

13.1.5 Material Amendments to CDS Rules - Delivery Services - Request for Comments

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED ("CDS")

MATERIAL AMENDMENTS TO CDS RULES

DELIVERY SERVICES

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

CDS offers various services to facilitate the delivery of securities and documentation to participants, CDS branches, transfer agents and the New York offices of Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC"). Proposed new Rule 13 will make the delivery services part of the services that are offered by CDS to its participants under the uniform legal format of the participant agreement and the CDS Rules.

B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

The delivery services offered by CDS give participants the advantages of lower costs (from bulk buying of armoured courier services and bulk use of CDS messengers), timeliness (particularly when deliveries are made to or from CDS branches) and efficiency (fees are paid through CDS in one consolidated invoice; routine deliveries and pick-ups can be made through a CDS branch, reducing the number of individual trips to be made by the participant's own messengers). In preparation for its corporate restructuring, scheduled for implementation in November 2006, CDS has reviewed all of the services it offers to participants and to others, to ensure that after the restructuring each service is offered by the appropriate entity and under an appropriate legal regime. It has been determined that the delivery services should be offered to participants by CDS as part of the services governed by the Rules, rather than under a separate contract.

Rule 13 describes the delivery services in general terms, and deals with the legal aspects of the service, particularly the limitation of liability of CDS. Amendments to Rule 1 include the "Delivery Services" in the list of "Services" offered by CDS. Amendments to Rule 4.2 integrate the limitation of CDS liability for the delivery services with the general provisions governing liability.

Participants are free to make shipments by using their own messengers or by contracting with commercial carriers and are under no obligation to use the CDS delivery services. For the convenience of the industry, and in order to limit the number of people using the transfer agent's premises and to provide more effective risk control, it is preferred that the CDS delivery service be used to deliver security certificates to the transfer agent, and to receive security certificates from the transfer agent, when securities are being deposited into or withdrawn from CDSX. Participants may use either the delivery services or their own messengers to deliver security certificates to CDS's offices for deposits, and to pick up security certificates from CDS's offices for withdrawals. The delivery services are used only for deposits and withdrawals of certificated securities that are not immobilized in the depository. A large proportion of the securities held in CDSX are permanently immobilized in the depository (including, for instance, Canada bonds and book entry only corporate debt securities). Other issues are also available in certificated form (such as corporate equities and certain corporate and provincial debt securities). The risks associated with handling certificated securities are, of course, eliminated by leaving the securities in CDSX and making deliveries on the books of CDS; however, the industry still requires the flexibility to handle securities in certificated form and must therefore from time to time process deposits and withdrawals.

Shipments through the delivery services are made by CDS employees or by an armoured courier under contract with CDS. Rule 13.3 provides that CDS is not the agent of the courier service when participants elect to make shipments with that courier. The Rule also provides that participants may be required to enter into a direct contract with the courier service to govern certain terms, as is currently the case with the delivery services that are offered outside the Rules. The armoured courier under contract to CDS provides limited insured coverage for its shipments and does not accept any liability above a stipulated amount.

The delivery services are not part of the core services offered by CDS for clearing and settlement, and in most cases can be replaced by commercial services. CDS has therefore determined that it should not accept liability for the value of shipments made through the delivery services (Rule 13.6). CDS does accept liability for all securities held for participants and credited to the securities accounts maintained for CDSX, from the time a security is deposited until the time that it is withdrawn (Rule 4.2). The new Rules define the point at which security certificates being delivered through the delivery services (for which CDS accepts no liability) become securities held in CDSX (for which CDS does accept liability) (Rule 13.8). Participants must ensure that they appropriately insure the risks arising from the handling of certificated securities in the course of deposit and withdrawal from CDSX. All participants are required as part of the standards for participation to maintain a policy of insurance, such as a financial institution bond. Under Rule 13.7, each participant acknowledges its responsibility to determine the appropriate level of insurance coverage for shipments made through the delivery services, which will vary depending on the participant's own

business activities. Each participant can ensure that its policy covers its risk for shipments at appropriate levels and with terms (such as deductibles and level of coverage for each incident) that are appropriate for its particular business.

The operational details of the CDS delivery services are set out in Procedures, including the preparation of shipments, the processes for refusing shipments and for dealing with lost or damaged shipments, and the restrictions on the content of shipments (Rule 13.5).

C. IMPACT OF THE PROPOSED AMENDMENTS

The implementation of the proposed Rule amendments will not change the operation of the delivery services. When Rule 13 becomes effective, participants will be able to continue to use the delivery services pursuant to the Rules without the need to execute new documents. The new Rules and Procedures will clarify the use of the delivery services, and will ensure that the risks arising from that service, including the loss of or damage to security certificates or other documents in a shipment, will be born by the participant making the shipment and by any courier providing the service (subject to its contractual limitations), and not by CDS. When the new Rules are implemented, participants will be reminded to review their insurance coverage with respect to their use of the CDS delivery services.

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* and as a self-regulatory organization by the Autorité des marchés financiers 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 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 ("LDG"). 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 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.

E. IMPACT OF PROPOSED AMENDMENTS ON TECHNOLOGICAL SYSTEMS

There are no anticipated impacts on CDS or its participants technological systems.

F. COMPARISON TO OTHER CLEARING AGENCIES

NSCC offers envelope settlement services that are not the same as CDS's Delivery Services. NSCC's envelope services are akin to certificate based settlement (no longer permitted at CDS). Nevertheless, the overriding insurance principle is similar to CDS's Delivery Services in that once NSCC takes responsibility for the securities, NSCC is responsible for any loss.

G. PUBLIC INTEREST ASSESSMENT

In analyzing the impact of the proposed amendments to the 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 August 21, 2006 and delivered to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
85 Richmond Street West
Toronto, Ontario M5H 2C9

Fax: 416-365-1984
e-mail: attention@cds.ca

A copy should also be provided to the Ontario Securities Commission by forwarding a copy to:

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 the text of the current CDS Participant Rules marked to reflect proposed amendments as well as the text of these rules reflecting the adoption of the proposed amendments.

J. QUESTIONS

Questions regarding this notice may be directed to:

Jamie Anderson
Senior Legal Counsel
The Canadian Depository for Securities Limited
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 AMENDMENTS

Text of CDS Participant Rules marked to reflect proposed amendments	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>"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 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>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>"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 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>

Text of CDS Participant Rules marked to reflect proposed amendments	Text of CDS Participant Rules reflecting the adoption of proposed amendments
<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> <ul style="list-style-type: none"> (a) the theft, destruction or mysterious disappearance of any certificate or other instrument evidencing Securities; (b) the determination that any Security is a Defective Security; or (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>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>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> <ul style="list-style-type: none"> (a) the theft, destruction or mysterious disappearance of any certificate or other instrument evidencing Securities; (b) the determination that any Security is a Defective Security; or (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>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><u>RULE 13 DELIVERY SERVICES</u></p>	<p><u>RULE 13 DELIVERY SERVICES</u></p>
<p><u>13.1 General Description</u></p>	<p><u>13.1 General Description</u></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><u>13.2 Means of Delivery</u></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>
<p><u>13.3 Courier Service</u></p>	<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</u></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</p>

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<p>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>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><u>13.4 Authorized Individuals</u></p>	<p>13.4 Authorized Individuals</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>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><u>13.5 Procedures</u></p>	<p>13.5 Procedures</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>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.</p>
<p><u>13.6 CDS Disclaimer of Responsibility</u></p>	<p>13.6 CDS Disclaimer of Responsibility</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>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.</p>
<p><u>13.7 Insurance and Limitation of Participant Recovery</u></p>	<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>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>

Text of CDS Participant Rules marked to reflect proposed amendments	Text of CDS Participant Rules reflecting the adoption of proposed amendments
<p><u>13.8 Deposit and Withdrawal of Securities</u></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>13.8 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>