

Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 CDS Rule Amendment - Intellectual Property Rights

CDS Rule Amendment - Intellectual Property Rights

Proposed Rule Amendments - Revisions in Response to Comments

Text of CDS Participant Rules marked to reflect (1) proposed Rule published for comment on May 26, 2006 and (2) revisions thereto in response to comments

Text of CDS Participant Rules reflecting the adoption of proposed amendments

Rule 1.2.1 Definitions

“CDS Trade-marks” means CDS Trade-marks as the term is defined in Rule 3.8.1.

“CDS Works” means data and information created or compiled by CDS and provided by CDS to the Participant in written, oral or electronic form, as identified in the Procedures, and software, Functions, systems, hardware and networks relating to Services made available by CDS to the Participant.

“Other Marks” means Other Marks as the term is defined in Rule 3.8.1.

“Security Information” means data and information in written, oral or electronic form concerning a Security, including, without limitation, the deposit or withdrawal of a Security, an event related to a Security, the Issuer of a Security, the Security Identifier, or otherwise, which CDS or any of its affiliates or agents records, reports, collects, processes, compiles, creates, publishes, distributes, makes available, provides access to or has in its possession or control at any time.

3.6. CONFIDENTIALITY

3.6.1 Confidentiality and Use of Participant Information

CDS shall preserve the confidentiality of any information concerning a Participant or provided by a Participant, that becomes known to CDS through the operation of any Service, exercising the same degree of care as it uses with respect to its own confidential information. CDS will not use such information except for operation of the Services. Such confidentiality obligation shall not apply to any information that is or becomes generally available to the public, otherwise than as a result of the breach of this Rule 3.6. Such confidentiality obligation shall not preclude the disclosure of confidential information to any of CDS's officers, directors, employees or agents that is reasonably necessary for the operation of the Services. The obligations of CDS pursuant to this Rule 3.6 shall be in addition to and shall not derogate from any other obligation of confidentiality arising from any agreement or legislation binding on CDS.

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“CDS Trade-marks” means CDS Trade-marks as the term is defined in Rule 3.8.1.

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3.6.2 Release of Participant Information

Each Participant authorizes CDS to release any information concerning the Participant or provided by a Participant:

- (a) to the auditors of CDS, of the Participant and of other Participants, as may reasonably be required to perform their duties;
- (b) to the legal counsel of CDS, as may reasonably be required to perform their duties;
- (c) requested by the Issuer of Securities held for the Participant or by any other Person, if such information is limited to information with respect to the Securities held for the Participant and if CDS is reasonably satisfied that such information is sought for a purpose concerning an effort to influence the voting by Security holders of the Issuer, an offer to acquire Securities of the Issuer or any other matter relating to either the affairs of the Issuer or Transactions in the Securities of the Issuer effected by the Participant, provided that any information released under this subsection (c) does not identify any client or customer of the Participant;
- (d) as may be required from time to time by order, summons, subpoena, statutory direction or other process of, or pursuant to an agreement with, a court, Regulatory Body or other administrative or regulatory agency, having, in the opinion of CDS, jurisdiction over CDS;
- (e) pursuant to any statutory or regulatory requirement including National Instrument 54-101 Communication with Beneficial Owners of a Reporting Issuer (as it may be reformulated from time to time) or any similar policy, instrument or Rule adopted or made by the Canadian Securities Administrators;
- (f) to any securities exchange, commodities exchange, alternative trading system, securities depository, securities clearing agency, payment clearing system or self-regulatory organization of which the Participant is a member or the services of which the Participant uses in connection with its participation in CDS, or to any insurer of the Participant including the Canadian Investor Protection Fund or the Canada Deposit Insurance Corporation; and
- (g) that is in a statistical, summary or other format, provided the information in that format does not specifically identify a particular Participant, or, if the information concerns debt Securities, provided the information in that format does not identify any industry group.

CDS shall take all reasonable steps to avoid releasing any information that may identify a particular client or customer of a Participant. When CDS is required pursuant to subsection (d) to disclose confidential information that is directed

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- (d) as may be required from time to time by order, summons, subpoena, statutory direction or other process of, or pursuant to an agreement with, a court, Regulatory Body or other administrative or regulatory agency, having, in the opinion of CDS, jurisdiction over CDS;
- (e) pursuant to any statutory or regulatory requirement including National Instrument 54-101 Communication with Beneficial Owners of a Reporting Issuer (as it may be reformulated from time to time) or any similar policy, instrument or Rule adopted or made by the Canadian Securities Administrators;
- (f) to any securities exchange, commodities exchange, alternative trading system, securities depository, securities clearing agency, payment clearing system or self-regulatory organization of which the Participant is a member or the services of which the Participant uses in connection with its participation in CDS, or to any insurer of the Participant including the Canadian Investor Protection Fund or the Canada Deposit Insurance Corporation; and
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exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request before making the disclosure unless the terms of any applicable statute, regulation, ruling or order prohibit such notice. When CDS releases confidential information pursuant to subsection (f), CDS shall request the recipient to treat such information as confidential.

3.6.3 Confidentiality of CDS Information

Each Participant shall preserve the confidentiality of: (i) CDS Works and Security Information; and (ii) any information concerning CDS or provided by CDS, that, at the time of disclosure, is marked as confidential or is disclosed orally as confidential and that becomes known to the Participant through the operation of any Service, or in anticipation of any new service, including any on-going projects, records, data and reports. In preserving such confidentiality, each Participant shall exercise the same degree of care as it uses with respect to its own confidential information. Such confidentiality obligation shall not apply to any information that is or becomes generally available to the public, otherwise than as a result of the breach of this Rule 3.6. Such confidentiality obligation shall not preclude the disclosure of such confidential information to any of Participant's officers, directors, employees, clients or customers in the manner authorized in Rule 3.8.3, or agents that is reasonably necessary: for the use or proposed use of the Services or any new service by the Participant; or for the development or operation of Services or any new service by CDS; or to achieve the purposes for which CDS disclosed the confidential information.

The obligations of each Participant pursuant to this Rule 3.6.3 shall be in addition to and shall not derogate from any other obligation of confidentiality arising from any agreement or legislation binding on the Participant.

CDS authorizes the Participant to release any confidential information concerning CDS:

- (a) to the auditors of the Participant, as may reasonably be required to perform their duties;
- (b) to the legal counsel of the Participant, as may reasonably be required to perform their duties; and
- (c) as may be required from time to time by order, summons, subpoena, statutory direction or other process of, or pursuant to an agreement with, a court, Regulatory Body or other administrative or regulatory agency, having, in the opinion of the Participant, jurisdiction over the Participant.

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3.8. RIGHTS AND USES

3.8.1 CDS Trade-marks

The “CDS Trade-marks” are those words and logos identified as such in the Procedures. In addition, certain words, phrases, names, designs, numbers or logos may constitute trade-marks, service marks, trade names, domain names or intellectual property of CDS or other third parties (collectively the “Other Marks”). CDS will use its best efforts to identify Other Marks in the Procedures. Nothing in the Rules gives the Participant any right to use the CDS Trade-marks or Other Marks, including without limitation, as part of the name of any of its products or services, except a limited, non-exclusive, revocable and non-transferable right to refer to the fact that the Participant is a participant of CDS or uses or facilitates the use of Services, in which cases the Participant shall display any CDS Trade-mark in special typographical treatment as set out in the Procedures, and shall indicate clearly that it is a trade-mark of and property of CDS. All uses of CDS Trade-marks and Other Marks and all goodwill attached thereto shall enure solely to the benefit of CDS or its respective third party owner. To the extent that any rights or goodwill inadvertently accrue or attach to the Participant in respect of the CDS Trade-marks and Other Marks, the Participant shall hold such rights and goodwill in trust and shall assign such rights and goodwill to CDS or its respective third party owner, if requested.

Each Participant acknowledges and agrees that it acquires absolutely no rights or licenses in or to the CDS Trade-marks or Other Marks, other than the limited, non-exclusive, revocable and non-transferable right to use that is outlined in this Rule 3.8.1. Any unauthorized use by the Participant of the CDS Trade-marks or Other Marks or any other intellectual property right or proprietary right of CDS is strictly prohibited. Each Participant shall promptly notify CDS of any conflicting use or any act of infringement or passing off which comes to its attention involving the CDS Trade-Marks or Other Marks or any variation or imitation thereof by unauthorized persons. Each Participant shall cooperate with CDS to take any steps CDS considers necessary to prevent further unauthorized use, including but not limited to, cooperating with CDS in any proceedings involving the CDS Trade-marks of Other Marks.

3.8.2 Ownership

The Participant acknowledges and agrees: that all right, title and interest in and to the Services, ~~Security Information~~ and CDS Works, including all patents, copyright, trade secrets and other intellectual property rights in any part of the world, are owned by CDS or its suppliers and are protected by Canadian and international copyright and other intellectual property laws; and that copyright subsists in the Services and CDS Works, ~~and in including the selection, arrangement and assembly of Security Information and other information the content in Services and CDS Works, Security Information, and other information;~~ and that such copyright is owned by CDS or its

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suppliers. All rights not expressly granted in the Rules are reserved. Each Participant shall promptly notify CDS of any unauthorized use of the Services, CDS Works, Security Information and other information owned by CDS or its suppliers, and agrees to cooperate with CDS and its suppliers to take any steps CDS considers necessary to prevent further unauthorized use, including but not limited to, cooperating with CDS and its suppliers in any proceedings involving the Services, CDS Works, Security Information and other information owned by CDS or its suppliers.

Each Participant will preserve or reproduce on all records, data and reports (including all copies made by Participant), and will not alter any proprietary, confidential or other notices and legends contained on the originals supplied to Participant by CDS, or as may otherwise be required by CDS.

Each Participant shall not take any action that purports to create a claim, lien or encumbrance on, or assignment of, any of the Services, or CDS Works or Security Information. Any act by the Participant, voluntary or involuntary, purporting to create a claim, lien or encumbrance on, or assignment of, any of the Services or, CDS Works or Security Information shall be void.

3.8.3 Use of CDS Works and Security Information

CDS grants each Participant a limited, non-exclusive, revocable, and non-transferable license to use CDS Works and Security Information only for uses directly related to Participant's use of the Services. The Participant shall not use CDS Works or Security Information, or any information obtained or derived from CDS Works or Security Information any of them, except in accordance with this license.

If the Participant provides access to or discloses CDS Works or Security Information to a Person authorized by the Participant to act on its behalf in its use of the Services, such as an affiliate, service bureau or third party service provider, then the Participant shall require each such Person to comply in writing with Rules 3.6 and 3.8 in their use of CDS Works and Security Information on behalf of the Participant. If the Participant provides access to or discloses CDS Works, Security Information or any information obtained or derived from any of them CDS Works or Security Information to a client or customer receiving services from a Participant, then CDS may require the Participant to enter into a written agreement with each such client or customer requiring each such client or customer to comply with Rules 3.6 and 3.8 in their use of CDS Works, Security Information or any information obtained or derived from CDS Works or Security Information any of them.

Except as provided above, the Participant will not:

- (a) use, disclose or communicate CDS Works or Security Information or any information obtained or derived from

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Participant shall promptly notify CDS of any unauthorized use of the Services, CDS Works, and other information owned by CDS or its suppliers, and agrees to cooperate with CDS and its suppliers to take any steps CDS considers necessary to prevent further unauthorized use, including but not limited to, cooperating with CDS and its suppliers in any proceedings involving the Services, CDS Works, and other information owned by CDS or its suppliers.

Each Participant will preserve or reproduce on all records, data and reports (including all copies made by Participant), and will not alter any proprietary, confidential or other notices and legends contained on the originals supplied to Participant by CDS, or as may otherwise be required by CDS.

Each Participant shall not take any action that purports to create a claim, lien or encumbrance on, or assignment of, any of the Services or CDS Works. Any act by the Participant, voluntary or involuntary, purporting to create a claim, lien or encumbrance on, or assignment of, any of the Services or CDS Works shall be void.

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Except as provided above, the Participant will not:

- (a) use, disclose or communicate CDS Works or any information obtained or derived from CDS Works or Security Information to or for the benefit of any third party or any affiliate of the Participant by any means whatsoever, whether as back-office service provider, outsourcer or wholesaler to any third party or affiliate of the Participant or for the benefit of any joint venture,

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~~CDS Works or Security Information any of them to or for the benefit of any third party or any affiliate of the Participant by any means whatsoever, whether as back-office service provider, outsourcer or wholesaler to any third party or affiliate of the Participant or for the benefit of any joint venture, partnership or sales agency relationship to which the Participant is a party or by which it is bound;~~

- (b) ~~reproduce, copy or modify CDS Works or Security Information except as permitted in the Rules or the Procedures;~~
- (c) ~~reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of CDS Works or Security Information or any information obtained or derived from CDS Works or Security Information any of them ; or~~
- (d) ~~directly or indirectly sell, rent, lease, license, sublicense, assign, provide access to or transmit or publish, repack, retransmit, resell or otherwise disseminate or make available CDS Works or Security Information in any medium or manner whatsoever to any third party or any affiliate of the Participant, except to provide information derived from CDS Works or Security Information to a client or customer of a Participant receiving services from the Participant directly related to the Services and the provision of such derived information from CDS Works or Security Information is solely incidental to the services provided to the client or customer by the Participant.~~

~~The Participant will maintain appropriate internal controls, measures and security precautions to prevent unauthorized access to and use of CDS Works and Security Information, exercising the same degree of care as it uses for its own similar restricted or confidential information.~~

~~CDS may offer new or enhanced functionality or grant additional rights to use CDS Works and Security Information as set out in the Procedures and User Guides.~~

3.8.4 Disclaimer

~~Certain Services and CDS Works provided by CDS to the Participants are dependent upon the provision to and use by CDS of information, including Security Information, from third parties. CDS represents that it has the right to grant Participants the right to use the Services, CDS Works and Security Information, but otherwise does not guarantee or make any representations or warranties whatsoever, and there are no conditions, express or implied, in fact or in law, with respect to the accuracy, adequacy, timeliness, completeness, sequence, merchantable quality or fitness for any particular purpose of any such information, which is provided on an "as is", "as available" basis. Upon the written request of a Participant, CDS will appoint such Participant as its agent to assert, while such Participant is a Participant, any right CDS may have to enforce a third party supplier's representations or~~

partnership or sales agency relationship to which the Participant is a party or by which it is bound;

- (b) reproduce, copy or modify CDS Works except as permitted in the Rules or the Procedures;
- (c) reverse engineer, decompile, disassemble or create derivative works based on the whole or any part of CDS Works or any information obtained or derived from CDS Works or Security Information; or
- (d) directly or indirectly sell, rent, lease, license, sublicense, assign, provide access to or transmit or publish, repack, retransmit, resell or otherwise disseminate or make available CDS Works in any medium or manner whatsoever to any third party or any affiliate of the Participant, except to provide information derived from CDS Works or Security Information to a client or customer of a Participant receiving services from the Participant directly related to the Services and the provision of such derived information from CDS Works or Security Information is solely incidental to the services provided to the client or customer by the Participant.

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warranties received by CDS, if any, provided that the Participant shall indemnify and hold harmless CDS, Nominees, Custodians and their respective partners, directors, officers, employees and agents, from and against any loss, damage, cost, expense, liability or claim (including the cost of legal counsel to advise on or defend against such claims) suffered by or made against it, them or any of them arising from, or which they may incur as a result of, the taking of steps at the request of the Participant or the bringing by the Participant of an action in the name of CDS, a Nominee or a Custodian, pursuant to this Rule 3.8.

3.8.5 Verification of Compliance

Upon reasonable notice, at the request of CDS, a Participant shall within a reasonable time provide to CDS a statement in the form provided by CDS, signed by a Signing Officer on behalf of the Participant, confirming that the Participant's use of Services and CDS Works and Security Information is in compliance with Rules 3.6 and 3.8.

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