

13.1.2 CDS Rule Amendment – Delivery Services – Revisions in Response to Comments

CDS RULE AMENDMENT – DELIVERY SERVICES

PROPOSED RULE AMENDMENTS – REVISIONS IN RESPONSE TO COMMENTS

Text of CDS Participant Rules marked to reflect (1) proposed Rule published for comment on July 21, 2006 and [marked single underline] (2) revisions to version of proposed Rule published for comment on July 21, 2006 [marked double underline]	Text of CDS Participant Rules reflecting the adoption of proposed amendments
<p>1.1.1 Application</p> <p>The Rules adopted by CDS by which each Participant has agreed to be bound pursuant to the Participant Agreement are:</p> <p>Rule 1 - Documentation ...</p> <p>Rule 11 - TA Participants</p> <p>Rule 12 - ATON</p> <p><u>Rule 13 - Delivery Services.</u></p> <p>1.2.1 Definitions</p> <p><u>“Delivery Services” means the Service made available by CDS and described in Rule 13.</u></p> <p>"Service" means the Depository Service, the Settlement Service, a Cross-Border Service, or ATON <u>or the Delivery Services.</u> Any reference to a Service includes all Functions made available in respect of that Service.</p> <p>4.2.3 CDS Liability for Participant Loss</p> <p>CDS shall be liable to its Participants for any Participant Loss, subject to the limitations set out in Rules 4.2.5 and 4.2.9. A "Participant Loss" means any loss, damage, cost, expense, liability or claim suffered or incurred by a Participant, other than a Loss of Securities, which arises from a Participant's participation in a Service, but only to the extent such was caused or contributed to by any act or omission of CDS or of any director, officer, employee, contractor or agent of CDS done while acting in the course of office, employment or service or made possible by information or opportunities afforded by such office, employment or service. Neither DTC nor NSCC shall be considered to be an agent of CDS for purposes of this Rule 4.2.3. Notwithstanding the foregoing acceptance of liability, CDS shall not be liable to a Participant for any Participant Loss in respect of which that Participant is required to make indemnification pursuant to Rules 4.1, 10.2 or 10.5, <u>nor for any Participant Loss arising from the Delivery Services.</u></p> <p>4.2.4 CDS's Liability for Loss of Securities</p> <p>This Rule 4.2.4 applies only to CDSX and does not apply to the Cross-Border Services. On request by a Participant, CDS shall deliver to the Participant the Securities held by CDS for the Participant as shown in the records of CDS for the Participant's Securities Accounts. The obligation of CDS to</p>	<p>1.1.1 Application</p> <p>The Rules adopted by CDS by which each Participant has agreed to be bound pursuant to the Participant Agreement are:</p> <p>Rule 1 - Documentation ...</p> <p>Rule 11 - TA Participants</p> <p>Rule 12 - ATON</p> <p>Rule 13 - Delivery Services.</p> <p>1.2.1 Definitions</p> <p>"Delivery Services" means the Service made available by CDS and described in Rule 13.</p> <p>"Service" means the Depository Service, the Settlement Service, a Cross-Border Service, ATON or the Delivery Services. Any reference to a Service includes all Functions made available in respect of that Service.</p> <p>4.2.3 CDS Liability for Participant Loss</p> <p>CDS shall be liable to its Participants for any Participant Loss, subject to the limitations set out in Rules 4.2.5 and 4.2.9. A "Participant Loss" means any loss, damage, cost, expense, liability or claim suffered or incurred by a Participant, other than a Loss of Securities, which arises from a Participant's participation in a Service, but only to the extent such was caused or contributed to by any act or omission of CDS or of any director, officer, employee, contractor or agent of CDS done while acting in the course of office, employment or service or made possible by information or opportunities afforded by such office, employment or service. Neither DTC nor NSCC shall be considered to be an agent of CDS for purposes of this Rule 4.2.3. Notwithstanding the foregoing acceptance of liability, CDS shall not be liable to a Participant for any Participant Loss in respect of which that Participant is required to make indemnification pursuant to Rules 4.1, 10.2 or 10.5, nor for any Participant Loss arising from the Delivery Services.</p> <p>4.2.4 CDS's Liability for Loss of Securities</p> <p>This Rule 4.2.4 applies only to CDSX and does not apply to the Cross-Border Services. On request by a Participant, CDS shall deliver to the Participant the Securities held by CDS for the Participant as shown in the records of CDS for the Participant's Securities Accounts. The obligation of CDS to</p>

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<p>deliver Securities to a Participant is subject to the terms of issue of the Securities and to any restrictions, constraints or conditions on withdrawals imposed in accordance with the Rules, to the security interests granted pursuant to the Rules and to the rights of a Surety to the transfer of Securities from the Participant.</p>	<p>deliver Securities to a Participant is subject to the terms of issue of the Securities and to any restrictions, constraints or conditions on withdrawals imposed in accordance with the Rules, to the security interests granted pursuant to the Rules and to the rights of a Surety to the transfer of Securities from the Participant.</p>
<p>CDS shall be liable to its Participants for a Loss of Securities, subject to the limitations set out in Rules 4.2.5 and 4.2.9. A "Loss of Securities" means any circumstance in which CDS would be unable to deliver in accordance with the foregoing to all Participants all Securities held by CDS for them, including:</p>	<p>CDS shall be liable to its Participants for a Loss of Securities, subject to the limitations set out in Rules 4.2.5 and 4.2.9. A "Loss of Securities" means any circumstance in which CDS would be unable to deliver in accordance with the foregoing to all Participants all Securities held by CDS for them, including:</p>
<p>(a) the theft, destruction or mysterious disappearance of any certificate or other instrument evidencing Securities;</p> <p>(b) the determination that any Security is a Defective Security; or</p> <p>(c) the determination that the registration of any Security in the name of CDS, a Nominee, a Custodian or a nominee of a Custodian, is invalid, improper, defective, subject to any adverse claim or privilege or cannot be effectively and rightfully transferred.</p>	<p>(a) the theft, destruction or mysterious disappearance of any certificate or other instrument evidencing Securities;</p> <p>(b) the determination that any Security is a Defective Security; or</p> <p>(c) the determination that the registration of any Security in the name of CDS, a Nominee, a Custodian or a nominee of a Custodian, is invalid, improper, defective, subject to any adverse claim or privilege or cannot be effectively and rightfully transferred.</p>
<p>Notwithstanding the foregoing acceptance of liability, CDS shall not be liable to any Participant for any Loss of Securities in respect of which that Participant is required to make indemnification pursuant to Rule 4.1. <u>For greater certainty, the loss of or damage to any shipment by a Participant through the Delivery Services is not a Loss of Securities.</u></p>	<p>Notwithstanding the foregoing acceptance of liability, CDS shall not be liable to any Participant for any Loss of Securities in respect of which that Participant is required to make indemnification pursuant to Rule 4.1. For greater certainty, the loss of or damage to any shipment by a Participant through the Delivery Services is not a Loss of Securities.</p>
<p>RULE 13 DELIVERY SERVICES</p>	<p>RULE 13 DELIVERY SERVICES</p>
<p><u>13.1 General Description</u></p>	<p>13.1 General Description</p>
<p><u>Participants may use the Delivery Services to deliver Securities and other documents to designated recipients, including CDS, other Participants, Transfer Agents, DTC and NSCC. Participants may use the Delivery Service for a variety of purposes, including facilitating the deposit or withdrawal of Securities into or from CDSX and transactions in the Cross-Border Services. Participants are not required to use the Delivery Services.</u></p>	<p>Participants may use the Delivery Services to deliver Securities and other documents to designated recipients, including CDS, other Participants, Transfer Agents, DTC and NSCC. Participants may use the Delivery Service for a variety of purposes, including facilitating the deposit or withdrawal of Securities into or from CDSX and transactions in the Cross-Border Services. Participants are not required to use the Delivery Services.</p>
<p><u>13.2 Means of Delivery</u></p>	<p>13.2 Means of Delivery</p>
<p><u>As determined by CDS, shipments through the Delivery Service may be made by CDS employees, by employees of Transfer Agents or other third parties, by a courier service under contract with CDS, or by a combination of such means. Deliveries may be made to or from a CDS Office, or the premises of a Participant, a Transfer Agent, DTC or NSCC or another Person. Deliveries may be made within the same city, between CDS Offices, between different cities or internationally.</u></p>	<p>As determined by CDS, shipments through the Delivery Service may be made by CDS employees, by employees of Transfer Agents or other third parties, by a courier service under contract with CDS, or by a combination of such means. Deliveries may be made to or from a CDS Office, or the premises of a Participant, a Transfer Agent, DTC or NSCC or another Person. Deliveries may be made within the same city, between CDS Offices, between different cities or internationally.</p>

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<p><u>13.3 Courier Service</u></p> <p><u>CDS may enter into a contract with a courier service to handle certain shipments through the Delivery Services. In entering into any such contract, CDS is the agent of the Participants using the Delivery Services; in offering the Delivery Services to Participants, CDS is not the agent of any such courier service; the provisions of this Rule 13 (including any disclaimer of responsibility and limitation of liability) apply only to CDS and to Participants, and do not apply to any such courier service. Each Participant using the Delivery Services will execute any direct pay rider or similar document with a courier service that may be required in accordance with the Procedures.</u></p> <p><u>13.4 Authorized Individuals</u></p> <p><u>Participants shall appoint Authorized Individuals to attend at CDS Offices for the purposes of making or receiving shipments through the Delivery Services and to take delivery of and to sign receipts for Securities and documents delivered through the Delivery Services.</u></p> <p><u>13.5 Procedures</u></p> <p><u>The Procedures describe the options available as part of the Delivery Services, the requirements for preparing and sending shipments through the Delivery Services (including the information to be recorded by the Participant concerning the contents of each Shipment, the use of sealed envelopes and the use of declarations of value), the processes for refusing shipments and for dealing with lost or damaged shipments, and the restrictions that are imposed on the content of shipments made through the Delivery Service. CDS has no responsibility to verify the contents of any envelope or other shipment made through the Delivery Services.</u></p> <p><u>13.6 CDS Disclaimer of Responsibility</u></p> <p><u>CDS has no responsibility for the contents of the envelopes delivered in any shipment made through the Delivery Services, nor for any damage to or loss of any shipment made through the Delivery Services. In the event that a shipment is lost or damaged, or that the contents of an envelope are not as expected, the Participant must deal directly with any courier involved in the shipment and with the party who made the shipment. CDS shall not be liable to any Participant for any loss, damage, cost, expense, liability or claim suffered or incurred by a Participant, which arises from the Delivery Services, whether arising from or in any way connected with a breach (including a fundamental breach) of the Legal Documents, or any negligent or reckless act or omission of CDS or any fraudulent, negligent, reckless or wilful act or omission of any director, officer, employee, agent or contractor of CDS.</u></p>	<p>13.3 Courier Service</p> <p>CDS may enter into a contract with a courier service to handle certain shipments through the Delivery Services. In entering into any such contract, CDS is the agent of the Participants using the Delivery Services; in offering the Delivery Services to Participants, CDS is not the agent of any such courier service; the provisions of this Rule 13 (including any disclaimer of responsibility and limitation of liability) apply only to CDS and to Participants, and do not apply to any such courier service. Each Participant using the Delivery Services will execute any direct pay rider or similar document with a courier service that may be required in accordance with the Procedures.</p> <p>13.4 Authorized Individuals</p> <p>Participants shall appoint Authorized Individuals to attend at CDS Offices for the purposes of making or receiving shipments through the Delivery Services and to take delivery of and to sign receipts for Securities and documents delivered through the Delivery Services.</p> <p>13.5 Procedures</p> <p>The Procedures describe the options available as part of the Delivery Services, the requirements for preparing and sending shipments through the Delivery Services (including the information to be recorded by the Participant concerning the contents of each Shipment, the use of sealed envelopes and the use of declarations of value), the processes for refusing shipments and for dealing with lost or damaged shipments, and the restrictions that are imposed on the content of shipments made through the Delivery Service. 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CDS shall not be liable to any Participant for any loss, damage, cost, expense, liability or claim suffered or incurred by a Participant, which arises from the Delivery Services, whether arising from or in any way connected with a breach (including a fundamental breach) of the Legal Documents, or any negligent or reckless act or omission of CDS or any fraudulent, negligent, reckless or wilful act or omission of any director, officer, employee, agent or contractor of CDS.</p>

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<p>13.7 Insurance and Limitation of Participant Recovery</p> <p><u>Each Participant acknowledges that CDS accepts no liability for losses arising from the Delivery Services and that it is the responsibility of the Participant to determine whether or not to use the Delivery Services for any shipment. Each Participant acknowledges that it is solely responsible for determining, based on its knowledge of its own activities and business, whether it requires a policy of insurance to provide coverage with respect to shipments made by it through the Delivery Services, and if so the terms of any such policy, including the risks to be covered and the amount of insurance to be maintained under any such insurance policy.</u></p> <p>13.8 Deposit and Withdrawal of Securities</p> <p><u>The Delivery Services may be used for shipments of Security Certificates evidencing Securities that are in the course of being deposited into or withdrawn from CDSX. If a Participant uses the Delivery Services to deliver a Security Certificate evidencing Securities for deposit into CDSX pursuant to Rule 6.2.4, then the Securities shall be considered to be a shipment through the Delivery Services, the disclaimer of responsibility in Rule 13.6 shall apply and CDS shall have no liability with respect to such Securities until the deposit has been effected and CDS has credited the Security to a Securities Account of the Participant. If a Participant uses the Delivery Services to receive delivery of a Security Certificate evidencing Securities withdrawn from CDSX pursuant to Rule 6.3.3, then the Securities shall be considered to be a shipment through the Delivery Services, the disclaimer of responsibility in Rule 13.6 shall apply and CDS shall have no liability with respect to such Securities from the time that the withdrawal has been effected and CDS has debited the Securities from the Withdrawal Account of the Participant.</u></p>	<p>13.7 Insurance and Limitation of Participant Recovery</p> <p>Each Participant acknowledges that CDS accepts no liability for losses arising from the Delivery Services and that it is the responsibility of the Participant to determine whether or not to use the Delivery Services for any shipment. Each Participant acknowledges that it is solely responsible for determining, based on its knowledge of its own activities and business, whether it requires a policy of insurance to provide coverage with respect to shipments made by it through the Delivery Services, and if so the terms of any such policy, including the risks to be covered and the amount of insurance to be maintained under any such insurance policy.</p> <p>13.8 Deposit and Withdrawal of Securities</p> <p>The Delivery Services may be used for shipments of Security Certificates evidencing Securities that are in the course of being deposited into or withdrawn from CDSX. If a Participant uses the Delivery Services to deliver a Security Certificate evidencing Securities for deposit into CDSX pursuant to Rule 6.2.4, then the Securities shall be considered to be a shipment through the Delivery Services, the disclaimer of responsibility in Rule 13.6 shall apply and CDS shall have no liability with respect to such Securities until the deposit has been effected and CDS has credited the Security to a Securities Account of the Participant. If a Participant uses the Delivery Services to receive delivery of a Security Certificate evidencing Securities withdrawn from CDSX pursuant to Rule 6.3.3, then the Securities shall be considered to be a shipment through the Delivery Services, the disclaimer of responsibility in Rule 13.6 shall apply and CDS shall have no liability with respect to such Securities from the time that the withdrawal has been effected and CDS has debited the Securities from the Withdrawal Account of the Participant.</p>