

**13.1.2 CDS Notice and Request for Comments – Material Amendments to CDS Rules Relating to Constrained Entitlements**

**CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS)**

**MATERIAL AMENDMENTS TO CDS RULES**

**CONSTRAINED ENTITLEMENTS**

**REQUEST FOR COMMENTS**

**A. DESCRIPTION OF THE PROPOSED AMENDMENTS**

Constraints imposed by issuers on entitlements distributed with respect to a security, or on reorganization events affecting a security, will be treated in the same way as constraints arising from the terms of the securities held through CDSX.

**B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS**

The terms of certain securities impose constraints, such as limitations on the total number of shares that may be held by a single owner or requirements as to the residency of security holders. This is recognized in current Rule 6.5, which describes such constraints, requires the participant holding the securities to comply with the constraints, and provides a mechanism for participants to provide declarations to CDS when the issuer requires such declarations (for example, to demonstrate an appropriate level of Canadian share ownership). In addition, entitlements or reorganization events affecting certain securities may also be subject to constraints; for instance, the ability to choose a dividend in the form of securities rather than cash, or to have dividends paid in a particular currency, may be restricted to particular classes of persons. At the present time, the Rules do not deal with such constraints. The proposed amendments will treat constraints on entitlements and reorganization events in the same way as constraints on securities. Participants will have the obligation to supervise the exercise of rights on behalf of their customers to ensure that constraints are not violated (just as participants have the obligation to ensure that their customers do not hold securities contrary to constraints). CDS will be able to request a declaration of eligibility to exercise rights if that becomes necessary.

**C. IMPACT OF PROPOSED AMENDMENTS**

CDS will deal with all constraints affecting securities (including those linked to entitlements and to reorganization events) on a consistent basis.

**D. DESCRIPTION OF THE RULE DRAFTING PROCESS**

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.1 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".

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.

The amendments to Participant Rules may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

**E. IMPACT OF PROPOSED AMENDMENTS ON TECHNOLOGICAL SYSTEMS**

No system changes are required to implement this amendment.

**F. COMPARISON TO OTHER CLEARING AGENCIES**

CREST Rule 2.6 provides for conditions relating to securities. In the CRESTCo Sponsors Agreement, section 3.5 provides that due diligence must be undertaken as appropriate for elections attaching to securities. In CDS's case, the due diligence must be

undertaken by its Participants as they are the entities with the relevant data concerning underlying beneficial owners of securities.

**G. PUBLIC INTEREST ASSESSMENT**

In analysing the impact of the proposed amendments to the CDS Participant Rules, CDS has determined that the implementation of these amendments would not be contrary to the public interest. The CDSX process for handling constraints on entitlements and reorganization events will be consistent for all participants. The participants, who have direct knowledge of the customers for whom the securities are held, will be responsible for ensuring compliance with the constraints.

**H. COMMENTS**

Comments on the proposed amendments should be in writing and delivered by March 5, 2007 and delivered to:

Jamie Anderson  
Managing Director, Legal  
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:

Jacinthe Bouffard  
Director, SRO Oversight  
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: jacinthe.bouffard@lautorite.qc.ca

Cindy Petlock  
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: cpetlock@osc.gov.on.ca

CDS will make available to the public, upon request, copies of comments received during the comment period.

**I. PROPOSED 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.

**J. QUESTIONS**

Questions regarding this notice may be directed to:

Jamie Anderson  
Managing Director, Legal  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
Toronto, Ontario M5H 2C9

Fax: 416-365-1984  
e-mail: attention@cds.ca

TOOMAS MARLEY  
Chief Legal Officer

**APPENDIX "A"**  
**PROPOSED RULE AMENDMENT**

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
<p><b>6.5.2 <u>Constraints on Securities, Entitlements, Reorganizations and Other Rights</u> <del>Constrained Securities</del></b></p> <p><b><u>(a) Constraints on Securities</u></b></p> <p>CDS may be unable to accept certain Securities, or more than a limited number of certain Securities, for deposit in the Depository Service, due to constraints imposed by the charter or bylaws of the Issuer of the Securities, or by legislation, regulation or order of a court or Regulatory Body. Such constraints include restrictions on the <del>p</del>Persons eligible to hold such Securities, restrictions on the maximum quantity of such Securities permitted to be held by a Person or its associates, or requirements to submit declarations to the Issuer of such Securities on a periodic basis or on the happening of an event such as the transfer of the Securities or the issue of rights pertaining to such Securities. The Issuer of such Securities may be empowered to purchase, sell, redeem or cancel such Securities, or limit the rights attached to such Securities, on the breach of such a constraint. A Participant shall not knowingly permit Securities held for its account in the Depository Service, or reflected in its Pledge Account or Tender Account, to be held beneficially in contravention of any applicable charter, bylaw, legislation, regulation or order.</p> <p><b><u>(b) Other Constraints</u></b></p> <p><u>CDS receives and distributes entitlements on Securities in accordance with Rule 6.6, and deals with reorganization events affecting Securities in accordance with Rule 6.8. Entitlements and reorganization events may also be subject to constraints, including restrictions on the Persons eligible to receive such entitlements or to exercise a right with respect to a reorganization event, or requirements to submit declarations with respect to an entitlement or a reorganization event. A Participant shall not knowingly permit the distribution of an entitlement, or the exercise of a right with respect to a reorganization event, contrary to such constraints, with respect to Securities held for its account in the Depository Service or reflected in its Pledge Account or Tender Account.</u></p> <p><b>6.5.3 Declarations</b></p> <p>Each Participant shall provide or cause to be provided to CDS within a reasonable time following request a completed declaration providing such information with respect to any Security held in the Depository Service for the account of the Participant as CDS may reasonably require in order for CDS or a Nominee to comply (i) with a lawful request of the Issuer of the Security made to comply or facilitate compliance with any legislation, rule, regulation, order of a court or administrative or regulatory body, bylaw or provision to which the Issuer is subject, or (ii) with any legislation, regulation, or order of a court or administrative or regulatory</p>	<p><b>6.5.2 Constraints on Securities, Entitlements, Reorganizations and Other Rights</b></p> <p><b>(a) Constraints on Securities</b></p> <p>CDS may be unable to accept certain Securities, or more than a limited number of certain Securities, for deposit in the Depository Service, due to constraints imposed by the charter or bylaws of the Issuer of the Securities, or by legislation, regulation or order of a court or Regulatory Body. Such constraints include restrictions on the Persons eligible to hold such Securities, restrictions on the maximum quantity of such Securities permitted to be held by a Person or its associates, or requirements to submit declarations to the Issuer of such Securities on a periodic basis or on the happening of an event such as the transfer of the Securities or the issue of rights pertaining to such Securities. The Issuer of such Securities may be empowered to purchase, sell, redeem or cancel such Securities, or limit the rights attached to such Securities, on the breach of such a constraint. A Participant shall not knowingly permit Securities held for its account in the Depository Service, or reflected in its Pledge Account or Tender Account, to be held beneficially in contravention of any applicable charter, bylaw, legislation, regulation or order.</p> <p><b>(b) Other Constraints</b></p> <p>CDS receives and distributes entitlements on Securities in accordance with Rule 6.6, and deals with reorganization events affecting Securities in accordance with Rule 6.8. Entitlements and reorganization events may also be subject to constraints, including restrictions on the Persons eligible to receive such entitlements or to exercise a right with respect to a reorganization event, or requirements to submit declarations with respect to an entitlement or a reorganization event. A Participant shall not knowingly permit the distribution of an entitlement, or the exercise of a right with respect to a reorganization event, contrary to such constraints, with respect to Securities held for its account in the Depository Service or reflected in its Pledge Account or Tender Account.</p> <p><b>6.5.3 Declarations</b></p> <p>Each Participant shall provide or cause to be provided to CDS within a reasonable time following request a completed declaration providing such information with respect to any Security held in the Depository Service for the account of the Participant as CDS may reasonably require in order for CDS or a Nominee to comply (i) with a lawful request of the Issuer of the Security made to comply or facilitate compliance with any legislation, rule, regulation, order of a court or administrative or regulatory body, bylaw or provision to which the Issuer is subject, (ii) with any legislation, regulation, or order of a court or administrative or regulatory</p>

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<p>body <u>or (iii) with any constraint with respect to an entitlement or a reorganization event</u>. Each Participant shall provide or cause to be provided such declaration in respect of any Security recorded in its Securities Account or Withdrawal Account, or reflected in its Pledge Account or Tender Account. A Participant shall not be required to provide or cause to be provided such declaration in respect of any Security that is held in the Participant's Collateral Account or Offer Account. CDS shall be entitled to rely upon and shall be under no duty of inquiry with respect to any such declarations received from a Participant.</p> <p><b>6.6.1 Entitlements</b></p> <p>CDS receives entitlements on the Securities held by CDS on behalf of Participants to whose Account the Securities are credited. Entitlements include dividends, interest, payments upon redemption or maturity of Securities and other events involving payments or distributions to holders of Securities. Entitlements may be distributed in the form of a payment of money or a distribution of Securities or other property. Securities entitlements include stock dividends, dividends in kind, and Securities issued on the subdivision, consolidation or conversion of Securities held for a Participant. <u>Entitlements may be subject to constraints.</u></p> <p><b>6.8.1 Reorganization Information</b></p> <p>Securities held in the Depository may be subject to reorganization events including retraction, redemption, buyback, exchange, extension, rights distribution, warrant subscription, offer and exercise of options, and instalment receipts. Within a reasonable time after receiving information relating to a reorganization event, CDS shall inform Participants of the reorganization event, and may provide a summary of information regarding the reorganization event. The information to be provided is a summary of information available to CDS from various sources and CDS does not represent the accuracy, adequacy, timeliness, completeness, or fitness for any particular purpose of the information provided by it. Information about reorganization events is made available to all Participants and is not directed only to Participants holding the affected Securities. <u>Reorganization events may be subject to constraints.</u></p>	<p>body or (iii) with any constraint with respect to an entitlement or a reorganization event. Each Participant shall provide or cause to be provided such declaration in respect of any Security recorded in its Securities Account or Withdrawal Account, or reflected in its Pledge Account or Tender Account. A Participant shall not be required to provide or cause to be provided such declaration in respect of any Security that is held in the Participant's Collateral Account or Offer Account. CDS shall be entitled to rely upon and shall be under no duty of inquiry with respect to any such declarations received from a Participant.</p> <p><b>6.6.1 Entitlements</b></p> <p>CDS receives entitlements on the Securities held by CDS on behalf of Participants to whose Account the Securities are credited. Entitlements include dividends, interest, payments upon redemption or maturity of Securities and other events involving payments or distributions to holders of Securities. Entitlements may be distributed in the form of a payment of money or a distribution of Securities or other property. Securities entitlements include stock dividends, dividends in kind, and Securities issued on the subdivision, consolidation or conversion of Securities held for a Participant. Entitlements may be subject to constraints.</p> <p><b>6.8.1 Reorganization Information</b></p> <p>Securities held in the Depository may be subject to reorganization events including retraction, redemption, buyback, exchange, extension, rights distribution, warrant subscription, offer and exercise of options, and instalment receipts. Within a reasonable time after receiving information relating to a reorganization event, CDS shall inform Participants of the reorganization event, and may provide a summary of information regarding the reorganization event. The information to be provided is a summary of information available to CDS from various sources and CDS does not represent the accuracy, adequacy, timeliness, completeness, or fitness for any particular purpose of the information provided by it. Information about reorganization events is made available to all Participants and is not directed only to Participants holding the affected Securities. Reorganization events may be subject to constraints.</p>