

13.1.2 Notice and Request for Comment – Material Amendments to CDS Procedures Relating to Exchange Trades

CDS Clearing and Depository Services Inc. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

EXCHANGE TRADES PROCEDURES AMENDMENTS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

The proposed amendments to the Exchange Trades Procedures will:

- a) clarify and expand the definition of exchange trades to include trades that are executed in marketplaces as well as exchanges;
- b) clarify the process by which such trades are reported to CDS for settlement between CDS participants; and
- c) codify existing related practices and additional details such as specific timeframes and obligations of sources of exchange trades.

B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

The proposed amendments to the Exchange Trades Procedures are intended to clarify the definition of exchange trades and the process by which such trades are reported to CDS for settlement between CDS participants. The proposed amendments have arisen out of the need for CDS to document existing practices while at the same time respond to and accommodate changes that have recently occurred in the marketplace, such as the increasingly prominent role of alternative trading systems (“ATS”).

The proposed amendments are CDS’s latest procedure change initiative on exchange trades; an effort to further refine criteria initially set out in February of 2007. In its Notice and Request for Comments of February 1, 2007, CDS set out the criteria which CDS uses to determine whether a trade originating from one of several sources (exchanges, quotation and trade reporting systems (“QTRS”), or ATS), can properly be described as an exchange or non-exchange trade for the purposes of settlement in CDSX®. As stated in the referenced Notice, for the purposes of CDS’s operations, eligible sources of exchange trades may originate only from those entities so recognized by securities regulators by virtue of National Instrument 21-101 – Marketplace Operation. The proposed amendments of February 2007 also incorporated the process through which a potential source of exchange trades, must apply to CDS in order to be considered a source of exchange trades. In addition, those proposed amendments outlined CDS’s requirements in respect of the documentation required in order for an entity to be permitted to submit exchange trades to CDSX. The current proposed amendments are to further define, clarify and to codify what was introduced in February of 2007 and what has been the practice followed since then.

C. IMPACT OF THE PROPOSED AMENDMENTS

The proposed amendments to the CDS Exchange Trades Procedures will not have a substantive impact on current or prospective CDS participants, beyond the clarification of definitions and processes described above.

C.1 Competition

The proposed amendments to the CDS Exchange Trades Procedures will have no impact on the ability of qualified and eligible market participants to access CDS’s clearing, settlement, and depository services.

C.2 Risks and Compliance Costs

There are no changes in risks or compliance costs for marketplaces or for 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

No such comparison is available in respect of the proposed amendments.

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

CDS staff identified a lack of clarity in existing procedures in respect of Exchange Trades and the process by which such trades are reported to CDS for settlement between CDS participants. It was deemed prudent to document existing related practices, as well as better define and clarify certain aspects thereof. The proposed amendments were developed by CDS staff in that context and for that purpose.

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 the CDS Participant community and it meets on a monthly basis.

D.3 Issues Considered

The proposed amendments will clarify and expand the definition of exchange trades, clarify the process by which such trades are reported to CDS for settlement between CDS participants, and codify existing related practices and additional details such as specific timeframes and obligations of sources of exchange trades.

D.4 Consultation

The SDRC reviewed and approved the proposed amendments on June 26, 2008 and on July 31, 2008, prior to their submission for public comment.

D.5 Alternatives Considered

The *status quo* was considered, but CDS staff determined that the current procedures in respect of Exchange Trades were not sufficiently responsive to the demands of CDS's market and its 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 Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

No technological systems changes to CDS's systems are anticipated as a result of the proposed amendments.

E.2 CDS Participants

No technological systems changes to participants' systems are anticipated as a direct result of the proposed amendments.

E.3 Other Market Participants

The proposed amendments are not expected to result in any technological systems changes for other market participants.

F. COMPARISON TO OTHER CLEARING AGENCIES

No comparable or similar procedures were available for other clearing agencies.

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 delivered by September 7, 2008 to:

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Legal Counsel
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:

Me Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22nd floor
PO box 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Fax: (514) 873-7455
e-mail: consultation-en-cours@lautorite.qc.ca

Susan Greenglass
Manager, Market Regulation 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 PROCEDURE AMENDMENTS

Appendix "A" contains 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.

JAMIE ANDERSON
Managing Director, Legal

APPENDIX "A"
PROPOSED PROCEDURE AMENDMENT

Text of CDS Participant Procedures marked to reflect proposed amendments	Text of CDS Participant Procedures reflecting the adoption of proposed amendments
<p>CHAPTER 3 Exchange trades</p> <p>Exchange trades are reported as between two CDS participants and are delivered to CDS directly from a source of exchange trades. Eligible sources of exchange trades are certain marketplaces, as defined by the Canadian Securities Administrators' National Instrument 21-101 – Marketplace Operation, and may be either an exchange, quotation and trade reporting system (QTRS) or alternative trading system (ATS).</p> <p><u>Exchange trades are trades executed on a source of exchange trades and reported to CDS for settlement between CDS participants.</u></p> <p><u>3.1 Exchange trades</u></p> <p>To be eligible <u>accepted</u> as an exchange trade, the trade must be:</p> <ul style="list-style-type: none"> • <u>matched prior to delivery to CDS and cannot be modified by participants prior to settlement; and</u> • (i) a trade executed on an exchange or QTRS that is regulated by a Canadian securities regulatory authority; or • (ii) a trade executed on an ATS that is a member of the <u>Investment Dealers Association Industry Regulatory Organization of Canada (IDA/IIROC)</u> and identified by the <u>IDA IIROC</u> as an Acceptable Trade Matching Utility for the purposes of <u>Regulation Dealer Member Rule 800.49</u>. <p>Exchange trades may also be received on behalf of sources of exchange trades from another external clearing organization, or a CDS participant.</p> <p>A marketplace must supply CDS Customer Service with documentation that provides assurance that the responsibility for the delivery of trades rests with the marketplace or its agent.</p> <p>To ensure that exchange trades are confirmed for settlement by CDSX, they must be matched prior to delivery to CDSX and cannot be modified by the participants prior to settlement. These trades will be reported to participants as confirmed by CDSX.</p> <p><u>Note:</u> Exchange trades are reported to participants as confirmed trades in CDSX.</p> <p><u>Sources of exchange trades</u></p> <p><u>Certain marketplaces act as sources of exchange trades. The sources are defined by the Canadian Securities Administrators' National Instrument 21-101 – Marketplace Operation, and may be either an exchange, quotation and trade reporting system (QTRS) or alternative trading system</u></p>	<p>CHAPTER 3 Exchange trades</p> <p>Exchange trades are trades executed on a source of exchange trades and reported to CDS for settlement between CDS participants.</p> <p>3.1 Exchange trades</p> <p>To be accepted as an exchange trade, the trade must be:</p> <ul style="list-style-type: none"> • matched prior to delivery to CDS and cannot be modified by participants prior to settlement; and • executed on an exchange or QTRS that is regulated by a Canadian securities regulatory authority; or • executed on an ATS that is a member of the Investment Industry Regulatory Organization of Canada (IIROC) and identified by IIROC as an Acceptable Trade Matching Utility for the purposes of Dealer Member Rule 800.49. <p>Exchange trades may also be received on behalf of sources of exchange trades from another external clearing organization, or a CDS participant.</p> <p>Note: Exchange trades are reported to participants as confirmed trades in CDSX.</p> <p>Sources of exchange trades</p> <p>Certain marketplaces act as sources of exchange trades. The sources are defined by the Canadian Securities Administrators' National Instrument 21-101 – Marketplace Operation, and may be either an exchange, quotation and trade reporting system (QTRS) or alternative trading system (ATS).</p> <p>A source of exchange trades must submit all initial trades between participants for which CDS offers settlement services. An initial trade is a trade executed on the marketplace where the only permitted change is a modification that indicates that a CDS participant acts as the clearing broker for either a non-CDS participant, a dormant participant, an inactive participant or a participant that utilises the clearing service of the CDS participant for settlement purposes.</p> <p>Becoming a source of exchange trades</p> <p>In order to become a source of exchange trades in CDSX, marketplaces must submit the following documents:</p> <ul style="list-style-type: none"> • Completed application for use by a Marketplace Requesting Designation as a Source of Exchange Trades in CDSX form (CDSX818) to confirm that the marketplace meets the criteria detailed in Exchange trades on page 20. • A letter on company letterhead indicating the market ID that should be reserved for use.

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<p>(ATS).</p> <p><u>A source of exchange trades must submit all initial trades between participants for which CDS offers settlement services. An initial trade is a trade executed on the marketplace where the only permitted change is a modification that indicates that a CDS participant acts as the clearing broker for either a non-CDS participant, a dormant participant, an inactive participant or a participant that utilises the clearing service of the CDS participant for settlement purposes.</u></p> <p><u>Becoming a source of exchange trades</u></p> <p><u>In order to become a source of exchange trades in CDSX, marketplaces must submit the following documents:</u></p> <ul style="list-style-type: none"> • <u>Completed application for use by a Marketplace Requesting Designation as a Source of Exchange Trades in CDSX form (CDSX818) to confirm that the marketplace meets the criteria detailed in Exchange trades on page 20.</u> • <u>A letter on company letterhead indicating the market ID that should be reserved for use.</u> <p><u>Setting up a source of exchange trades in CDSX</u></p> <p><u>Once all required documentation is received by CDS, network setup and testing can commence. Four to six weeks lead time is required to set up the network connection to CDS that enables the transmission of a day-end exchange trade file. For more information on required documentation, see Becoming a source of exchange trades on page 21.</u></p> <p><u>Once setup and testing are successfully completed, written confirmation of the startup date must be sent to CDS at least 10 business days prior to the first trade reporting date.</u></p> <p><u>Suspension of a source of exchange trades</u></p> <p>In order to qualify as a source of exchange trades in CDSX, marketplaces must submit If the Application for use by a Marketplace Requesting Designation as a Source of Exchange Trades in CDSX form (CDSX818) to confirm that the marketplace meets the above criteria. In the event that the marketplace no longer meets any one or more of the criteria required to qualify as a source of exchange trades, CDS may, at its discretion, suspend the marketplace as a source of exchange trades.</p> <p><u>Exchange trade reporting</u></p> <p>CDS identifies the sources of all exchange trades, and reports this source in file transmissions and InterLink messages. The current list of sources is maintained on the CDS website (www.cds.ca).</p> <p>CDSX applies the following rules to exchange trades reported by an eligible source:</p> <ul style="list-style-type: none"> • The seller is the submitter and the buyer is the acceptor. 	<p>Setting up a source of exchange trades in CDSX</p> <p>Once all required documentation is received by CDS, network setup and testing can commence. Four to six weeks lead time is required to set up the network connection to CDS that enables the transmission of a day-end exchange trade file. For more information on required documentation, see Becoming a source of exchange trades on page 21.</p> <p>Once setup and testing are successfully completed, written confirmation of the startup date must be sent to CDS at least 10 business days prior to the first trade reporting date.</p> <p>Suspension of a source of exchange trades</p> <p>If the marketplace no longer meets any of the criteria required to qualify as a source of exchange trades, CDS may, at its discretion, suspend the marketplace as a source of exchange trades.</p> <p>Exchange trade reporting</p> <p>CDS identifies the sources of all exchange trades, and reports this source in file transmissions and InterLink messages. The current list of sources is maintained on the CDS website (www.cds.ca).</p> <p>CDSX applies the following rules to exchange trades reported by an eligible source:</p> <ul style="list-style-type: none"> • The seller is the submitter and the buyer is the acceptor. • Exchange trades settle by either trade-for-trade (TFT) settlement, certificate-based settlement (CBS) or continuous net settlement (CNS). Instructions from the source of the trade, security eligibility and the participant's eligibility determine the mode of settlement. • Direct participant (DP) and mandatory cash (MC) are the only valid trade types. • Mandatory cash trades are defaulted to settle by TFT. • Exchange trades are reported with a confirmed status. • Exchange trades where the mode of settlement is CNS or CBS are defaulted to settle to the participant's GA 000. • For exchange trades targeted to settle by CBS, CDSX sets the settlement control indicators of both parties to N (no). For all other exchange trades, the settlement control indicators of both parties are set to Y (yes) and cannot be changed. <p>Exchanges, ATSS and QTRSs are responsible for correcting any trade reporting problems. If an incorrect trade is sent, a corrective (reversal) entry and a new trade must be entered the next day. CDS does not notify exchange, ATS or QTRS members of reporting problems.</p> <p>3.2 Exchange trade activities</p> <p>Participants may perform the following exchange trade activities:</p>

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<ul style="list-style-type: none"> • Based on instructions from the source of the trade, the security eligibility and the participant's eligibility, exchange Exchange trades are targeted to settle by either trade-for-trade (TFT) settlement, certificate-based settlement (CBS) or continuous net settlement (CNS). Instructions from the source of the trade, security eligibility and the participant's eligibility determine the mode of settlement. • Direct participant (DP) and mandatory cash (MC) are the only valid trade types. • Mandatory cash trades are defaulted to settle by TFT. • Exchange trades are reported with a confirmed status. • Exchange trades where the mode of settlement is CNS or CBS are defaulted to settle to the participant's GA 000. • For exchange trades targeted to settle by CBS, CDSX sets the settlement control indicators of both parties to N (no). For all other exchange trades, the settlement control indicators of both parties are set to Y (yes) and cannot be changed. <p><u>Exchanges, ATSS and QTRSs are responsible for correcting any trade reporting problems. If an incorrect trade is sent, a corrective (reversal) entry and a new trade must be entered the next day. CDS does not notify exchange, ATS or QTRS members of reporting problems.</u></p> <p>3.2 Exchange trade activities</p> <p>Participants may perform the following exchange trade activities:</p> <ul style="list-style-type: none"> • Review exchange trade information online, or receive InterLink messages or end-of-day file transmissions • Receive beginning-of-day transmissions for domestic exchange trade reconciliation files. <p>For the message layouts, refer to <i>CDS Batch and Interactive Services – Technical Information</i>.</p> <p>Participants may review exchange trades on the following reports:</p> <ul style="list-style-type: none"> • Exchange Trade Corrections and Adjustments report • Exchange Trade report • Outstanding Exchange Trade report • Trade Reconciliation report. <p>For more information, refer to <i>CDS Reporting Procedures</i>.</p>	<ul style="list-style-type: none"> • Review exchange trade information online, or receive InterLink messages or end-of-day file transmissions • Receive beginning-of-day transmissions for domestic exchange trade reconciliation files. <p>For the message layouts, refer to <i>CDS Batch and Interactive Services – Technical Information</i>.</p> <p>Participants may review exchange trades on the following reports:</p> <ul style="list-style-type: none"> • Exchange Trade Corrections and Adjustments report • Exchange Trade report • Outstanding Exchange Trade report • Trade Reconciliation report. <p>For more information, refer to <i>CDS Reporting Procedures</i>.</p>