

13.3 Clearing Agencies

13.3.1 Material Amendments to CDS Rules – Financial Institutions – Request for Comments

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES

FINANCIAL INSTITUTIONS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

The proposed rule amendment updates the definition of “Financial Institutions” in the CDS Participant Rules so as to add Schedule III banks, a category of permitted banks under the *Bank Act* since 1999.

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

The *Bank Act* identifies categories of banks permitted to operate in Canada. In 1999, the *Bank Act* was amended to add Schedule III banks to the list of permitted banks. Prior to the amendment only Schedule I and Schedule II banks were permitted to operate in Canada.

Reference to banks in the definition of “Financial Institutions” in sub-section 1.2.1 of the CDS Participant Rules lists Schedule I and Schedule II banks. This definition was drafted before the 1999 amendment to the *Bank Act*. This definition in CDS’ Participant Rules was an exhaustive list of permitted banks reflecting the law as it stood prior to 1999, but was never updated to reflect the 1999 amendment to the *Bank Act*.

The proposed rule amendment updates the definition of “Financial Institutions” to accord with the list of permitted banks under the *Bank Act*.

The proposed rule amendments will insert the words “or III” in paragraph of a) of the definition of “Financial Institutions” in sub-section 1.2.1 of the CDS Participant Rules.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

(a) CDS Clearing – The proposed rule amendment will update the CDS Participant Rules and will ensure that CDS continues to satisfy its recognition order requirements concerning reasonable access to its services.

(b) CDS Participants – The proposed rule amendment will ensure that all Participants continue to have reasonable access to CDSX, a requirement under CDS’ recognition orders.

(c) & (d) Other Market Participants and Securities and Financial Markets in General – The proposed rule promotes diversity in the capital markets.

C.1 Competition

The proposed rule amendments are not expected to have any impact on the competitive landscape of the Canadian capital markets or CDS Participants.

C.2 Risks and Compliance Costs

The admission of schedule III banks as CDS Participants provides diversification to the pool of CDS Participants.

Under the category of “Foreign Institutions”, CDS Participant Rules already permit foreign banks (and other foreign institutions) to be Receivers of Credit.

Applications from schedule III banks will be assessed on their merits in accordance with CDS’ Participant Rules and Risk Model.

Every schedule III bank that applies to be a CDS Participant will be required to provide a foreign legal opinion in a form satisfactory to the Bank of Canada and CDS.

CDS does not expect that the proposed rule amendment will result in any compliance costs for CDS, its Participants, or other market participants.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

CDS believes that the proposed rule amendments will help CDS respond to Principle 18 (Access and participation requirements) of the *Principles for Financial Market Infrastructures* (“PFMIs”) published by the Committee on Payment and Settlement Systems of the International Organization of Securities Commissions (CPSS-IOSCO) published in April 2012, which relates to effective by ensuring that current and prospective Participants have reasonable access to CDSX.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

CDS developed the proposed rule amendment in response to its recognition order requirements to provide reasonable access to its services following the reorganization of one of its Participant. It also recognized the need to update its definition to reflect the 1999 amendment to the *Bank Act*. CDS consulted prior versions of its rules and contextual documentation in the drafting of this proposed rule amendment.

D.2 Rule Drafting Process

Each amendment to the CDS Participant Rules is reviewed by CDS’ Legal Drafting Group (“LDG”). The LDG is a committee that includes members of Participants’ legal and business groups.

D.3 Issues Considered

CDS considered its recognition order requirement to provide reasonable access to its services.

CDS considered that it already has the ability to accept foreign bank branches as Receivers of Credit.

CDS considered that its Participant Rules were never amended to keep up with changes to the list of permitted banks under the *Bank Act*.

D.4 Consultation

In accordance with CDS’ recognition order requirements, the proposed rule amendment will be submitted to its regulators for considerations and published on the OSC and the AMF websites for public comment.

D.5 Alternatives Considered

Not amending the definition of “Financial Institutions” in the CDS Participant Rules to include schedule III banks could result in an unreasonable access to CDS services and could be a contravention of CDS’ recognition order requirements and Principle 18 of the PFMIs. No alternatives were considered.

D.6 Implementation Plan

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*, by the British Columbia Securities Commission pursuant to Section 24(d) of the British Columbia *Securities Act* and by the *Autorité des marchés financiers* (“AMF”) pursuant to section 169 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 British Columbia Securities Commission, the *Autorité des marchés financiers* and the Bank of Canada will hereafter be collectively referred to as the “Recognizing Regulators”.

The amendments to CDS Participant Rules are expected to become effective upon approval of the amendments by the Ontario Securities Commission, the *Autorité des marchés financiers*, and the British Columbia Securities Commission following public notice and comment.

E. TECHNOLOGICAL SYSTEMS CHANGES (E.1, E.2, E.3)

The proposed rule amendment is not expected to have an impact on technological systems, or require changes to such systems, for CDS, for CDS Participants, or for other market participants.

F. COMPARISON TO OTHER CLEARING AGENCIES

Rules for the Canadian Derivatives Clearing Corporation (“CDCC”) do not prohibit Schedule III banks from applying for membership or from being Members.

Under the *Canadian Payment Associations Act*, banks in Canada, including “authorized foreign banks” must be members of the Canadian Payments Association. Members of the CPA may access the Large Value Transfer System (“LVTS”).

G. PUBLIC INTEREST ASSESSMENT

CDS believes that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Legal Department
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, British Columbia Securities Commission and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^e Anne-Marie Beaudoin
Secrétaire générale
Autorité des marchés financiers
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CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS 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.

APPENDIX "A"
PROPOSED CDS RULE AMENDMENTS

Text of CDS Participant Rules marked to reflect proposed amendments	Text of CDS Participant Rules reflecting the adoption of proposed amendments
<p>1.2.1 Definitions</p> <p>"Financial Institution" means any one of the following:</p> <ul style="list-style-type: none"> (i) a bank named in Schedule I or II <u>or III</u> to the Bank Act (Canada); (ii) an institution regulated pursuant to an Act respecting financial services cooperatives (Québec); (iii) a trust company or corporation, a loan company or corporation, a credit union, a savings and credit union or a credit union central, which is incorporated and regulated under the laws of Canada or any province or territory thereof; or (iv) a crown corporation created pursuant to and governed by the Alberta Treasury Branches Act (Alberta). 	<p>1.2.1 Definitions</p> <p>"Financial Institution" means any one of the following:</p> <ul style="list-style-type: none"> (i) a bank named in Schedule I or II or III to the Bank Act (Canada); (ii) an institution regulated pursuant to an Act respecting financial services cooperatives (Québec); (iii) a trust company or corporation, a loan company or corporation, a credit union, a savings and credit union or a credit union central, which is incorporated and regulated under the laws of Canada or any province or territory thereof; or (iv) a crown corporation created pursuant to and governed by the Alberta Treasury Branches Act (Alberta).