

CDS Clearing and Depository Services Inc. (CDS®)

**Entitlement payments for Depository Trust Company-registered securities offering
A Canadian-Dollar Payment Option**

A. DESCRIPTION OF THE PROPOSED PROCEDURE AMENDMENTS

Background

CDS Clearing and Depository Services Inc. (CDS) offers its Participants a facility permitting the delivery of security positions between the CDS and The Depository Trust & Clearing Corporation (DTC) in the United States. This facility is made possible through DTC's participation in CDSX, and CDS's memberships in DTC and the National Securities Clearing Corporation (NSCC). Pursuant to this bilateral, cross-border arrangement, U.S.-source entitlement payments (e.g., dividends) paid to holders-of-record of securities, as reflected in CDSX ledgers, may be funded by a US dollar payment to CDS by DTC. In certain circumstances, these holders of record may have the option to receive such entitlement payments in Canadian dollars. In such circumstances, Section 8.16.1 of the CDSX Procedures and User's Guide (Release 11.0 – November 2, 2015) specifies the process to which CDS Participants must adhere in order to receive such entitlements in Canadian dollars. More specifically, Section 8.16.1 describes the consequences of CDS Participants not performing their northbound movements within required processing timelines.

CDS is not in a position to assume the risk of, or absorb, foreign exchange losses by its Participants, and the proposed technical amendments clarify that CDS does not, and has never, assumed such risks.

The proposed technical amendments to Section 8.16.1: a) clarify that, in the event that a Participant does not perform northbound movements within required processing timelines, notwithstanding CDS's efforts to secure funding in Canadian Dollars, CDS will pay Participants in the currency which CDS receives; and, b) specify the actions CDS will take to inform Participants that a payment will not be made in Canadian dollars.

Description of the amendment

Participants subscribing to CDS's DTC Cross Border Services have the ability to deliver shares acquired at DTC to their CDSX accounts ("northbound deliveries"). These securities are held in custody by CDS at DTC in a DTC participant account. Any entitlement on these securities is, therefore, paid to CDS by DTC. Those proceeds are then redistributed by CDS to its Participants based on each Participant's ledger position in CDSX pursuant to CDS Participant Rules 6.6 – *Entitlements* and 10.9 – *Cross-Border Payments*.

An entitlement paid by a Canadian issuer whose securities are deposited with DTC presents an operational challenge for Canadian security-holders who would prefer to receive their entitlement(s) in Canadian dollars. Generally speaking, DTC will pay its account holders (its members, of which CDS is one) in US dollars regardless of the currency in which a distribution is declared. In some cases, however, DTC does provide a facility for its participants, including CDS, to elect that the distribution be made in Canadian dollars. Where an issuer declares an entitlement in Canadian dollars, and an election by the security-holder for receipt in Canadian dollars is not, or cannot be, made at DTC, the payment to DTC account holders will be converted to, and made in, US funds *by DTC*. Should the security-holder require Canadian funds, the payment will, consequently, need to be exchanged, a second time, for Canadian dollars after onward distribution by CDS.

The election and currency-conversion process was implemented to mitigate the above-mentioned effects of foreign exchange variance on CDS's Participants, and has been designed to elect to receive entitlement payments in Canadian dollars whenever possible. Where DTC provides for a currency election, CDS makes those elections directly on DTC's system(s). In certain other, exceptional, cases, CDS attempts to

repatriate the securities from DTC, which results in the securities being re-registered domestically to CDS & Co., CDS's nominee.

The Procedures currently stipulate that CDS will attempt to mitigate our Participants' foreign exchange risk by either electing to receive entitlements in Canadian dollars (and requesting related tax exemptions), or repatriating the securities. The proposed technical amendment, which is a matter of a technical nature in routine operating procedures and administrative practice relating to CDS Services, clarifies that, notwithstanding CDS's reasonable but unsuccessful efforts to secure payment in Canadian dollars, where possible, CDS will pay its Participants entitlement funds in the currency received from DTC. Further, the proposed technical amendment clarifies the communication process from CDS to affected Participants in the event that a currency election was either not possible or not made by the Participant within specified processing timelines.

CDS procedure amendments are reviewed and approved by CDS's strategic development review committee (SDRC). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from the CDS participant community and meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on April 28, 2016.

The proposed procedure amendments are available for review and download on the user Documentation page on the CDS website at <http://www.cds.ca/cds-services/user-resources/user-documentation>.

B. REASONS FOR TECHNICAL CLASSIFICATION

The proposed procedure amendment clarifies the existing procedure, and is both a) a matter of a technical nature in routine operating procedures and administrative practices relating to CDS Services; and b) required to ensure consistency with existing Rules.

C. EFFECTIVE DATE OF PROCEDURE AMENDMENT

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to Section 21.2 of the Ontario *Securities Act*, and by the British Columbia Securities Commission pursuant to Section 24(d) of the British Columbia *Securities Act*, and as a clearing house by the *Autorité des marchés financiers* pursuant to Section 169 of the Quebec *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".

CDS has determined that these amendments will become effective on June 1, 2016.

D. QUESTIONS

Questions in respect of the proposed amendments should be in writing and submitted to:

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Copies should also be provided to the *Autorité des marchés financiers*, the British Columbia Securities Commission and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

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Secrétaire générale
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CDS will make available to the public, upon request, all questions received.