CDS Participants having executed, and NASDAQ having accepted a NASDAQ Services Agreement, as well as, a NON-MEMBER FINRA/NASDAQ TRADE REPORTING FACILITY ADDENDUM TO THE NASDAQ SERVICES AGREEMENT and if using the NASDAQ WebLink application, a NASDAQ Front End Request Form on behalf of its participants where such participants have executed, and Nasdaq has accepted, a Non-Member ACT Access Participant Application Agreement and a Nasdaq Workstation II Service Subscriber Agreement (the "Prescribed Agreements"));~~

WHEREAS the Participant has executed copies of the Prescribed Agreements, dated as of the date indicated in the execution page hereof, which have been accepted by Nasdaq NASDAQ or delivered to Nasdaq NASDAQ for acceptance;

WHEREAS the provisions of the ACT Rules and Prescribed Agreements require the Participant's compliance with all applicable rules and operating procedures of FINRA, Nasdaq NASDAQ and of the Securities and Exchange Commission ("SEC"), including, but not limited to, the ACT Rules, the ACT Users Guide, Code of Procedure, Article III, Section 1 of the NASD FINRA Rules of Fair Practice, the NASD FINRA Uniform Practice Code, the NASD FINRA Code of Arbitration Procedure, and Schedule D to the NASD FINRA By-Laws (hereafter the "FINRA, NASDAQ Nasdaq and SEC Requirements") and,

WHEREAS the ACT Rules and ACT Clearing Organization Agreement require that, in the event that the Participant should fail to honor a locked-in trade that has been sent for clearing and settlement, CDS shall be obligated to honor the trade on the scheduled settlement date;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties to this aAgreement do hereby acknowledge and agree as follows:

1. Service Bureau CDS's Sponsor Function. Trade information shall may be supplied by the Participant ~~to CDS for submission of behalf of the Participant into ACT into the ACT Service via NASDAQ's WebLink application. The Participant shall ensure the timeliness, completeness and accuracy of the information provided for submission submitted into the ACT Service. CDS, as the Participant's sponsor shall submit into ACT the trade information supplied by the Participant and not be responsible for ensuring the timeliness, completeness and accuracy of that information.~~
2. Condition Precedent. The facilitation by CDS of the Participant's participation ~~in access to the ACT Service~~ is conditional upon acceptance by Nasdaq NASDAQ of executed copies of the Prescribed Agreements. CDS shall not make services-access available to the Participant pursuant to this Agreement until such time as CDS has received

confirmation from NASDAQ in the form and manner acceptable to CDS, of the ~~acceptance by Nasdaq~~ NASDAQ's acceptance of the executed copies of the Prescribed Agreements.

3. CDS Legal Documents Binding. ~~The facilitation by CDS of the Participant's participation in ACT is provided by CDS as a component of the Link Services, and the Participant's participation in ACT~~ CDS sponsoring of the Participant's access to the ACT Service and the Participant's access and use of the ACT Service is accordingly governed by CDS Service Participant Rules, Procedures and Users Guides and the Participant Agreement, as amended from time to time (which together comprise the "Legal Documents") as if, and to the same extent as would be the case if the ACT Service constituted a Settlement Service under the Legal Documents, subject to the provisions of Sections 7, 8, 9 and 10 below. For greater certainty, in construing the Service Participant Rules governing the applicable Link Service, the following interpretations shall apply:
 - i) ~~References to the Participant's use of a Link Service or to its use of the National Securities Clearing Corporation ("NSCC") Services~~ shall encompass references to the Participant's use of the ACT Service and references to NSCC and the Depository Trust Corporation ("DTC") shall likewise encompass references to Nasdaq NASDAQ; and,
 - ii) ~~without limiting the generality or paragraph (i) above, references to NSCC Charges or ACCESS Charges shall encompass any charges (including, without limitation, taxes imposed against the participant in respect of ACT.~~
 - ii) The Participant shall pay to CDS the fees related to the provision of access to the ACT Service as per the CDS Fee Schedule; and
 - iii) The Participant shall pay to NASDAQ directly, NASDAQ's own fees related to the provision of the ACT service.
4. Participant's Warranty. The Participant warrants and represents that it shall not make use of the ACT Service contrary to the laws of Canada and the United States of America or an applicable province, territory or state thereof, including the by-laws, rules and regulations of any self-regulatory organization of which it is a member. The participant shall use the ACT Service in accordance with this Agreement and any agreements it may enter into with Nasdaq NASDAQ in regard to the ACT Service, and in accordance with FINRA, Nasdaq NASDAQ and SEC requirements, as amended from time to time. The Participant also acknowledges that it is bound by, and its use of the ACT Service is governed by, all agreements entered into, instruments executed, declarations made and acts done by CDS (collectively the "Other Agreements") from time to time in with respect of participation by CDS and the participant in ACT to CDS's sponsorship and the Participant's access to the ACT Service. Should the Participant cease to use have access to the ACT Service or should its use of access to the ACT Service be suspended or terminated, the Participant shall nonetheless continue to be bound by this Agreement and the Other Agreements as to all matters occurring while the Participant made use of had access to the ACT Service.
5. Further Agreements. The Participant shall enter into such further agreements, execute such instruments, make such declarations, or provide such information as may be required from time to time by CDS and/or Nasdaq NASDAQ and/or FINRA and/or the SEC in connection with the Participant's participation in access to the ACT Service.
6. Participant's Status with CDS. The Participant acknowledges that, pursuant to the ACT Rules, the ACT Clearing Organization Agreement and the Prescribed Agreements, its participation in access to the ACT Service is contingent on its continued good standing with CDS. Accordingly, the Participant consents to CDS providing such information as may be requested from time to time by Nasdaq NASDAQ and/or FINRA and/or the SEC to confirm the Participant's status with CDS.
7. FINRA, NASDAQ and SEC Requirements. CDS shall use reasonable efforts to make available to the Participant, upon request and for a reasonable fee, copies of documents relevant to the FINRA, Nasdaq NASDAQ and SEC requirements. However, the Participant acknowledges that CDS does not warrant or represent the accuracy, currency, or comprehensiveness of the documents that it may make available to the Participant, nor does CDS warrant or represent that such documents constitute a full and exhaustive description of the FINRA, Nasdaq NASDAQ and SEC requirements. CDS shall not be required to prepare for the Participant any form of procedures or user guides governing access to or the use of the ACT Service. However CDS retains reserves the right to prepare and issue such documentation which, in conjunction with the FINRA, Nasdaq NASDAQ and the SEC Requirements, shall govern the Participant's access to and use of the ACT Service.
8. **Non-Compliance:** The Participant shall comply with the terms of this Agreement and of all other applicable documents. The Participant acknowledges that CDS may take the necessary steps, including imposing non-compliance fees and/or suspending CDS's sponsorship of the Participant's access to the ACT Service, if the Participant is non-compliant with any of the terms of the applicable documents. The Participant further acknowledges

that CDS may take any of the above actions on the direction of FINRA, NASDAQ, the SEC and/or another relevant regulatory body.

9. Disruption to Nasdaq the ACT Service. CDS shall in no way be liable for any interruption to, delay in, or unavailability, incompleteness or inaccuracy of, the ACT Service as provided by Nasdaq NASDAQ, its affiliates, agents, or service providers including, without limitation, telecommunications service providers (collectively a "Service Disruption"). (For greater certainty, CDS shall not be considered to be an agent or service provider of Nasdaq NASDAQ for the purposes of this the provision of the ACT Service). Nor shall CDS be liable for any losses, damages or other claims in connection with a Service Disruption, (including without limitation, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or for increased expenses of operation, or for indirect, special, punitive, consequential, or incidental loss or damage).
10. Modification or Termination by Nasdaq NASDAQ. The Participant acknowledges that Nasdaq NASDAQ may, when required to do so in fulfillment or statutory obligations, temporary or permanently, unilaterally condition, modify or terminate ~~it's the Participant's~~ right to have access to receive or use the ACT Service. CDS shall ~~in no~~ not in any way be liable for such conditioning, modification or termination, nor for any losses, damages or other claims associated therewith, (including without limitation, trading losses, loss of anticipated profits, loss by reason of shutdown in operation or for increased expenses of operation, or for indirect, special, punitive, consequential, or incidental loss or damage).
11. Intellectual Property. CDS shall ~~in no~~ not in any way be liable for any alleged and/or actual infringement or misappropriation by the ACT ~~s~~Service or by the Participant's access to and/or use of the ACT Service, of any third party's intellectual property rights.
12. Counterpart Execution: This ~~a~~Agreement may be executed in counterparts each of which shall be deemed to be an original and both of which together shall constitute one and the same document.
13. Language. This agreement is also available in the French language. ~~Cete convention est egalment disposable en francaise. By executing this Agreement in the English language, the parties hereto declare that it is their wish that this document and any documents related to it to be in the English language only. En signant la version anglaise de la presente convention les parties aux presentes declarent vouloir que ce document et ceux qui s'y rattachent, soient rediges en langue anglaise seulement. La presente entente est également offerte en français. By executing this agreement in the English language, the parties hereto declare that it is therewith this document and any documents related to it to be in the English language only. Par la signature de la version anglaise de la présente entente, les parties aux présentes déclarent vouloir que le présent document et les documents qui s'y rattachent soient uniquement en anglais.~~

IN WITNESS WHEREOF the parties hereto have executed this Agreement, and the Participant confirms its execution of the Prescribed Agreements as of the date hereof or, where applicable, as of the date(s) indicated below:

_____ **THE CANADIAN DEPOSITORY FOR
SECURITIES LIMITED CDS CLEARING AND DEPOSITORY SERVICES INC.**
(Name of Participant)

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

SROs, Marketplaces and Clearing Agencies

Executed at: _____ Executed at: _____

Date: _____ Date: _____

i) Non-Member ACT Access Participant Application Agreement dated _____

ii) NASDAQ Workstation II Service Subscriber Agreement dated _____

i) NASDAQ Services Agreement dated _____

ii) NON-MEMBER FINRA/NASDAQ TRADE REPORTING FACILITY ADDENDUM TO THE NASDAQ SERVICES AGREEMENT dated _____

iii) NASDAQ Front End Request Form dated _____