

13.1.2 Material Amendments to CDS Rules Relating to Intellectual Property Rights - Summary of Comments

CDS'S SUMMARY OF COMMENTS RECEIVED AND RESPONSES

MATERIAL AMENDMENTS TO CDS RULES

INTELLECTUAL PROPERTY RIGHTS

On May 26th, 2006 a proposed amendment CDS Participant Rules relating to Intellectual Property rights was published for comment.

CDS received three comment letters: one collectively from CIBC Mellon Global Securities Services Company, RBC Dexia Investor Services Trust, and State Street Trust Company of Canada; a second from Credit Union Central of British Columbia; and a third, from the Royal Bank of Canada.

SUMMARY OF WRITTEN COMMENTS RECEIVED ON THE PROPOSED AMENDMENT AND CDS RESPONSE

All commentators were supportive of CDS's effort to protect its legitimate intellectual property rights and the intellectual property rights in material entrusted to CDS by third parties. The commentators, however, noted several concerns with respect to the scope, applicability, and specificity included in the proposed amendments.

Comment 1 - Credit Union Central of British Columbia

The lack of specificity in the phrase "Other Marks" may inadvertently place Participants in violation of CDS Participant Rules since such Other Marks are not enumerated in the proposed amendment.

CDS Response

CDS is concerned that, as a practical matter, it may not be able to identify all Other Marks *a priori*. CDS proposes to add the following sentence in Rule 3.8.1 after the second sentence, which defines "Other Marks":

"CDS will use its best efforts to identify Other Marks in the Procedures."

Comment 2 - Royal Bank of Canada

The Draft IP Rule Amendments are too restrictive in respect of Security Information as they prevent Participants from disclosing information regarding securities to the beneficial owners or issuers of those securities.

CDS Response

The intent of Rule 3.8.3 is not to prohibit transmission of proprietary information, but rather to authorize Participants to provide relevant information, whether or not proprietary to CDS, to their clients for use relating to the securities which they have issued by, or have in custody with

Participants.

Comment 3 - Royal Bank of Canada

"Security" and "Security Information" are very broadly defined in the Draft IP Rule Amendments, and includes all data and information regarding a Security, including the deposit or withdrawal of a Security, an event relating to the Security, and the Security Identifier. Beneficial owners and issuers of Securities need to know this information and other information that could be defined as "Security Information" regarding those securities and they may need to pass that information on further.

The commentator recommended that "Security Information" not be regulated or, in the alternative, that Participants be permitted to disclose such to their clients who are either beneficial owners of, or issuers of, the Securities or, in the alternative, that the definition of "Security Information" be narrowed so that it does not include information that must be passed on to beneficial owners or issuers.

CDS Response

CDS is of the view that it would be unfair to permit Participants to earn revenue on the resale of CDS intellectual property products at the cost of CDS and its other Participants. Furthermore, the prohibition on the free passing-on of CDS Works and Security Information for use by *non*-beneficial holders is intended to insulate CDS from additional risks and claims by third parties - *without* any connection to CDS - relying on that information.

CDS agrees with the comment and believes that the Rules as drafted permit Participants to transmit Security Information to their clients, provided that the information relates to their holdings and use of CDS services, not the whole file of records that CDS may transmit to each Participant.

Comment 4 - CIBC Mellon Global Securities Services Company, RBC Dexia Investor Services Trust, and State Street Trust Company of Canada

Concern was raised in that the downstream restrictions on distribution of Security Information might hamper communication with intermediaries, who may have been engaged on behalf of the underlying security holder, but who are not specified as benefiting from the permitted disclosure of such information by the Rule.

CDS Response

CDS believes that Participants, their clients and beneficial holders must be able to receive all the information that they would receive if they were the registered holders of the securities directly, i.e. depositing securities with CDS should not create a barrier to receiving shareholder information. On the other hand, CDS invests time and resources to develop value-added information that is specific to the services that CDS provides to Participants and for which CDS should be compensated, just like any other provider of information. While this value-added

information is provided to Participants for free or on a cost recovery basis, it also has a market value for secondary uses beyond only CDS's Services. Revenues earned when CDS licenses secondary uses is a means by which CDS reduces Participant fees.

CDS does not see these two goals as being in conflict; the Rules attempt to articulate these rights and balance the interests of the parties involved.

Participants can provide their clients with information relating to the specific securities which have been deposited as part of the Participants' custodial services (proposed Rule 3.8.3(d)); on the other hand, Participants and their clients should not be able to take the information and services that CDS provides to the Participant, and pass them off as their own or sell or otherwise provide them to others who have not deposited securities in CDS. CDS is of the view that it would be unfair to permit Participants to earn revenues on the resale of CDS IP at the cost of CDS and its other Participants, and in competition to CDS, resulting in lower CDS revenues earned from secondary uses available to be shared among all CDS Participants to reduce fees. Furthermore, if Participants were able to freely pass on CDS Works and Security Information for non-beneficial holder use, CDS could be exposed to additional risks and claims by third parties that rely on this information through no connection to CDS.

In view of the comments in respect of Confidentiality provisions, CDS proposes the following amendment to Section 3.6.3 (marked to the published Rule amendments):

"...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."

Comment 5 - CIBC Mellon Global Securities Services Company, RBC Dexia Investor Services Trust, and State Street Trust Company of Canada

Concern was expressed in regards to the broad definition of "Security Information" – both in theory and in practice, the consequential impact of this definition on operations and systems, and the application of repackaging restrictions in respect of client communications.

CDS Response

Although CDS is of the view that the definition of Security Information is appropriate, CDS agrees that it should not be claiming ownership in Security Information. CDS does not believe, however, that CDS does have copyright "in the selection, arrangement and assembly" of its content, i.e., the value added by CDS efforts.

Accordingly, to respond to the concerns, CDS proposes to delete the term "Security Information" from various parts of the proposed amendments.

Comment 6 - CIBC Mellon Global Securities Services Company, RBC Dexia Investor Services Trust, and State Street Trust Company of Canada

The three commentators expressed concern with respect to Rule 3.8.3 as it related to agreements with clients or customers. The commentators felt that the proposed Rule imposes a significant administrative burden on Participants – a burden which could hamper the transmission of information to beneficial holders of securities. The commentators also felt that the proposed amendments could constitute a barrier to entry and/or communication with CDS. The commentators felt, finally, that Rule 3.8.3 does not account for certain clients' desire for anonymity and suggested that, where such anonymity is otherwise legally permitted, it may be inappropriate for CDS's Rules not to account for such.

CDS Response

The intent of the Rule is that Participants not pass on CDS Works or Security Information to any third party exactly as CDS provides them to the Participants; if a Participant extracts (or derives) information received from CDS and provides it to a client together with other information that the Participant has obtained independently, then CDS has no objection to that; CDS believes that proposed Rule 3.8.3(d) permits this.

With respect to the concern regarding barriers to entry, it is not CDS's intention to mandate such agreements, except where continuing non-compliance with the IP Rules is discovered by CDS. While CDS recognizes that the language would theoretically permit the management of CDS to mandate such agreements for all Participants at any time, CDS would respond that Rule 3.2.3 gives every Participant a right of appeal of any management decision to the full Board; if not satisfied with the Board's response, a further right of review to the securities commissions is provided by Rule 3.2.4.

Comment 7 - CIBC Mellon Global Securities Services Company, RBC Dexia Investor Services Trust, and State Street Trust Company of Canada

The three commentators expressed concern with respect to the scope of the disclaimer contained in proposed Rule 3.8.4. The commentators requested: that Participants receive some representation that CDS has sufficient rights in the Services to grant Participants the right to use such

for their intended purpose; that, to the extent that CDS receives representations and warranties from third parties, Participants receive the benefit of such; and that, notwithstanding the 'as available' limitation on the Services, Participants should not be responsible for fees or expenses relating to Services not provided by CDS and that CDS should use reasonable endeavours to procure replacement Services.

CDS Response

CDS proposes to amend proposed Rule 3.8.4 as follows (marked for changes from the published Rule):

“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 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.