

### 13.3 Clearing Agencies

#### 13.3.1 CDS Clearing and Depository Services Inc. (CDS) – Material Amendments to CDS Rules – New York Link Service Investment Committee – Request for Comment

## MATERIAL AMENDMENTS TO CDS RULES NEW YORK LINK SERVICE INVESTMENT COMMITTEE REQUEST FOR COMMENTS

All defined terms used herein and not otherwise defined shall have the meanings set forth in the CDS Participant Rules.

### A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

Principles 4, 15 and 16 of the Principles For Financial Market Infrastructures (“PFMIs”) issued by the Committee on Payments and Market Infrastructures of the Bank for International Settlements (“CPMI”) and the International Organization of Securities Commission (“IOSCO, and collectively, “CPMI-IOSCO”) require, among other things, that a CCP maintain financial resources to cover potential losses resulting from a participant default and general business risk, including custody and investment risks. In their July 2017 Report (Resilience of central counterparties (CCPs): Further guidance on the PFMI), CPMI-IOSCO indicated “*that the CCP’s own contribution related to custody and investment losses should reflect the degree of the involvement of the CCP in the decision-making process related to the custody and investment of participants’ assets, including any margin and prefunded default arrangements posted to the CCP*”.<sup>1</sup>

According to CPMI-IOSCO, where “*the CCP has greater discretion in such a process, it should consider contributing a relatively larger amount of its financial resources to absorb the losses. Where participants have full decision-making authority on the custody and investment of their assets, the associated risks will depend on the decisions made by those participants and not the CCP. In these cases, the CCP would not be expected to identify an amount of its own resources to apply towards losses arising from those custody and investment risks. If a CCP operates multiple clearing services that apply different models for safeguarding participant assets, the exception noted here would only apply to those service lines for which the CCP does not have any decision-making authority on how assets are held and invested*”.<sup>2</sup>

While, on the one hand, the PFMIs require CDS to have the ultimate responsibility in establishing and approving its risk-management framework, the PFMIs allow, on the other hand, a CCP to give some decision-making authority to its participants in the investment of their assets.

Based on the foregoing, and as further explained in this Notice and Request for Comment, CDS proposes the following amendments to the CDS Participant Rules in order to implement an Investment Committee (“IC”) composed of CDS New York Link Service (“NYL Service”) Participants. The IC will assume certain management responsibilities and decision-making authority for the investment of the collateral delivered to CDS by the Participants in the context of Participants’ use of the NYL Service (“Collateral”):

- (i) The addition of the definition “NYL Investment Committee”;
- (ii) Rule 4.2.3, which provides that CDS is liable to its Participants for any Participant Loss, in the manner set forth in Rule 4.2 of the Rules, will be modified to specify that the term “Participant Loss” does not include any losses resulting from an action, or omission, by CDS or of any director, officer, employee, contractor or agent of CDS, that is based on, results from, or is required by, a decision made by the NYL Investment Committee;
- (iii) Rule 4.2.9, which states that CDS is not liable to any Participant for any “consequential loss” suffered or incurred by any Participant arising from any Service, including a consequential loss arising from or associated with a Participant Loss, or a Loss of Securities, will be modified to specify that CDS will not be liable for any consequential loss arising from an action or omission by CDS, or of any director, officer, employee, contractor or agent of CDS, that is based on, results from, or is required by, a decision made by the NYL Investment Committee; and
- (iv) Rule 5.3.6, which states, *inter alia*, that CDS may invest Specific Collateral, Fund Contributions, Supplemental Liquidity Contributions or Collateral Pool Contributions in a reasonable and prudent manner, acting in the best interests of all Participants, will be modified to clarify that CDS will invest the Contributions made by NYL Participants to the Participant Fund established by CDS for NYL in accordance with the decisions of the NYL Investment Committee.

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<sup>1</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD568.pdf>, page 42.

<sup>2</sup> *Idem*.

## B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

CDS would like to provide to NYL Service Participants the authority to decide how their assets - the Collateral - are invested, and to delegate limited authority with respect to decisions related to the custody and investment of such assets. Providing the Participants with the authority to decide how the Collateral is invested is commensurate with the existing risks they assume as Participants of NYL. Pursuant to the proposed amendments, the risks associated with such limited delegated authority - custodial and investment losses - will be consequent to decisions made by the IC and not made by CDS. Such risk allocation is consistent with existing Rule 4.2, pursuant to which Participants ultimately bear the risks associated with such investments.

In compliance with the PFMI, the CDS Board of Directors will adopt and approve an enterprise risk management framework, including custody and investment policies and standards, that will determine the areas (e.g., eligible investment counterparties, types and tenor of Collateral, etc.) in respect of which the Participants will make decisions and the parameters (of these items) within which the Participants will make decisions. The IC will not have the authority to make investment decisions that could result in CDS being in a Cover-1 breach scenario (not having the ability to cover at least one Participant and its affiliates' largest potential credit exposure(s) in extreme but plausible market conditions).

In the context of the foregoing framework, the investment policy will be aligned with the Risk Appetite Statement adopted by the CDS Board of Directors and the Custody and Risk Management Framework developed by CDS management. The CDS Board of Directors retains the ultimate responsibility for establishing and approving the CDS risk management framework. In fact, PFMI Principle 2 relating to Governance requires that a CCP's board of directors have and retain ultimate responsibility for establishing and approving an appropriate risk management framework, including investment risks (for example, maturities, concentration, risk limits). CDS is of the view that establishing an investment model for the affected Collateral is part of the risk management framework CDS must establish for the management of investment risks (Principle 2 of PFMI). Doing otherwise could result in CDS not being Cover-1 compliant, which would compromise CDS' ability to access liquidity in a timely manner (same-day) in order to manage any potential default.

CDS proposes to introduce the IC in the Participants Rules. The IC will be a committee with investment decision-making authority within a predetermined set of parameters. As indicated above, these parameters will be determined in conformity with the enterprise risk management framework and applicable custody and investment policies and standards approved and established by CDS. The IC is not a participant advisory committee. Its role is not similar to those committees that advise the Board of Directors and CDS on various risk matters. In fact, the proposed structure is outside the scope of the market participant advisory committee structure contemplated in the AMF, BCSC and OSC recognition orders. The IC is a new decision-making committee with its own limited-scope decision-making authority.

As suggested by CPMI-IOSCO, where participants of a CCP have decision-making authority on the investment of their assets, the associated risks are consequent to the decisions made by the participants and not the CCP. NYL Service Participants will, therefore, collectively bear the burden of any losses suffered as a result of such decisions or investments in proportion to their Collateral size when the losses are incurred. For clarity, the members of the IC will not be personally liable. All NYL Service Participants will proportionally share any losses. As indicated earlier, the allocation of any loss to Participants is not a change from the current investment risks borne by Participants. The establishment of the IC, and the proposed rule amendments, however, offer the Participants transparency and decision-making powers with respect to these investments that correlate to that risk.

Finally, the IC will have the ability to make such recommendations to the CDS Board of Directors it deems appropriate for the benefit of any investment models but, ultimately, the Board of Directors remains responsible for the content of the investment policy and the Cover-1 compliance.

### **Charter and Membership**

The IC will have the following responsibilities:

(1) within the Participant Asset Investment Policy and CDS Custody and Investment Risk Management Framework that CDS has established in accordance with the applicable legal, regulatory and compliance requirements, the IC reviews the investment type(s) and allocation in which the Collateral may be invested. With respect to those investments, CDS has determined (within these custody and investment policies and frameworks) the various items on which the IC makes decisions and the parameters (of these items) within which the Participants make decisions. The items and parameters, any specific voting thresholds as well as all other decision-making authority of the IC for each type of investment will be outlined and described in a schedule attached to the Charter of the IC.

(2) as part of their responsibilities, the IC members shall understand, without limitation, the regulatory standards that must be met, and the need to balance those regulatory obligations against the associated risks, operational impact, costs, or any other material investment considerations.

(3) the IC can make any recommendations to CDS with respect to any aspects of the Collateral investment approach in place.

Since the decisions and activities of the IC will be based on an investment policy adopted by the CDS Board of Directors, such decisions and activities will be subject to TMX/CDS Internal Audit's review in the manner, and at a frequency, determined by Internal Audit, from time to time.

Membership of the IC will be limited and will be subject to risk-based criteria and a rotating membership. CDS is of the view this form of membership is equitable and ensures the effective function of the IC. IC Representation will be based on the value of the Collateral provided.

The IC will be composed of :

- (i) five (5) Participants identified by CDS, being the five largest Collateral providers from all the NYL Service Participants, over a 12-month period prior to determination;
- (ii) two (2) Participants elected by and from the other NYL Service Participants (One Participant = One vote); and
- (iii) CDS (without any voting right).

Each Participant identified or elected as IC member may be represented by one or more representatives (maximum three (3) representatives) with experience in operations, risk management, finance and/or business development, and who have knowledge of the CDS Participant Rules and Procedures applicable to the NYL Service, and an understanding of CDS NYL Service Collateral process. Notwithstanding the number of representatives attending a meeting on behalf of a Participant, each Participant will only have "one vote".

CDS itself may be represented by one or more individuals but will not have the right to vote with respect to investment decisions, provided such decisions are within the scope of the IC's authority. The role of one of the CDS representatives will be similar to a Chairperson (without any voting right). This CDS representative will help facilitate the deliberations and discussions of the IC, provide and/or present the IC with various data from time to time and on an ongoing basis, provide general information and support on the matters being decided by the IC, as may be required for the IC members to execute their responsibilities. Finally, one CDS representative will act as "committee secretary", recording minutes and coordinating meetings and agendas.

All IC members shall attend the IC meetings, which shall occur, at a minimum, quarterly. If not, the IC does not have a quorum. Notwithstanding the foregoing, if a decision must be taken on a same-day basis, the quorum will be the Participants attending the meeting. The IC shall be subject to the ongoing oversight of the CDS Board of Directors, with a quarterly obligation to report its minutes, decisions, activities and deliberations. The IC will provide the same reporting to all NYL Service Participants on a quarterly basis. The Meetings will be held at the offices of CDS or via teleconferencing or video-conferencing facilities to be provided by CDS. The IC Members' mandate term is for a period of two years. After the two-year period, CDS will constitute a new IC as per the above committee governance process.

Finally, unless otherwise indicated in a schedule attached to the Charter (such a schedule describing the items and parameters and the decision-making authority of the IC for each type of investment, as indicated earlier), all IC decisions shall be taken with a simple majority of votes.

## **C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS ON CDS AND ON CDS PARTICIPANTS**

- (a) CDS – The proposed rule amendments eliminate any potential risk exposure that may accrue to CDS from the investment of the NYL Service Participants' Collateral.
- (b) CDS Participants – The proposed rule amendments provide the NYL Service Participants with authority to decide how the Collateral is deployed and invested, subject to CDS' investment policy.
- (c) Other market participants – The proposed rule amendments will have no impact on other market participants.
- (d) Securities and Financial Market in General – The proposed amendments will have no impact on the securities and financial market except as noted above.

### **C.1 Competition & Conflict of Interest Analysis**

The proposed rule amendments will apply to CDS NYL Service Participants only. No CDS Participants will be disadvantaged or otherwise prejudiced by the introduction of the proposed changes except as detailed in the proposed amendments. A conflict of interest analysis with respect to the Canadian Derivatives Clearing Corporation, which is a CDS affiliate, a Participant, and a Third Party Clearing System pursuant to CDS' Participant Rules, is not necessary in the context of the proposed amendments.

### **C.2 Risks and Compliance Costs**

The proposed amendments relate to the modification of governance processes and certain limitations on liability in respect of investment decisions made by the proposed IC, and not to compliance systems, technological, or regulatory compliance impacts

or costs. The formation of the proposed IC, as described in this Notice and Request for Comment, is intended to enhance the degree to which NYL Service Participants contribute to decisions related to the investment of Collateral while ensuring that the risk and liability profile of CDS itself, as a designated Clearing House operating a Designated Clearing System is not altered in an adverse way.

### **C.3 Comparison to Applicable International Standards**

The proposed rule amendments are in compliance with, and in furtherance of, PFMI standards (including Principles 2, 4 and 16) and other CPMI-IOSCO guidance reports. Such compliance is required under CDS' designation as a Clearing House and operator of a Designated Clearing System, and is also required pursuant to CDS' recognition orders and under National Instrument 24-102 (Clearing Agency Requirements) and related Companion Policy 24-102CP.

## **D. DESCRIPTION OF THE RULE DRAFTING PROCESS**

### ***D.1 Development Context***

CDS senior management, as well as CDS operations, legal, and risk management teams, have prepared documents describing the proposed rule amendments. Such amendments and the concept of the IC as a whole have been discussed with some NYL Service Participants on an informal basis. In fact, the concept of the IC has been raised during CDS RAC meetings (January 18, 2021 and January 28, 2022) and was discussed as part of 1-on-1 meetings with selected NYL participants. Those 1-on-1 meetings were held in October 2021 and January 2022.

### ***D.2 Rule Drafting Process***

The proposed rule amendments were drafted by representatives of CDS legal, in consultation with CDS risk management representatives, and were subsequently reviewed by CDS' Legal Drafting Group ("**LDG**") on January 31, 2022. The LDG is an *ad hoc* advisory committee composed of legal and business representatives of participating CDS Participants. The LDG comments on the drafting of proposed amendments to the CDS Rules and may suggest revisions and additions.

In the drafting process, CDS also took into consideration the informal comments received from NYL Service Participants, as indicated in subparagraph D.1 above.

### ***D.3 Issues Considered***

In drafting the proposed rule amendments and creating the IC, CDS' primary considerations were defining the role of the IC as a decision-making committee, distinct from other CDS Participants' committees, and clarifying that any losses resulting from the decisions of the IC would be borne directly by the NYL Service Participants. As indicated earlier, the NYL Service Participants are currently collectively liable for any losses suffered as a result of such investments or decisions, in proportion to their participation in the NYL Service. Providing the Participants with the authority to decide how the Collateral is invested is commensurate with the existing risks they assume as Participants of NYL.

### ***D.4 Consultation***

The proposed rule amendments were presented to the LDG on January 31, 2022, and subsequently to the Risk Management and Audit Committee and to the CDS Board of Directors on February 4, 2022. Approval of the proposed amendments for filing, public comment and regulatory review was received by written resolution of the CDS Board of Directors on February 4, 2022.

### ***D.5 Alternatives Considered***

Given the nature of the changes proposed, the scope of the applicable PMFIs and CPMI-IOSCO guidance on the matter, and the current provisions of CDS Participant Rules regarding Participants losses, it appears logical to provide NYL Service Participants with decision-making authority over the investment of the Collateral. Doing so in an efficient manner would require a decision-making committee with limited membership. Yet, such a committee would need to properly represent the interests of all NYL Service Participants.

Based on the foregoing, CDS has determined that the market participant advisory committee structure contemplated in the AMF, BCSC and OSC recognition orders would not be an appropriate alternative for the project. In fact, the RAC is not a decision-making committee. Its role is to advise the Board of Directors and CDS on various risk matters and all CDS Participants are members of that committee.

The proposed IC membership is only open to NYL Service Participants (and not all CDS Participants), based on the value of the Collateral provided to CDS for the use of the NYL Service. Such membership makes more sense given that the NYL Service Participants would not share any investment risks equally. Hence, the IC will be composed of the five largest NYL Service Collateral providers and two representatives of the other NYL Service Participants. Based on observations and reports, the

Collateral value of the five largest NYL Service Collateral providers would represent approx. 76.65% of all Collateral provided by the NYL Service Participants between June 1, 2021, and December 21, 2021.

#### **D.6 Implementation Plan**

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the *Securities Act* (Ontario), by the British Columbia Securities Commission pursuant to Section 24(d) of the *Securities Act* (British Columbia) and by the *Autorité des marchés financiers* ("AMF") pursuant to section 169 of the *Securities Act* (Québec). In addition, CDS is deemed to be the clearinghouse for CDSX<sup>®</sup>, 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 on a date to be determined by CDS (expected to be in Q3 2022), such date to fall subsequent to approval of the amendments by the Recognizing Regulators following public notice and comments and be contingent on applicable notice to CDS participants.

#### **E. Technological systems changes**

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

#### **F. Comparison to other clearing agencies**

In order to achieve collateral efficiencies for its clearing members, CME has established a number of collateral programs under the designation "Interest Earning Facility" or "IEF". The IEF2 Program has been offered by CME since 2002 and allows clearing members to invest their collateral in government money market mutual funds determined by CME (in shares of approved money market mutual funds). Dividends earned on these shares, net of fees, are solely for the account of the clearing members on whose behalf the shares were purchased. Such investments are not guaranteed by CME (or any other entity). In fact, CME recommends that the clearing members read the prospectus of the relevant mutual funds and contact the funds for any questions or issues they may have. In short, the clearing members assume the liability of the investment.<sup>3</sup>

From the example above, CDS notes the following:

- CME selects the investments;
- All benefits from the investments (net of administration costs) are sent back to clearing members;
- The clearing members assume the liability of the investments.

CDS notes, however, that the above program is different from CDS NYL Participant Fund rules, in its scope and its size, and that results in CME being able to offer more investment opportunities to the clearing members.

#### **G. Public interest assessment**

CDS believes that the proposed rule amendments are not contrary to the public interest and are aligned with the PFMI standards.

#### **H. Comments**

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

CDS Clearing and Depository Services Inc.  
Attn: Legal Department, Martin Jannelle, Senior Legal Counsel  
100 Adelaide Street West – Suite 300  
Toronto, Ontario, M5H 1S3  
Email: [martin.jannelle@tmx.com](mailto:martin.jannelle@tmx.com)

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<sup>3</sup> <https://www.cmegroup.com/clearing/financial-and-collateral-management/ief2-eligibility.html#>

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:

Philippe Lebel  
Corporate Secretary and  
Executive Director, Legal Affairs  
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 the proposed rule amendments as well as text of these rules reflecting the adoption of the proposed amendments.

## APPENDIX "A"

## PROPOSED CDS RULE AMENDMENTS

COMPARED VERSION	CLEAN VERSION
<p><b>1.2 DEFINITIONS</b></p> <p><b>1.2.1 Definitions</b></p> <p>For the purposes of the Legal Documents, unless otherwise specified:</p> <p>[...]</p> <p><u>"NYL Investment Committee" means a committee composed of certain NYL Participants making investment decisions regarding the Contributions made by NYL Participants to the Participant Fund established by CDS for NYL.</u></p>	<p><b>1.2 DEFINITIONS</b></p> <p><b>1.2.1 Definitions</b></p> <p>For the purposes of the Legal Documents, unless otherwise specified:</p> <p>[...]</p> <p>"NYL Investment Committee" means a committee composed of certain NYL Participants making investment decisions regarding the Contributions made by NYL Participants to the Participant Fund established for NYL.</p>
<p><b>4.2.3 CDS Liability for Participant Loss</b></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 <b>"Participant Loss"</b> 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. None of DTC, NSCC, or a TPCS shall be considered to be an agent of CDS for purposes of this Rule 4.2.3. <u>For greater certainty, "Participant Loss" does not include any losses resulting from an action or omission of CDS or of any director, officer, employee, contractor or agent of CDS that is based on, that is the results of, or that is required by, any decisions made by the NYL Investment Committee.</u> 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><b>4.2.3 CDS Liability for Participant Loss</b></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. None of DTC, NSCC, or a TPCS shall be considered to be an agent of CDS for purposes of this Rule 4.2.3. For greater certainty, "Participant Loss" does not include any losses resulting from an action or omission of CDS or of any director, officer, employee, contractor or agent of CDS that is based on, that is the results of, or that is required by, any decision made by the NYL Investment Committee. 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><b>4.2.9 Exclusion of CDS Liability</b></p> <p>CDS shall not be liable to any Participant for any loss of opportunity, profit, market, goodwill, interest or use of money or Securities, or any other special, indirect or consequential loss, damage, cost, expense, liability or claim (in this Rule, a "consequential loss") suffered or incurred by any Participant arising from any Service, including a consequential loss arising from or associated with a Participant Loss, <del>or</del> a Loss of Securities <u>or a loss resulting from an action or omission of CDS or of any director, officer, employee, contractor or agent of CDS that is based on, that is the results of, or that is required by, any decision made by the NYL Investment Committee.</u> 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 any action taken by CDS in accordance with a lawful direction given by a</p>	<p><b>4.2.9 Exclusion of CDS Liability</b></p> <p>CDS shall not be liable to any Participant for any loss of opportunity, profit, market, goodwill, interest or use of money or Securities, or any other special, indirect or consequential loss, damage, cost, expense, liability or claim (in this Rule, a "consequential loss") suffered or incurred by any Participant arising from any Service, including a consequential loss arising from or associated with a Participant Loss, a Loss of Securities or a loss resulting from an action or omission of CDS or of any director, officer, employee, contractor or agent of CDS that is based on, that is the results of, or that is required by, any decision made by the NYL Investment Committee. 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 any action taken by CDS in accordance with a lawful direction given by a</p>

COMPARED VERSION	CLEAN VERSION
<p>Regulatory Body having jurisdiction over CDS. The amount payable by CDS for any Participant Loss or Loss of Securities shall be limited to the amount payable pursuant to Rule 4.2.5 and shall not exceed that amount in any circumstances, including a Participant Loss or Loss of Securities arising from or in any way connected with a breach (including a fundamental breach) of the Legal Documents, or a Participant Loss or Loss of Securities arising from or in any way connected with any negligent or reckless act or omission of CDS or any fraudulent, negligent, reckless or wilful act or omission or any director, officer, employee, agent or contractor of CDS, whether or not the possibility of such Participant Loss or Loss of Securities was disclosed to or reasonably could have been foreseen by CDS.</p>	<p>Regulatory Body having jurisdiction over CDS. The amount payable by CDS for any Participant Loss or Loss of Securities shall be limited to the amount payable pursuant to Rule 4.2.5 and shall not exceed that amount in any circumstances, including a Participant Loss or Loss of Securities arising from or in any way connected with a breach (including a fundamental breach) of the Legal Documents, or a Participant Loss or Loss of Securities arising from or in any way connected with any negligent or reckless act or omission of CDS or any fraudulent, negligent, reckless or wilful act or omission or any director, officer, employee, agent or contractor of CDS, whether or not the possibility of such Participant Loss or Loss of Securities was disclosed to or reasonably could have been foreseen by CDS.</p>
<p><b>5.3.6 Custody of Collateral</b></p> <p>In exercising any of the powers conferred by this Rule 5.3, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants other than a Defaulter. CDS shall not be the agent, trustee or fiduciary (i) for a Participant in respect of its own Specific Collateral, Fund Contributions, Supplemental Liquidity Contributions, Collateral Pool Contributions or Settlement Service Collateral, nor (ii) for any other Category Credit Ring Member (except to the extent that it acts as the bare nominee of the Survivors of a suspended Extender) in respect of its interest in the Category Credit Ring Collateral of a Defaulter. Collateral in the form of money shall be held by CDS in accordance with this Rule 5.3 and need not be applied to reduce any obligation of the Participant to CDS. CDS may invest Specific Collateral, Fund Contributions, Supplemental Liquidity Contributions or Collateral Pool Contributions in a reasonable and prudent manner, acting in the best interests of all Participants. <u>Notwithstanding the foregoing, CDS shall invest the Contributions made by NYL Participants to the Participant Fund established by CDS for NYL in accordance with the decisions of the NYL Investment Committee.</u> CDS shall segregate any such collateral from its own money and shall make use of such collateral only for the purposes of this Rule 5. The net amount of any interest, dividend or income received by CDS on the collateral of a Participant (other than minimum cash contributions) shall be distributed to the Participant in accordance with the Procedures, provided the Participant's obligations to CDS have been fulfilled. In exercising any of the foregoing powers, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants making use of the Services.</p>	<p><b>5.3.6 Custody of Collateral</b></p> <p>In exercising any of the powers conferred by this Rule 5.3, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants other than a Defaulter. CDS shall not be the agent, trustee or fiduciary (i) for a Participant in respect of its own Specific Collateral, Fund Contributions, Supplemental Liquidity Contributions, Collateral Pool Contributions or Settlement Service Collateral, nor (ii) for any other Category Credit Ring Member (except to the extent that it acts as the bare nominee of the Survivors of a suspended Extender) in respect of its interest in the Category Credit Ring Collateral of a Defaulter. Collateral in the form of money shall be held by CDS in accordance with this Rule 5.3 and need not be applied to reduce any obligation of the Participant to CDS. CDS may invest Specific Collateral, Fund Contributions, Supplemental Liquidity Contributions or Collateral Pool Contributions in a reasonable and prudent manner, acting in the best interests of all Participants. Notwithstanding the foregoing, CDS shall invest the Link Fund Contributions and the Cross-Border Specific Collateral provided to CDS by NYL Participants for the use of NYL in accordance with the decisions of the NYL Investment Committee. CDS shall segregate any such collateral from its own money and shall make use of such collateral only for the purposes of this Rule 5. The net amount of any interest, dividend or income received by CDS on the collateral of a Participant (other than minimum cash contributions) shall be distributed to the Participant in accordance with the Procedures, provided the Participant's obligations to CDS have been fulfilled. In exercising any of the foregoing powers, CDS shall take reasonable care in what it, in good faith, considers to be necessary to protect the interests of CDS and to be in the best interest of all Participants making use of the Services.</p>