

13.1.6 Notice and Request for Comment – Material Amendments to CDS Rules Relating to Dormant Participants

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES

DORMANT PARTICIPANTS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

Currently, dormant participants can remain inactive indefinitely and do not pay additional fees when reactivated. The proposed amendments clarify: how participants become dormant, dormancy fees payable, and fees to be paid upon reactivation.

B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

As currently set out in the CDS procedures, participants are permitted to continue indefinitely as a dormant participant provided that it pays the annual dormancy fee of \$2,000. If a dormant participant wishes to become active again, it submits an application and, if accepted, it is reactivated without having to pay any additional fees.

The concern is that dormant participants can remain dormant indefinitely and can be reactivated without payment of an additional entrance fee. Once reactivated, Participants can benefit from CDS's services without having sufficiently contributed to the development and operating costs incurred by CDS during the dormancy period. Further, the annual dormancy fee of \$2,000 does not reflect increases in CDS's development and operating costs since the 1980's.

CDS is making the following recommendations:

1. Formal recognition of dormant status under the Participant Rules to reflect the status of a Participant which does not actively use CDS's Services.
2. If a participant has not used any of CDS's Services for six consecutive months, it must either start using one or more Services actively on an ongoing basis, withdraw from participation, or become a dormant participant.
3. Increase in the annual dormancy fee to \$4,000.
4. After five years of dormant status, CDS will ask a dormant participant whether it wishes to remain inactive or be reactivated.
5. If the participant chooses to reactivate, the dormant participant must complete an application as though it were applying to be a new Participant and submits the fee described below. The dormant participant will be required to submit all relevant information that a new applicant would submit and must meet the current criteria for admission.
6. The fee payable for reactivation is the positive difference (if any) between the current entrance fee and the original entrance fee paid by the dormant participant.
7. If a dormant participant chooses to remain dormant, it must pay the same fee it would if it chose to be reactivated.
8. As long as the dormant participant chooses to stay dormant, the process will repeat every five years. That is, to reactivate or stay dormant, a dormant participant must pay any positive difference between the current entrance fee and the entrance fee as at the start of the applicable five-year period.

Rules 2.1 and 2.7, which refer to participation and the suspension, withdrawal or termination of Participants, are proposed to be amended to incorporate a general description of the dormant participant policy described above. Rule 3.5 deals with fees and shall also be amended to accommodate the fees payable by dormant participants.

C. IMPACT OF THE PROPOSED AMENDMENTS

Currently there are two dormant participants in CDSX. The two dormant participants will be advised of the new policy in advance of its implementation and given the opportunity to decide if they want to continue as dormant participants.

CDS has determined that four other Participants have ceased using any of CDS's services but have not been designated as dormant. CDS will contact each of them to determine if they want to become dormant participants based on the proposed amendments, or whether they wish to withdraw from participation.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 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 ("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.

Pursuant to the unanimous shareholder agreement between The Canadian Depository for Securities Limited ("CDS Ltd.") and CDS, effective as of November 01, 2006 whereby CDS Ltd., which acts under the supervision of its Board of Directors, assumes all rights, powers, and duties of the CDS Board of Directors, these amendments were reviewed and approved by the Board of Directors of CDS Ltd. on June 17, 2008.

The amendments to the Participant Rules will become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

E. TECHNOLOGICAL SYSTEMS CHANGES

No system changes are required to implement these amendments.

F. COMPARISON TO OTHER CLEARING AGENCIES

CDS's fee structure for new participants is different from other securities depositories. The Depository Trust Company in the U.S. does not charge an entrance fee but charges participant a fee per account that they use, whereas Euroclear U.K. and Euroclear France charge participants annual fee for membership but not an entrance fee. Rather than charge a per-account fee or annual fee, CDS's entrance fee is the means for obtaining a contribution towards the infrastructure and services in which existing participants have already invested. The entrance fee is based on size as measured by capital as an indication of the level of usage and benefit that the participant is expected to derive from CDS's infrastructure and services. Given the different fee structures used in the other depositories, it is not possible to make a comparison with CDS's dormant participant concept. CDS believes that this Rule amendment is consistent with the rationale for an entrance fee and responds to the particular conditions of the Canadian financial market.

G. PUBLIC INTEREST ASSESSMENT

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

H. COMMENTS

Comments on the proposed amendments should be in writing and delivered by July 27, 2008 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:

M^e Anne-Marie Beaudoin
Directrice du secrétariat
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: consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

CDS will make available to the public, upon request, all 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.

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><u>2.1.4 Dormancy</u></p> <p><u>The circumstances in which a Participant elects to become dormant or is designated as dormant by CDS are set out in Rule 2.7.10. Dormant Participants may apply for reactivation.</u></p> <p><u>2.7.10 Dormant Participants</u></p> <p><u>A Participant may become a dormant Participant or, if a dormant Participant, become an active Participant in accordance with the provisions of this Rule 2.7.10 as follows:</u></p> <p>(a) <u>A Participant may elect on written notice to CDS that it wishes to be designated as a dormant Participant if it proposes not to use any of the Services or Functions;</u></p> <p>(b) <u>If a Participant has not used any of the Services or Functions for a period of at least six months to a degree determined reasonable by CDS in accordance with criteria established in the Procedures, CDS may on written notice to the Participant advise that the Participant is to be designated as dormant. In such event, the Participant shall within 30 days of receipt of such notice from CDS elect by written notice to CDS to commence to use Services and Functions of CDS on an active, ongoing basis, be designated as a dormant Participant, or cease to be a Participant of CDS and, on failure to make such election, shall be deemed to have elected to be designated as dormant.</u></p> <p>(c) <u>A dormant Participant shall not be entitled to use any of the Services or Functions to the extent prescribed in the Procedures unless and until it has been designated as an active Participant in accordance with the provisions of this Rule 2.7.10. A dormant Participant shall remain liable for all obligations and liabilities under the Rules arising from or related to the period prior to its being designated as dormant including any such obligations arising under Rules 9.2 and 9.3 as if those Rules were applicable to the dormant Participant as a suspended Participant. The effective date on which a Participant shall be designated as dormant shall be determined by CDS in its discretion. Effective on the fifth anniversary of being designated dormant, a Participant must advise CDS of its election to be (i) designated as an active Participant, (ii) cease to be a Participant in accordance with the Rules, or (iii) continue to be designated as a dormant Participant.</u></p> <p>(d) <u>A dormant Participant which elects to be</u></p>	<p>2.1.4 Dormancy</p> <p>The circumstances in which a Participant elects to become dormant or is designated as dormant by CDS are set out in Rule 2.7.10. Dormant Participants may apply for reactivation.</p> <p>2.7.10 Dormant Participants</p> <p>A Participant may become a dormant Participant or, if a dormant Participant, become an active Participant in accordance with the provisions of this Rule 2.7.10 as follows:</p> <p>(a) A Participant may elect on written notice to CDS that it wishes to be designated as a dormant Participant if it proposes not to use any of the Services or Functions;</p> <p>(b) If a Participant has not used any of the Services or Functions for a period of at least six months to a degree determined reasonable by CDS in accordance with criteria established in the Procedures, CDS may on written notice to the Participant advise that the Participant is to be designated as dormant. In such event, the Participant shall within 30 days of receipt of such notice from CDS elect by written notice to CDS to commence to use Services and Functions of CDS on an active, ongoing basis, be designated as a dormant Participant, or cease to be a Participant of CDS and, on failure to make such election, shall be deemed to have elected to be designated as dormant.</p> <p>(c) A dormant Participant shall not be entitled to use any of the Services or Functions to the extent prescribed in the Procedures unless and until it has been designated as an active Participant in accordance with the provisions of this Rule 2.7.10. A dormant Participant shall remain liable for all obligations and liabilities under the Rules arising from or related to the period prior to its being designated as dormant including any such obligations arising under Rules 9.2 and 9.3 as if those Rules were applicable to the dormant Participant as a suspended Participant. The effective date on which a Participant shall be designated as dormant shall be determined by CDS in its discretion. Effective on the fifth anniversary of being designated dormant, a Participant must advise CDS of its election to be (i) designated as an active Participant, (ii) cease to be a Participant in accordance with the Rules, or (iii) continue to be designated as a dormant Participant.</p> <p>(d) A dormant Participant which elects to be</p>

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<p><u>designated as an active Participant in accordance with Rule 2.7.10(c) or to continue to be a dormant Participant must complete and provide to CDS all information and documentation as though it were applying to become a new Participant and must qualify as a Participant according to the then current criteria and qualifications as set out in the Rules and determined by the Board of Directors and on such terms and conditions as may be considered by CDS to be appropriate. If the Participant fails to qualify as a Participant according to such criteria and qualifications, it shall be considered as a terminated Participant for the purpose of Rule 2.7.5 on the basis that failure to qualify as a Participant as aforesaid constitutes adequate cause for termination.</u></p> <p>(e) <u>A dormant Participant shall pay such annual fees and other charges as may be determined by the Board of Directors from time to time pursuant to the Rules including a reactivation or continued dormancy fee if it wishes to be designated as an active Participant or continue as a dormant Participant in accordance with Rule 2.7.10(c)(iii).</u></p> <p>3.5.2 User Fees</p> <p>CDS may charge and the Participants shall pay fees for the use of each Service or Function, <u>or in respect of their dormant status or in order to be designated as active Participants,</u> as determined by CDS from time to time. A schedule of fees shall be included in the Procedures or User Guides for each Service, or CDS shall give notice of the fee schedule to the Participants in that Service. The fees may include fees for the failure to comply with the Legal Documents. The fees may be revised from time to time by CDS. CDS shall give notice to Participants of any increase in fees not less than 60 days prior to the implementation of such increase. The Board of Directors may specify a shorter notice period or may implement the revised fees immediately or retroactively.</p>	<p>designated as an active Participant in accordance with Rule 2.7.10(c) or to continue to be a dormant Participant must complete and provide to CDS all information and documentation as though it were applying to become a new Participant and must qualify as a Participant according to the then current criteria and qualifications as set out in the Rules and determined by the Board of Directors and on such terms and conditions as may be considered by CDS to be appropriate. If the Participant fails to qualify as a Participant according to such criteria and qualifications, it shall be considered as a terminated Participant for the purpose of Rule 2.7.5 on the basis that failure to qualify as a Participant as aforesaid constitutes adequate cause for termination.</p> <p>(e) A dormant Participant shall pay such annual fees and other charges as may be determined by the Board of Directors from time to time pursuant to the Rules including a reactivation or continued dormancy fee if it wishes to be designated as an active Participant or continue as a dormant Participant in accordance with Rule 2.7.10(c)(iii).</p> <p>3.5.2 User Fees</p> <p>CDS may charge and the Participants shall pay fees for the use of each Service or Function, or in respect of their dormant status or in order to be designated as active Participants, as determined by CDS from time to time. A schedule of fees shall be included in the Procedures or User Guides for each Service, or CDS shall give notice of the fee schedule to the Participants in that Service. The fees may include fees for the failure to comply with the Legal Documents. The fees may be revised from time to time by CDS. CDS shall give notice to Participants of any increase in fees not less than 60 days prior to the implementation of such increase. The Board of Directors may specify a shorter notice period or may implement the revised fees immediately or retroactively.</p>