

13.1.4 CDS Notice of Request for Comments – Material Amendments to CDS Rules Relating to Qualifications for Participation – Foreign Institutions

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED (“CDS”)

**MATERIAL AMENDMENTS TO CDS RULES
QUALIFICATIONS FOR PARTICIPATION – FOREIGN INSTITUTIONS**

REQUEST FOR COMMENT

DESCRIPTION OF THE PROPOSED AMENDMENTS

On October 12, 2005, the Board of Directors of The Canadian Depository for Securities Limited (“CDS”) approved amendments to the CDS Participant Rules to remove the requirement that a Participant which is a Foreign Institution provide CDS with a guarantee or irrevocable letter of credit in form, substance and amount satisfactory to CDS from another Participant of CDS which is a Regulated Financial Institution.

NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

Background

Under the current CDS Participant Rules, there is a requirement that all Foreign Institution Participants provide an irrevocable letter of credit or guarantee of their obligations to CDS. This requirement was considered necessary under the Book Based System and Securities Settlement Service formerly offered by CDS in order to provide CDS with an extra level of protection from default by Foreign Institutions. Foreign Institutions were considered to be higher risks than institutions based in Canada since Foreign Institutions’ assets and capital are generally located outside of Canada.

This guarantee (or irrevocable letter of credit) requirement has been effectively rendered obsolete under the current CDSX Risk Model (i.e. all obligations are guaranteed by credit rings and sureties, and supported by security interests in specific collateral). Foreign Institutions have the same capital and collateral obligations as other Participants classified in the same Participant category. Additionally, upon applying for Participant status, a Foreign Institution is required to provide a legal opinion that verifies that the Participant Rules are binding on it, and specifically that the security interest and netting provisions are enforceable against it.

In practice, Foreign Institution Participants are no longer required to provide a guaranty (or irrevocable letter of credit) of their obligations to CDS.

IMPACT OF THE PROPOSED AMENDMENTS

As the proposed amendment will result in the CDS Participant Rules being consistent with current practice, the proposed amendments will have no impact on CDS or its Participants. Foreign Institutions will continue to have the same capital and collateral obligations as all other Participants classified in the same category.

The proposed amendment will not impose additional costs or risks on CDS Participants.

The proposed amendment will not have an impact on CDS’s technology systems or the technology systems of CDS Participants.

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* and as a self-regulatory organization by the Autorité des marchés financiers pursuant to Section 169 of the Québec *Securities Act*. In addition CDS has been 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 which 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.

COMMENTS

Comments on the proposed amendments should be in writing and delivered by November 20, 2005 and delivered to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

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

A copy should also be provided to the Ontario Securities Commission by forwarding a copy to:

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.

COMPARATIVE ANALYSIS

CDS criteria for the admission of foreign institutions as members is consistent with international standards in that such criteria provide an objective and publicly disclosed standard permitting fair and open access. To be considering for acceptance as a Participant a foreign institution must comply with the same standards as a Canadian entity but must also have at least \$1 million in capital and a guarantee of its obligations by a Canadian Participant.

The Depository Trust Company ("DTC") requirements for foreign institutions include:

Maintain a minimum net capital of 1000% of the DTC requirements for a US entity;

Maintain haircutted collateral equal to 50% of its net debit cap at the start of each day such an amount not receiving credit in DTC's Collateral Monitor; and

The institution's home nation regulator must have entered into a memorandum of understanding with the US Securities and Exchange Commission; and

The institution must provide DTC with audited financial information in a form acceptable to DTC.

To qualify as a member of the National Securities Clearing Corporation ("NSCC") broker/dealers must be registered under the US *Securities Exchange Act*. The NSCC requires its members to make contributions to its clearing fund in an amount determined by a risk-based margin calculation.

In completing its comparative analysis of the obligations of foreign institution obligations for access to a clearing agency, CDS believes that its criteria for being granted Participant status is appropriate. The proposed amendments will provide more open access for foreign entities to CDS and will be consistent with international standards.

PUBLIC INTEREST ASSESSMENT

In analyzing the impact of the proposed amendments to the Participant rules, CDS has determined that the implementation of these amendments would not be contrary to the public interest.

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.

QUESTIONS

Questions regarding this notice may be directed to:

Michael Brady
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The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Telephone: 416-365-8395
Fax: 416-365-1984
e-mail: attention@cds.ca

TOOMAS MARLEY
VICE-PRESIDENT, LEGAL AND CORPORATE SECRETARY

APPENDIX "A"
PROPOSED RULE AMENDMENT

2.2.5 Qualifications for Participation	2.2.5 Qualifications for Participation
<p>A Participant must satisfy all of the qualifications set out below for the category to which the Participant belongs.</p> <p>...</p> <p>(b) If the Participant is a Foreign Institution:</p> <ul style="list-style-type: none"> (i) the Participant must be a subsisting legal entity under the laws of its jurisdiction of incorporation, establishment or formation and must not be in default of filing any notice, report or return under the laws of such jurisdiction or the laws of any other jurisdiction in which the Participant carries on business, the failure to file which could result in the Participant's ceasing to be duly incorporated, established or formed or in the cancellation of its authorization to carry on business; (ii) the Participant must hold, and must have done all things required to hold, every registration, licence, permit, authorization or approval required in connection with its business from each Regulatory Body having jurisdiction over the Participant; (iii) if a Regulatory Body has jurisdiction over the Participant, the Participant and each of its partners, directors and officers must be in compliance with all applicable regulations, rules, orders or directions of that Regulatory Body, including such minimum capital requirements and financial stability standards as are applicable to the Participant; (iv) the Participant must own, manage, control, or have custody of a portfolio of Securities of Canadian Issuers with a minimum fair market value (as determined to the satisfaction of CDS) of such amount as the Board of Directors may from time to time determine; (v) the Participant must either have a minimum Capital equivalent to \$1,000,000 or provide other evidence satisfactory to CDS of its financial stability; (vi) the Participant must provide CDS with a guarantee or irrevocable letter of credit of its obligations to CDS, in form, substance and amount satisfactory to CDS, from a Regulated Financial Institution who is a Participant; (vii) the Participant must provide CDS with a legal opinion satisfactory to counsel for CDS with respect to the Participant's participation in CDS including an opinion on the enforceability of any security interests granted 	<p>A Participant must satisfy all of the qualifications set out below for the category to which the Participant belongs.</p> <p>...</p> <p>(b) If the Participant is a Foreign Institution:</p> <ul style="list-style-type: none"> (i) the Participant must be a subsisting legal entity under the laws of its jurisdiction of incorporation, establishment or formation and must not be in default of filing any notice, report or return under the laws of such jurisdiction or the laws of any other jurisdiction in which the Participant carries on business, the failure to file which could result in the Participant's ceasing to be duly incorporated, established or formed or in the cancellation of its authorization to carry on business; (ii) the Participant must hold, and must have done all things required to hold, every registration, licence, permit, authorization or approval required in connection with its business from each Regulatory Body having jurisdiction over the Participant; (iii) if a Regulatory Body has jurisdiction over the Participant, the Participant and each of its partners, directors and officers must be in compliance with all applicable regulations, rules, orders or directions of that Regulatory Body, including such minimum capital requirements and financial stability standards as are applicable to the Participant; (iv) the Participant must own, manage, control, or have custody of a portfolio of Securities of Canadian Issuers with a minimum fair market value (as determined to the satisfaction of CDS) of such amount as the Board of Directors may from time to time determine; (v) the Participant must either have a minimum Capital equivalent to \$1,000,000 or provide other evidence satisfactory to CDS of its financial stability; (vi) the Participant must provide CDS with a legal opinion satisfactory to counsel for CDS with respect to the Participant's participation in CDS including an opinion on the enforceability of any security interests granted by the Participant pursuant to the Rules and of the netting provisions of the Rules applicable to the Participant; and (vii) the Participant must satisfy such other requirements as the Board of Directors in its

<p>by the Participant pursuant to the Rules and of the netting provisions of the Rules applicable to the Participant; and</p> <p>(viii) (vii) the Participant must satisfy such other requirements as the Board of Directors in its sole discretion deems appropriate for the protection of CDS and other Participants. ...</p>	<p>sole discretion deems appropriate for the protection of CDS and other Participants. ...</p>
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