

13.1.4 Rule Protocol Regarding the Review and Approval of CDS Rules by the OSC

APPENDIX "A"

RULE PROTOCOL REGARDING THE REVIEW AND APPROVAL
OF CDS RULES BY THE OSC

1. Purpose of the Protocol

On [**** 2005], the Commission issued a varied and restated recognition and designation order ("Recognition Order") with terms and conditions governing CDS' recognition as a clearing agency pursuant to subsection 21.2(1) of the *Securities Act* (Ontario). To comply with the Recognition Order, CDS must file, among other things, its rules with the Commission for approval. This protocol sets out the procedures for the submission of a rule by CDS and the review and approval of the rule by the Commission.

2. Definitions

In this protocol:

"rule" means a proposed new or amendment to or deletion of a participant rule, operating procedure, user guide, manual or similar instrument or document of CDS which contains any contractual term setting out the respective rights and obligations between CDS and participants or among participants.

All other terms have the respective meanings ascribed to them in the Recognition Order and in securities legislation as that term is defined in NI 14-101.

3. Classification of Rules

CDS will classify a rule as either "material" or "technical/housekeeping" for the purposes of the approval process set out in this protocol.

(a) **Technical/Housekeeping Rules**

For the purpose of this protocol, a rule will be classified as "technical/housekeeping" if the rule involves only:

- (i) matters of a technical nature in routine operating procedures and administrative practices relating to the settlement services;
- (ii) amendments required to ensure consistency or compliance with an existing rule, securities legislation or other regulatory requirement;
- (iii) the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing; or
- (iv) stylistic formatting, including changes to headings or paragraph numbers.

(b) **Material Rules**

A rule that is not a technical/housekeeping rule, as defined above, would be classified as a "material" rule.

4. Procedures for Review and Approval of Material Rules

(a) **Prior Notice of a Significant Material Rule**

If CDS is developing a material rule that it anticipates will result in a significant change in its policy, will require amendments to a significant number of rules or may be the subject of significant public comment as a result of publication, then CDS will notify Commission staff in writing at least 30 calendar days prior to submitting such a significant material rule. The purpose of such prior notification is to enable the Commission to react in a timely manner to the material rule upon filing. Prior notification shall not be interpreted as an opportunity for Commission staff to participate in CDS policy development. Commission staff will not begin a formal review of the material rule until all relevant documents have been filed.

(b) **Documents to be Filed**

For a material rule, CDS will file with the Commission the following documents electronically, or by other means as agreed to by Commission staff and CDS from time to time:

- (i) a cover letter that indicates the classification of the rule and the rationale for that classification and includes a statement that the rule is not contrary to the public interest;
- (ii) the rule and, where applicable, a blacklined version of the rule indicating the proposed changes to an existing rule;
- (iii) a notice of publication to be published by the Commission in the OSC Bulletin that contains the following information:
 - A. a description of the rule,
 - B. a concise statement, together with supporting analysis, of the nature and purpose of the rule,
 - C. a description and analysis of the possible effects of such rule on CDS, participants and other market participants and the securities and financial markets in general, including but not limited to any impact on competition, risks and the costs of compliance borne by any of the foregoing parties or within any market, and where applicable, a comparison of the rule to international standards promulgated by Committee on Payment and Settlement Systems of the Bank for International Settlements, the Technical Committee of the International Organization of Securities Commissions and the Group of Thirty,
 - D. a description of the rule drafting process, including a description of the context in which the rule was developed, the process followed, the issues considered, consultation done, the alternative approaches considered, the reasons for rejecting the alternatives and a review of the implementation plan,
 - E. where the rule requires technological systems changes to be made by participants, other market participants or CDS, CDS shall provide a description of the implications of the rule on such systems and, where possible, an implementation plan, including a description of how the rule will be implemented and the timing of the implementation,
 - F. where CDS is aware that another clearing agency has a counterpart to the rule, CDS shall include a reference to the rules of the other clearing agency, including an indication as to whether that clearing agency has a comparable rule or has made or is contemplating making a comparable rule, and a comparison of the rule to same,
 - G. a statement that CDS has determined that the rule is not contrary to the public interest, and
 - H. an explanation that all comments should be sent to CDS with a copy to the Commission, and that CDS will make available to the public on request all comments received during the comment period.
- (c) **Confirmation of Receipt**
Commission staff will within 5 business days send to CDS confirmation of receipt of documents filed by CDS under subsection (b).
- (d) **Publication of a Material Rule by the Commission**
As soon as practicable, Commission staff will publish in the OSC Bulletin the notice and rule filed by CDS under subsection (b) for a comment period of 30 calendar days (the "comment period"), commencing on the date on which the notice first appears in the OSC Bulletin or website.
- (e) **Review by Commission Staff**
Commission staff will use their best efforts to conduct their initial review of the material rule and provide comments to CDS during the comment period. However, there will be no restriction on the amount of time necessary to complete the review of the material rule.
- (f) **CDS Responses to Commission Staff's Comments**
 - (i) CDS will respond to any comments received to Commission staff in writing.
 - (ii) CDS will provide to Commission staff a summary of all public comments received and CDS' responses to the public comments, or confirmation of having received no public comments.

- (iii) If CDS fails to respond to comments from Commission staff within 120 calendar days after receipt of their comment letter, CDS will be deemed to have withdrawn the material rule unless Commission staff otherwise agree.

(g) Approval by the Commission

Commission staff will use their best efforts to prepare the material rule for approval within 30 calendar days of the later of (a) receipt of written responses from CDS to staff's comments or requests for additional information, and (b) receipt of the summary of public comments and CDS' response to the public comments, or confirmation from CDS that there were no comments received. If at any time during the review period, Commission staff determine that they have further comments or require further information from CDS in order to prepare the materials for Commission approval, the review period will be extended by an additional period of 30 calendar days commencing on the day that Commission staff receive responses to the comments or the information requested. Commission staff will notify CDS of the Commission's approval of the material rule within 5 business days.

(h) Publication of Notice of Approval

Commission staff will prepare and publish in the OSC Bulletin and on its website a short notice of approval of the material rule within 15 business days of delivery of the notification to CDS of the decision. CDS will provide the following information to accompany the publication of the notice of approval:

- (i) a short summary of the material rule;
- (ii) CDS' summary of public comments and responses received, if applicable; and
- (iii) if changes were made to the version published for public comment, a blacklined copy of the revised material rule.

(i) Effective Date of a Material Rule

A material rule will be effective as of the date of the notification of approval by Commission staff in accordance with subsection (g) or on a date determined by CDS, if such date is later.

(j) Significant Revisions to a Material Rule

When a material rule is revised subsequent to its publication for comment in a way that Commission and CDS staff determine has a material effect on the substance of the rule or its effect, the revision will be published in the OSC Bulletin with a notice for a second 30 calendar day comment period. The request for comment shall include CDS' summary of comments and responses submitted in response to the previous request for comments, together with an explanation of the revision to the material rule and the supporting rationale for the amendment.

(k) Withdrawal of a Material Rule

If CDS withdraws or is deemed to have withdrawn a rule that was previously submitted, then it will provide a notice of withdrawal to be published by the Commission in the OSC Bulletin as soon as practicable.

5. Procedures for Review and Approval of a Technical/Housekeeping Rule

(a) Documents to be Filed

For a technical/housekeeping rule, CDS will file with the Commission the following documents electronically, or by other means as agreed to by the Commission staff and CDS from time to time:

- (i) a cover letter that indicates the classification of the rule and the rationale for that classification;
- (ii) the rule and, where applicable, a blacklined version of the rule indicating the proposed changes to an existing rule; and
- (iii) a short notice of publication to be published by the Commission in the OSC Bulletin that contains the following information:
 - A. a brief description of the technical/housekeeping rule;
 - B. the reasons for the technical/housekeeping classification; and
 - C. the effective date of the technical/housekeeping rule, or a statement that the technical/housekeeping rule will be effective on a date subsequently determined by CDS.

(b) Effective Date of Technical/Housekeeping Rules

The technical/housekeeping rule will be effective upon CDS filing the documents in accordance with subsection (a) or on a date determined by CDS. Where CDS does not receive any communication of disagreement with the classification from Commission staff in accordance with subsection (d) within 15 business days after filing the rule, CDS may assume that the Commission staff agree with the classification.

(c) Confirmation of Receipt

Commission staff will within 5 business days send to CDS confirmation of receipt of documents filed by CDS under subsection (a).

(d) Disagreement with Classification

Where CDS has classified a rule as "technical/housekeeping" and Commission staff disagree with the classification:

- (i) Commission staff will communicate to CDS, in writing, the reasons for disagreeing with the classification of the rule within 15 business days after receipt of CDS' filing.
- (ii) After receipt of Commission staff's written communication, CDS will re-classify the rule as material and the Commission will review and approve the rule under the procedures set out in section 4.
- (iii) Commission staff may require that CDS immediately repeal the technical/housekeeping rule and inform its participants of the reason for the repeal of the rule.

(e) Publication of Technical/Housekeeping Rules

Commission staff will publish the notice filed by CDS under clause (a)(iii) as soon as practicable.

(f) Comments received on Technical/Housekeeping Rules

If comments are raised in response to the publication of the notice or the implementation of the technical/housekeeping rule, Commission staff may review the rule in light of the comments received. Commission staff may determine that the rule was incorrectly classified and require that the rule be classified as a material rule and reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the material rule, CDS will immediately repeal the material rule and inform its participants of the disapproval.

6. Immediate Implementation of a Material Rule

(a) Criteria for Immediate Implementation

CDS may make a material rule effective immediately where CDS determines that there is an urgent need to implement the material rule because of a substantial and imminent risk of material harm to CDS, participants, other market participants, or the Canadian capital markets or due to a change in operation imposed by a third party supplying services to CDS and to its participants.

(b) Prior Notification

Where CDS determines that immediate implementation is necessary, CDS will advise Commission staff in writing as soon as possible but in any event at least 7 business days prior to the implementation of the rule. Such written notice will include an analysis to support the need for immediate implementation.

(c) Disagreement on Need for Immediate Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement will be as follows:

- (i) Commission staff will notify CDS, in writing, of the disagreement, or request more time to consider the immediate implementation, within 5 business days of being advised by CDS under subsection (b).
- (ii) Commission staff and CDS will discuss and resolve any concerns raised by Commission staff.
- (iii) If no notice is received by CDS by the 5th business day after Commission staff received CDS' notification, CDS may assume that Commission staff does not disagree with their assessment.

(d) Review of Material Rules Implemented Immediately

A material rule that has been implemented immediately will be published, reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the

Commission subsequently disapproves the material rule, CDS will immediately repeal the material rule and inform its participants of the disapproval.

7. Miscellaneous Provisions

(a) *Waiving Provisions of the protocol*

Commission staff may waive any part of this protocol upon request from CDS. Such a waiver must be granted in writing by Commission staff.

(b) *Amendments*

This protocol and any provision hereof may be amended at any time or times with the agreement of the Commission and CDS.

8. Effective Date

This protocol comes into effect on *.