

**13.1.3 CDS Rule Amendment Notice – Technical Amendments to CDS Rules Relating to Regulation SHO – SEC Interim Final Temporary Rule 204T - Additional Close-out Requirements**

**CDS Clearing and Depository Services Inc. (“CDS”)**

**TECHNICAL AMENDMENTS TO CDS RULES**

**Regulation SHO – SEC Interim Final Temporary Rule 204T - Additional Close-out Requirements**

**NOTICE OF EFFECTIVE DATE**

**A. DESCRIPTION OF THE RULE AMENDMENT**

In 2006, CDS’s regulators approved amendments to the CDS Participant Rules related to Regulation SHO as adopted by the United States Securities and Exchange Commission (“SEC”). Under the rule amendments, CDS was granted the authority to close out a fail-to-deliver position of a participant using the cross-border services in certain equity securities trading in the U.S. that are on a U.S. SRO list of securities experiencing substantial and persistent failures to deliver. Regulation SHO’s close-out requirements were designed to address problems with failures to deliver in certain equity securities.

In 2007, the SEC amended the close-out requirements for fails to deliver resulting from sales of threshold securities pursuant to Rule 144 of the Securities Act of 1933 (Securities Act). And CDS’s regulators approved consequential technical amendments to CDS Participant Rule 10.2.3(b) in order to be consistent with the amended Regulation SHO.

On October 17, 2008, the SEC adopted Interim Final Temporary Rule 204T to expand the close-out requirements in Regulation SHO. Specifically, additional close-out requirements were enacted for fails to deliver resulting from sales of any equity securities, in addition to existing close-out requirements for threshold securities. CDS Participant Rule 10.2.3(b) must be amended in order to be consistent with Interim Final Temporary Rule 204T.

The text of CDS Rules marked for the amendments are attached hereto in Appendix “A” and may be accessed at the CDS website.

**B. REASONS FOR TECHNICAL CLASSIFICATION**

The amendments proposed pursuant to this Notice are considered technical amendments as they are amendments required to ensure consistency or compliance with an existing rule, securities legislation or other regulatory requirement.

**C. EFFECTIVE DATE OF THE RULE**

Pursuant to Appendix A (“Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC”) of the Recognition and Designation Order, as amended on November 01, 2006, and Annexe A (“Protocole d’examen et d’approbation des Règles de Services de Dépot et de Compensation CDS Inc. par l’Autorité des marchés financiers”) of AMF Decision 2006-PDG-0180, made effective on November 01, 2006, CDS has determined that these amendments will be effective on June 29, 2009.

**D. QUESTIONS**

Questions regarding this notice may be directed to:

Resa R.H. Sitzer  
Managing Director, Legal  
The Canadian Depository for Securities Limited  
85 Richmond Street West  
Toronto, Ontario M5H 2C9  
Telephone: 416-365-3918  
Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto:attention@cds.ca)

TOOMAS MARLEY  
Chief Legal Officer

**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><b>10.2.3(b) Regulation SHO</b></p> <p>"Regulation SHO" means Regulation SHO adopted by the United States Securities and Exchange Commission promulgated under United States federal securities law, <u>as amended from time to time.</u></p> <p><u>"Regulation SHO Security" means a security governed by Regulation SHO.</u></p> <p><del>"Non-compliant Position with Regulation SHO" means a Participant using a Cross-Border Service is in a fail to deliver position regarding a sale of a threshold security, as defined in Rule 203(c)(6) of Regulation SHO Security, as provided in Rule 203(b)(3).</del></p> <p>Each Participant using a Cross-Border Service shall comply with the terms of Regulation SHO. CDS shall take the necessary steps to close out the Participant's Non-compliant Positions with Regulation SHO by the purchase of <u>Regulation SHO Securities</u> <del>threshold securities</del> in the amount <u>and within the time</u> specified by <del>Rule 203(b)(3) of</del> Regulation SHO. Such Participant shall reimburse CDS for all costs and expenses in regards to steps taken by CDS to close out the Participant's Non-compliant Positions with Regulation SHO, including the purchase price of the <u>Regulation SHO Securities</u> <del>threshold securities</del>, cost of funding, <u>fees payable to CDS</u>, and fees and expenses of legal counsel and other professionals retained by CDS. CDS shall have absolute discretion to purchase such <u>Regulation SHO Securities</u> <del>threshold securities</del> by any means available. Each Participant acknowledges that CDS must close out a Participant's Non-compliant Positions with Regulation SHO immediately and therefore the purchase price of such <u>Regulation SHO Securities</u> <del>threshold securities</del> may be greater than a price that could be obtained by alternative means of purchase or delay in purchase.</p> <p>Each Participant using a Cross-Border Service releases and discharges CDS from any liability or claim arising from the exercise of the powers granted pursuant to this Rule 10.2.3(b).</p>	<p><b>10.2.3(b) Regulation SHO</b></p> <p>"Regulation SHO" means Regulation SHO adopted by the United States Securities and Exchange Commission promulgated under United States federal securities law, as amended from time to time.</p> <p>"Regulation SHO Security" means a security governed by Regulation SHO.</p> <p>"Non-compliant Position with Regulation SHO" means a Participant using a Cross-Border Service is in a fail to deliver position regarding a sale of a Regulation SHO Security.</p> <p>Each Participant using a Cross-Border Service shall comply with the terms of Regulation SHO. CDS shall take the necessary steps to close out the Participant's Non-compliant Positions with Regulation SHO by the purchase of Regulation SHO Securities in the amount and within the time specified by Regulation SHO. Such Participant shall reimburse CDS for all costs and expenses in regards to steps taken by CDS to close out the Participant's Non-compliant Positions with Regulation SHO, including the purchase price of the Regulation SHO Securities, cost of funding, fees payable to CDS, and fees and expenses of legal counsel and other professionals retained by CDS. CDS shall have absolute discretion to purchase such Regulation SHO Securities by any means available. Each Participant acknowledges that CDS must close out a Participant's Non-compliant Positions with Regulation SHO immediately and therefore the purchase price of such Regulation SHO Securities may be greater than a price that could be obtained by alternative means of purchase or delay in purchase.</p> <p>Each Participant using a Cross-Border Service releases and discharges CDS from any liability or claim arising from the exercise of the powers granted pursuant to this Rule 10.2.3(b).</p>