

13.1.5 CDS Notice and Request for Comments – Material Amendments to CDS Rules Relating to the Rule Amendment Process

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS)

MATERIAL AMENDMENTS TO CDS RULES

RULE AMENDMENT PROCESS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

CDS Participant Rule 1.5 (Amendment of Rules) sets out the process by which the CDS Participant Rules are amended, including review by the CDS Board of Directors (“Board”) and by the Regulators of CDS, and the notice to be given to participants. The proposed amendments will (i) make it unnecessary for the Board to review certain technical/housekeeping amendments; and (ii) ensure that this Rule accurately reflects the current process for amending the CDS Participant Rules.

B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

The Board has a large workload, and its efforts should be reserved for substantial matters of policy. Therefore, it is proposed that certain technical/housekeeping amendments to the CDS Participant Rules should not require the approval of the Board.

Pursuant to (1) Appendix A (“Rule Protocol Regarding The Review And Approval Of CDS Rules By The OSC”) of the Ontario Securities Commission Recognition and Designation Order, as amended November 01, 2006 and (2) *Annexe A (“Protocole d’examen et d’approbation des Règles de Services de Dépôt et de Compensation CDS Inc. par l’Autorité des marchés financiers”)* of the Autorité des marchés financiers Decision 2006-PDG-0180, made effective on November 01, 2006, there are 5 categories of technical/housekeeping rule amendments:

- (i) matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services;
- (ii) consequential amendments intended to implement a material rule that has been published for comment pursuant to this protocol which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule;
- (iii) amendments required to ensure consistency or compliance with an existing rule, securities legislation or other regulatory requirement;
- (iv) the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing; or
- (v) stylistic formatting, including changes to headings or paragraph numbers.

CDS Participant Rule amendments falling within categories (iv) and (v) are considered by CDS to be of a nature not requiring review and approval by the Board. CDS will continue to present all CDS Participant Rule amendments to the Legal Drafting Group (“LDG”), including those amendments falling within categories (iv) and (v) outlined above. CDS will continue to give participants notice of, and an opportunity to comment on, all proposed CDS Participant Rule amendments, including those amendments falling within categories (iv) and (v) outlined above. The proposed amendments to Rule 1.5.1 define technical/housekeeping amendments in the context of Board review and approval and provide that such amendments need not be reviewed by the Board before being submitted to regulators and to participants for review and comment.

The other amendments to Rule 1.5 are intended to ensure that the Rule reflects the current CDS Participant Rule review and approval process accurately. The effective date of an amendment (rather than an “anticipated” date) is provided to participants with the notice of the proposed amendments. The submission to regulatory bodies is not necessarily concurrent with giving notice to participants. The reviews by the regulators and participants are now relatively simultaneous (and no longer, as suggested by current Rule 1.5.2, successive stages). As the process of obtaining regulatory review and approval is set out in Rule 1.5.1, the reference to that process in Rule 1.5.2 is unnecessary and has been deleted.

C. IMPACT OF PROPOSED AMENDMENTS

The Board of Directors will be able to devote additional time to matters other than minor technical/housekeeping amendments to CDS Participant Rules. The CDS Participant Rule amendment process will be more efficient and streamlined for certain

technical/housekeeping amendments – no longer will such minor amendments be dependent on Board meetings. Finally, the CDS Participant Rule amendment process will be accurately described.

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. 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 CDS Participant 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 CDS Participant Rules may be 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 or operating procedures are required to implement this amendment.

F. COMPARISON TO OTHER CLEARING AGENCIES

The Rule amendment process set out in the CDS Rules reflects the particular circumstances of CDS as the Canadian domestic clearing and settlement agency, and its relationship with its Canadian regulators.

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.

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>1.5 AMENDMENT OF RULES</p> <p>1.5.1 Review Period</p> <p>Any A proposed amendment to the Rules (<u>other than a technical amendment</u>) shall be submitted to the Board of Directors. <u>An amendment is a technical amendment if it is restricted to one or more of the following purposes: (i) correcting spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing in an existing Rule; or (ii) revising stylistic formatting, including changes to headings or paragraph numbers.</u> In its discretion, the Board of Directors may reject the proposed amendment or may approve the proposed amendment with or without variation. Upon approval by the Board of Directors, CDS shall give notice to each Participant of the proposed amendment <u>(after approval by the Board of Directors of the proposed amendment if such approval is required)</u> and shall provide Participants with a period of not less than 30 days within which to review the proposed amendment and to advise CDS of their comments in writing. The notice to Participants shall indicate the anticipated date on which the proposed amendment will become effective. Concurrently with giving notice to Participants, CDS shall <u>also</u> provide the proposed amendment to its Regulatory Bodies for review <u>and approval</u>. If, as a result of the review period, material revisions are required to be made to the proposed amendment, the revised amendment shall be submitted to the Board of Directors for approval for distribution for a further review period. In its discretion, the Board of Directors may reject the revised amendment or may approve the revised amendment with or without further variation. Concurrently with giving notice to Participants, CDS shall <u>also</u> provide the revised amendment to its Regulatory Bodies for review. If the Board of Directors determines that circumstances require prompt or immediate action, the Board of Directors may approve the amendments for immediate implementation, subject to a subsequent review period.</p> <p>1.5.2 Implementation of Amendment</p> <p>Once the review process is completed and all required revisions have been made, CDs shall submit the proposed amendment to its Regulatory Bodies for approval. The effective date <u>of an amendment</u> shall be not less than 10 days following the day on which CDS gives notice to Participants of the implementation of the such amendment. If the Board of Directors determines that circumstances require prompt or immediate action, the Board of Directors may specify a shorter period of time or make the amendment effective immediately.</p>	<p>1.5 AMENDMENT OF RULES</p> <p>1.5.1 Review Period</p> <p>A proposed amendment to the Rules (other than a technical amendment) shall be submitted to the Board of Directors. An amendment is a technical amendment if it is restricted to one or more of the following purposes: (i) correcting spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing in an existing Rule; or (ii) revising stylistic formatting, including changes to headings or paragraph numbers. In its discretion, the Board of Directors may reject the proposed amendment or may approve the proposed amendment with or without variation. CDS shall give notice to each Participant of the proposed amendment (after approval by the Board of Directors of the proposed amendment if such approval is required) and shall provide Participants with a period of not less than 30 days within which to review the proposed amendment and to advise CDS of their comments in writing. The notice to Participants shall indicate the date on which the proposed amendment will become effective. CDS shall also provide the proposed amendment to its Regulatory Bodies for review and approval. If, as a result of the review period, material revisions are required to be made to the proposed amendment, the revised amendment shall be submitted to the Board of Directors for approval for distribution for a further review period. In its discretion, the Board of Directors may reject the revised amendment or may approve the revised amendment with or without further variation. CDS shall also provide the revised amendment to its Regulatory Bodies for review. If the Board of Directors determines that circumstances require prompt or immediate action, the Board of Directors may approve the amendments for immediate implementation, subject to a subsequent review period.</p> <p>1.5.2 Implementation of Amendment</p> <p>The effective date of an amendment shall be not less than 10 days following the day on which CDS gives notice to Participants of such amendment. If the Board of Directors determines that circumstances require prompt or immediate action, the Board of Directors may specify a shorter period of time or make the amendment effective immediately.</p>