

13.1.7 Material Amendments to CDS Rules – CALMS (Corporate Action Liability Management Service) – Request for Comments

CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS”)

MATERIAL AMENDMENTS TO CDS RULES

CALMS (CORPORATE ACTION LIABILITY MANAGEMENT SERVICE)

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

The Entitlements Subcommittee of the Strategic Development Review Committee (“SDRC”) requested that CDS develop and implement a new service for the submission and tracking of liability notifications (commonly known as “letters of liability”) for corporate action events. The new service is called CALMS (Corporate Action Liability Management Service). In order to allow for this web-based electronic facility, Rule 6.8 “Reorganization and Exercise of Rights” will be amended to describe the optional new CALMS functionality and to clarify Participant and CDS responsibilities and obligations. In addition, definitions of the terms “CALMS” and “CA Liability Record” will be added in Rule 1.2.1.

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

The amendments proposed pursuant to this Notice are considered material amendments as they are amendments required to: (i) implement a new function to allow Participants to enter and track letter of liability notifications between them; and (ii) to confirm that CDS is not responsible for information transmitted through CALMS, for the enforceability of an accepted CALMS letter of liability or for performance of obligations by Participants to an accepted CALMS letter of liability.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

The current manual and paper-based process to finalize a letter of liability between Participants operates outside of CDS. A “letter of liability” provides details of when securities must be delivered to settle a trade and the consequences (or liability owed by one Participant to another Participant) for failing to make delivery by the specified date when a corporate action event for the securities is pending. Participants communicate with one another by signing paper-based letters of liability and faxing them. The letter of liability can be amended and transmitted by fax several times before being finalized by the parties to it.

CALMS will replace the paper/fax based exchange of letters of liability with on-line electronic communications. CALMS will use a browser-based Graphics User Interface to the on-line application and will permit Participants to electronically submit and track their liability notifications throughout their life cycle (from initiation to acceptance), including time and date and the user taking the specific action. The “initiating Participant” will submit through CALMS a proposed letter of liability, called a “CA Liability Record”, to its counterparty Participant. The counterparty Participant may accept or reject the CA Liability Record or suggest amendments to it. CALMS is independent of CDSX but will draw upon CDSX corporate action event and other information, where available, to insert in the CA Liability Record the relevant details about the parties, the security, the corporate action event and the liability being agreed to. Electronic alerts will advise Participants when a CALMS activity has occurred and when the relevant processing dates have been reached. Participants will be able to self-subscribe to those alerts they wish to receive.

Implementation of CALMS will significantly reduce Participant manual efforts in creating and processing letters of liability between Participants in the high risk world of voluntary corporate actions. First, significant time is currently wasted by Participants waiting for faxes to be sent, searching for faxes received and tracking down faxes gone astray. Second, with faxes, there is no systematic method to track and record each step in the life cycle of a letter of liability and who performed that step. Third, significant manual time is spent gathering and inputting relevant details in a letter of liability.

There are also inherent risks associated with the current process of using different forms of letters of liability, depending who is the other Participant to a letter of liability. CALMS will employ one standard form of CA Liability Record and will use automated corporate action event and other information for CDSX eligible securities: this will reduce the Participants’ costs and risks and will provide an accurate, uniform and reliable method to handle finalizing the obligation (or liability) owed from one Participant to another. Participants may use CALMS for both CDSX eligible securities and ineligible securities, however it may not be possible to draw upon corporate action event and other information for CDSX ineligible securities.

Participants are not required to use CALMS, and may chose to use it for some transactions and not others. Therefore, unless both Participants involved in a trade to be settled have agreed to use CALMS, it is possible that some Participants who have opted to use CALMS will be forced to continue to use the existing manual paper/fax process with a Participant who has not opted to use the service.

There should be no impact to other parties who are not participants, or to the securities and financial markets in general.

C.1 Competition

There is expected to be no impact on competition.

C.2 Risks and Compliance Costs

There is expected to be no impact on compliance costs specific to CALMS, apart from fees for transactions. There is expected to be a reduction in costs and risk to those Participants who use CALMS due to the standardization of one form of a letter of liability, availability of electronic alerts and the ability to track the life cycle of the letter of liability. Furthermore, as the service is between Participants only, the proposed Rule confirms responsibilities between Participants who use CALMS and that CDS is not responsible for the information transmitted through CALMS, or the enforceability of an accepted letter of liability, or for the performance of obligations by the Participants to an accepted CALMS letter of liability. It is not expected that CDS will incur any additional external costs to implement CALMS.

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 Committee on Payment and Settlement Systems of the Bank of International Settlements, the Technical Committee of the International Organization of Securities Commissions and the Group of Thirty do not refer to tracking letters of liability specifically, the proposed program is in-line with a move to an electronic environment and there is low risk involved in this program.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

For years, Participants have used the manual paper/fax process for letters of liability independent of CDS. Some Participants have had the opportunity to use DTC's electronic process for letters of liability and find the DTC service far more efficient than the manual process. CALMS has been developed to provide Participants with a similar process for the Canadian financial market, to reduce costs and inefficiencies and to speed the processing of letters of liability.

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.

These amendments were reviewed and approved by the Board of Directors of CDS on June 23, 2009.

D.3 Issues Considered

CDS investigated possible solutions that would both achieve the overall objective and benefits of eliminating the current manual paper/fax process while continuing to provide Participants with the choice of whether or not to use CALMS. CDS also considered mandating this service for use by all Participants; however, the SDRC has asked CDS to proceed with CALMS as an optional service.

D.4 Consultation

This initiative was identified and approved by the SDRC as a top priority development project for CDS, and in this regard, CDS consulted with Participants on possible alternatives to improve the current manual process.

D.5 Alternatives Considered

CDS considered building an electronic facility that would not only encompass the electronic communication and maintenance of corporate action liability records, but would also interface with CDSX to allow such records to be issued against CNS (Continuous Net Settlement) positions, automatically process settlements against the records and execute any records where liability had been accepted. After presenting the above described proposal to Participants, it was decided that CALMS would be developed initially to provide an electronic method of communicating corporate action liability records (replacing the current manual faxing of such letters) as well as an on-line repository for such records. CALMS is viewed as the best way to deliver the

required functionality to Participants in order to improve the current manual paper/fax process. The internet based system facilitates the use of electronic alerts.

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 November 16, 2009.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

CDS will create a new web access manager on www.cds.ca to provide Participants with the ability to obtain web IDs, assign user roles, maintain user contact information and control access to CDS's web based applications. Access to a web ID and a web application will be managed by a web user administrator (WUA) and web access administrator (WAA) respectively. The ability to access the different functions in CALMS will be controlled by the WAA appointed by the Participant.

E.2 CDS Participants

Participants will be required to have access to the internet to register and use CALMS from www.cds.ca. There are no other 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

DTC offers a similar service, called SMART/Track for Corporate Action Liability Notification Service, which is also web-based system that provides automated communication and tracking of corporate action liability notices for securities undergoing a voluntary corporate action event. CDS is not aware of any other depositories that use a similar electronic system.

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:

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 de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22^e 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 text of these rules reflecting the adoption of the proposed amendments.

Resa Sitzer
Managing Director, Legal

APPENDIX "A"
PROPOSED CDS RULE AMENDMENTS

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
<p>Add: New Definition to Rule 1.2.1</p> <p><u>"CA Liability Record" has the meaning ascribed to that term in Rule 6.8.5.</u></p> <p><u>"CALMS" means the Corporate Action Liability Management Service described in Rule 6.8.5.</u></p> <p>Add: New Rule 6.8.5</p> <p><u>6.8.5 Corporate Action Liability Management Service</u></p> <p><u>(a) Use of CALMS for Reorganization Events</u></p> <p><u>Participants may use CALMS to transmit and enter into a CALMS letter of liability (a "CA Liability Record") describing their obligations to one another as a result of a reorganization event affecting a Securities transaction to which they are a party. CALMS provides functionality to communicate between CALMS Participants the details of the effect of reorganization events on that Securities transaction (including changes in the delivery or payment obligations, or additional obligations arising from a failure to perform at a particular time). The transaction may involve either CDSX eligible Securities or ineligible Securities. The submission and acceptance of such details constitutes the agreement of the CALMS Participants to a CA Liability Record between them in the form set out in the Procedures and User Guides.</u></p> <p><u>(b) Execution and Dispute Resolution</u></p> <p><u>Each Participant using CALMS has the sole responsibility for:</u></p> <ul style="list-style-type: none"> <u>(i) the accuracy and completeness of information transmitted through CALMS;</u> <u>(ii) accepting or rejecting any proposed CA Liability Record;</u> <u>(iii) performance of their obligations under any accepted CA Liability Record; and</u> <u>(iv) the resolution of any disputes arising with respect to their use of CALMS, including the acceptance or rejection of a proposed CA Liability Record, performance or non-performance under an accepted CA Liability Record, and any consequences arising from such performance or non-performance.</u> <p><u>(c) CDS Responsibility</u></p> <p><u>CDS is not responsible for:</u></p> <ul style="list-style-type: none"> <u>(i) the information transmitted through CALMS;</u> 	<p>Add: New Definition to Rule 1.2.1</p> <p>"CA Liability Record" has the meaning ascribed to that term in Rule 6.8.5.</p> <p>"CALMS" means the Corporate Action Liability Management Service described in Rule 6.8.5.</p> <p>Add: New Rule 6.8.5</p> <p>6.8.5 Corporate Action Liability Management Service</p> <p>(a) Use of CALMS for Reorganization Events</p> <p>Participants may use CALMS to transmit and enter into a CALMS letter of liability (a "CA Liability Record") describing their obligations to one another as a result of a reorganization event affecting a Securities transaction to which they are a party. CALMS provides functionality to communicate between CALMS Participants the details of the effect of reorganization events on that Securities transaction (including changes in the delivery or payment obligations, or additional obligations arising from a failure to perform at a particular time). The transaction may involve either CDSX eligible Securities or ineligible Securities. The submission and acceptance of such details constitutes the agreement of the CALMS Participants to a CA Liability Record between them in the form set out in the Procedures and User Guides.</p> <p>(b) Execution and Dispute Resolution</p> <p>Each Participant using CALMS has the sole responsibility for:</p> <ul style="list-style-type: none"> (i) the accuracy and completeness of information transmitted through CALMS; (ii) accepting or rejecting any proposed CA Liability Record; (iii) performance of their obligations under any accepted CA Liability Record; and (iv) the resolution of any disputes arising with respect to their use of CALMS, including the acceptance or rejection of a proposed CA Liability Record, performance or non-performance under an accepted CA Liability Record, and any consequences arising from such performance or non-performance. <p>(c) CDS Responsibility</p> <p>CDS is not responsible for:</p>

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
(ii) <u>the enforceability of any CA Liability Record; or</u> (iii) <u>performance or non-performance by a Participant of any accepted CA Liability Record.</u>	(i) the information transmitted through CALMS; (ii) the enforceability of any CA Liability Record; or (ii) performance or non-performance by a Participant of any accepted CA Liability Record.