

13.1.4 CDS Rule Amendment Notice – Technical Amendments to CDS Procedures Relating to OFAC

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS)

TECHNICAL AMENDMENTS TO CDS PROCEDURES

OFAC PROCEDURES

NOTICE OF EFFECTIVE DATE

A. DESCRIPTION OF THE AMENDMENT

*Background*

In late 2005 and early 2006, the Depository Trust Company (“DTC”) implemented a screening process in respect of both its services and the securities it holds on behalf of its participants. The screening process for securities deposits was implemented in order to comply with the regulations of the United States Office of Foreign Asset Control (“OFAC”), and is applied using the OFAC Specially Designated Nationals and Blocked Persons list (“OFAC list”). CDS, as a member of DTC, has been obliged to modify its procedures and service offerings in several ways.

In particular, the implementation of OFAC screening obliged CDS to discontinue ‘instant’ U.S. deposits (i.e. those U.S. deposits where a participant received credit prior to the physical delivery of a certificate). CDS informed its participants of the discontinuation of instant U.S. deposits (both CDSX-Ledger bound, and DTC-Ledger bound [via New York Link or DTC Direct Link]). Bulletin 2006-00039C detailed this discontinuation as well as the procedures for making Regular and Direct deposits and Regular, Direct, and Instant withdrawals. While all are subject to the DTC OFAC screening procedures, only instant deposits were adversely affected.

Bulletin 2006-00039C also outlined the new obligations placed on CDS participants in respect of the provision of additional information to DTC in the event of a potential match to a name on the OFAC List. These obligations included a requirement to regularly review information on such potential matches (“pending review items”) provided via the “OFAP” function in DTC’s Participant Terminal system. In addition, where CDS participants are required to provide further information to DTC for the purposes of the OFAC screening process, the Bulletin clearly noted that the onus was on the participant to obtain consent for the release of personal information regarding their clients to DTC for this purpose; CDS disclaimed any responsibility for information provided to it in response to a DTC request for OFAC screening purposes. All such information is forwarded directly to DTC without review or assessment by CDS.

The proposed amendments to CDS Procedures codify these modifications and changes in CDS service offerings. The amendments are proposed at this time in order to further clarify CDS participant obligations with respect to the DTC OFAC screening process.

The Procedures marked for the amendments may be accessed on the CDS website at:

<http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open>

*Description of Proposed Amendments*

The proposed amendments affect three CDS Procedure Guides: 1) New York Link Participant Procedures; 2) DTC Direct Link Participant Procedures; and 3) U.S. Deposit and Withdrawal Procedures. In particular, the proposed amendments do the following:

- 1) New York Link Participant Procedures
  - At section 1.1, the removal of the reference to the *Facility Deposit Service*.
  - At Chapter 4, the removal of references to the ‘instant’ deposit services previously provided by CDS. Reference to delays with respect to rejected deposits and service fees will remain in the Procedures at sections 4.1 and 4.2.
- 2) DTC Direct Link Participant Procedures
  - At section 1.1, the removal of the reference to the *Facility Deposit Service* (relating to “instant deposits”).

- At Chapter 3, the removal of references to the 'instant' deposit services previously provided by CDS. Reference to delays with respect to rejected deposits and service fees will remain in the Procedures at sections 3.1 and 3.2.
- 3) U.S. Deposit and Withdrawal Procedures
- Chapter 3 – *Office of Foreign Assets Control list* was added, and includes sections addressing:
  - i. at section 3.1, CDS participant obligations with respect to the treatment of personal information and compliance with other privacy legislation.
  - ii. at section 3.2, the procedures, notifications, and responses in respect of Deposits to DTC.
  - iii. at section 3.3, the procedures, notifications, and responses in respect of Withdrawals from DTC.
- Various typographical amendments were also made.

**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**

Pursuant to Appendix A ("Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC") of the OSC Recognition and Designation Order, as amended 1 November, 2006, and *Annexe A ("Protocole d'examen et d'approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l'Autorité des marchés financiers")* of AMF Decision 2006-PDG-0180, made effective on 1 November, 2006, CDS has determined that these amendments will be effective on **March 26, 2007**.

**D. QUESTIONS**

Questions regarding this notice may be directed to:

Tony Hoffmann  
Legal Counsel  
The Canadian Depository for Securities Limited  
85 Richmond Street West  
Toronto, Ontario M5H 2C9

Telephone: 416-365-3768  
Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto:attention@cds.ca)

JAMIE ANDERSON  
Managing Director, Legal