

### 13.3 Clearing Agencies

#### 13.3.1 CDS – Notice and Request for Comments – Material Amendments to CDS Rules – Disclosure of Participant Information

##### CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS”)

##### MATERIAL AMENDMENTS TO CDS RULES

##### DISCLOSURE OF PARTICIPANT INFORMATION

##### NOTICE AND REQUEST FOR COMMENTS

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

During 2009, CDS reviewed the processes for issuing, transferring and maintaining custody of money market securities in CDSX, and the roles and responsibilities of the participants acting as issuer agents. CDS determined that the processes required updating, that additional controls and standards needed to be imposed on its internal processes and on participant issuer agents, and that new measures were required to ensure compliance with these controls and standards. A number of system changes and Rule and procedure amendments were implemented to support these enhancements. The draft amendments to Rule 3.6.2, Release of Information, were not approved by CDS's regulators at that time and not implemented. After consultation with the regulatory authorities, CDS has prepared revised amendments to Rule 3.6.2 and is resubmitting them for the non-disapproval of the regulators following the requisite review by participant committees and approval by the CDS Board of Directors.

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

The amendments proposed pursuant to this Notice are considered material amendments as they describe the situations in which CDS is permitted to disclose participants' information to regulatory authorities, issuers and their agents, other participants and third parties.

##### (a) Description of Proposed CDS Rule Amendment

CDS has a general duty to preserve the confidentiality of any information concerning a participant (Rule 3.6.1), subject to specific exceptions (Rule 3.6.2).

###### (i) *Disclosure Requested or Required by CDS Regulator*

A new sub-section (d) has been added to authorize CDS to release participant's confidential information which is legally required to be provided to or requested in writing by a CDS Regulator within the regulatory authority of the requesting CDS Regulator. CDS will be legally required to provide the information described in the amendments to the Ontario Securities Commission Recognition Order set out in Appendix B to this Notice. CDS will give notice of such disclosure to the specific participant whose information is being requested, unless the request specifically prohibits such disclosure.

###### (ii) *Disclosure of Participant-Caused Material Risk*

A new exception numbered (k) has been added, directed specifically to the release of information about material risk events. Such events include a material breach of the Rules or Procedures, a Loss of Securities or a Participant Loss that may give rise to material risk to the CDS system. CDS will inform its own regulators of such an event, and, if deemed appropriate, the regulators of the participant involved in the event, and in doing so will identify the participant. If necessary, CDS will also inform other participants (who are affected by the event) about the event. To minimize the possibility of injury to the participant's business reputation, CDS will give the participant notice of the proposed disclosure. CDS will not identify the participant to other participants unless that information is necessary to enable the other participants to take appropriate steps to respond to the potential risk. Furthermore, Participants receiving information concerning the identity of involved Participants must treat such information as confidential.

###### (iii) *Litigation-Related Disclosure*

A new sub-section (l) is proposed to Rule 3.6.2 to permit CDS to disclose relevant confidential participant information to other participants which become involved in litigation where CDS has become a party to a lawsuit as a result of its operations of the CDSX or other Services, provided that the participant is given the opportunity to appeal (Rule 3.2.3) to the CDS Board of Directors before the proposed disclosure is made by CDS. CDS has been named as a party (usually as a defendant) to lawsuits where the real party or parties with an interest in the litigation are participants or their clients. In order to disclose information

relating to the lawsuit to the participants involved in the lawsuit, to receive instructions from these participants and to make decisions in the interest of the group of defending participants, CDS requires the ability to release participant information relevant to the lawsuit to the group of participants. Such information, however, will not be released to the opposing party without a court order or the consent of the participants. Additionally, Participants receiving such information must treat it as confidential.

*(iv) Disclosure Requested or Consented to by Participant*

In the event that no other sub-section of Rule 3.6.2 was applicable to a disclosure of participant confidential information, the practice of CDS has always been to release such information if the specific participant requests or consents to such disclosure. This right of the participant has been encoded in sub-section (a).

*(v) Other Sub-sections*

Other sub-sections of Rule 3.6.2 have also been re-worded to make it clear that a participant can consent to the release of information by CDS, and to clarify the conditions which apply to the release of information under a particular exception.

*(vi) Conforming Amendments to Rule 1.2.1, Definitions*

Conforming amendments were required to Rule 1.2.1, Definitions, to define “CDS Regulator” as the Autorité des marchés financiers, the Bank of Canada and the Ontario Securities Commission. The definition of “Regulatory Body” was clarified to include CDS Regulators when used in reference to CDS.

**(b) Proposed Changes to CDS OSC Recognition Order**

The Ontario Securities commission has advised CDS that it proposes to amend its Recognition Order for CDS as set out in Appendix “B” to clarify its regulatory authority to require CDS to disclose participant information in the relevant situations described in the amended Rule 3.6.2.

**C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS**

The Rule 3.6.2 amendments relating to the release of participant information will affect all participants. CDS will be permitted by the amendments to disclose such information to its regulators upon their written request (sub-section (d)) and to disclose on CDS’s own initiative material risk information to the regulators of CDS and of the relevant participant where the actions of the participant have resulted or may result in a material risk to CDS’s services or a material breach of the CDSX Rules or Procedures (sub-section (k)). Where a regulatory request or order prohibits the notification of the participant that a disclosure of its information has been requested by a regulatory authority, CDS will not provide notification to the participant (sub-section (f)). CDS will also be authorized to disclose material risk information relating to a participant to other affected participants, such as the Extender of Credit for a Receiver of Credit or a Credit Ring of participants, in order to enable them to assess and respond to material risk in CDSX (sub-section (k)).

The Rule 3.6.2 amendments are being proposed in order to reduce material risks within CDSX and to permit affected participants and regulators to respond effectively and in a timely manner to an actual or potential risk for the benefit of the securities and financial markets in general. The amendments should have no direct impact on any individual or entity which is not a participant in CDSX.

**C.1 Competition**

The Rule 3.6.2 amendments will apply to all participants equally and will not have any impact on competition.

**C.2 Risks and Compliance Costs**

CDS is of the view that the implementation of the Rule 3.6.2 amendments will reduce risks in CDSX and in the securities and financial markets generally by permitting better informed decision-making by the regulators of CDS and by the affected participants themselves.

**C.3 Comparison to International Standards**

The Principles for Financial Market Infrastructures released in April 2012 by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) mandate such disclosure of information. Principle 24, Disclosure of market data by trade repositories, sets out the following two key considerations:

1. A TR (Trade Repository) should provide data in line with regulatory and industry expectations to relevant authorities and the public, respectively, that is comprehensive and at a level of detail sufficient to enhance market transparency and support other public policy objectives.
2. A TR should have effective processes and procedures to provide data to relevant authorities in a timely and appropriate manner to enable them to meet their respective regulatory mandates and legal responsibilities.

A "TRADE REPOSITORY" IS DEFINED AS "AN ENTITY THAT MAINTAINS A CENTRALISED ELECTRONIC RECORD (DATABASE) OF TRANSACTION DATA." WHILE CDS IS NOT A TRADE REPOSITORY, CDS SEEKS TO COMPLY WITH THE SPIRIT OF THIS PRINCIPLE 24.

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

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

There has been no systems development involved in the Rule 3.6.2 amendments.

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

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 generally.

As the Rule 3.6.2 amendments involve the disclosure of material risks to CDS and to participants, the Rule amendments were reviewed by the Risk Advisory Committee of participants' representatives. The RAC's mandate includes a responsibility for reviewing the adequacy of the CDSX Risk Model's coverage of the financial risks related to CDSX and the relative costs to CDS and its participants, for recommendation to CDS's Audit/Risk Committee.

The Rule 3.6.2 amendments were reviewed at a joint meeting of the RAC and the LDG held on May 8, 2012. The comments of the RAC and LDG were considered in the proposed text of the Rule amendments.

These amendments were reviewed by the Audit/Risk Committee and approved by the Board of Directors<sup>1</sup> of The Canadian Depository for Securities Limited on June 19, 2012.

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

The Rule 3.6.2 amendments seek to balance the rights of each participant to confidentiality of its information versus the needs of regulators and other participants to full and timely disclosure of material risk information in the interests of a safe, fair and efficient securities depository, clearance and settlement system in Canada.

### **D.4 Consultation**

CDS consulted with each of its regulators in the development of the Rule 3.6.2 amendments. CDS has not consulted with individual participants, other than the members of the RAC and LDG as described above in section D.2.

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

Rule 3.6.2 has existed in various forms in CDS's Rules and earlier agreements with participants since the beginning of the Securities Settlement Service in the 1970's. The Rule has evolved with experience in its application. The current amendments represent a further enhancement to the situations where CDS is authorized to release confidential participant information. A number of wording alternatives were discussed with the regulators of CDS.

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

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<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

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<sup>1</sup> Pursuant to a unanimous shareholder agreement between The Canadian Depository for Securities Limited ("CDS Ltd.") and CDS, effective as of November 01, 2006, CDS Ltd., which acts under the supervision of its Board of Directors, assumed all rights, powers, and duties of the CDS Board of Directors.

Ontario 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 Participant Rules will become effective upon approval/non-disapproval of the amendments by the Recognizing Regulators, following public notice and comment. The target date for implementation is September 17, 2012.

**E. TECHNOLOGICAL SYSTEMS CHANGES**

There are no technological systems impacts on CDS, CDS participants or other market participants as a result of the implementation of the Rule 3.6.2 amendments.

**F. COMPARISON TO OTHER CLEARING AGENCIES**

The confidentiality and disclosure rules of other clearing agencies vary widely and do not provide any consistent basis for comparison with the proposed amendments to Rule 3.6.2:

Canadian Derivatives Clearing Corporation  
[http://www.cdcc.ca/f\\_rules\\_en/cdcc\\_rules\\_en.pdf](http://www.cdcc.ca/f_rules_en/cdcc_rules_en.pdf)  
Section A-210 Distribution of Information, Confidentiality and Use of CDCC Materials

Depository Trust Company  
[http://www.dtcc.com/legal/rules\\_proc/dtc\\_rules.pdf](http://www.dtcc.com/legal/rules_proc/dtc_rules.pdf)  
No confidentiality or disclosure rules

National Securities Clearing Corporation  
[http://www.dtcc.com/legal/rules\\_proc/nsccl\\_rules.pdf](http://www.dtcc.com/legal/rules_proc/nsccl_rules.pdf)  
Rule 63, SRO Regulatory Reporting

Fixed Income Clearing Corporation  
[http://www.dtcc.com/legal/rules\\_proc/gsd\\_rules.pdf](http://www.dtcc.com/legal/rules_proc/gsd_rules.pdf)  
Rule 29, Release of Clearing Data

**G. PUBLIC INTEREST ASSESSMENT**

For the reasons given above in this Notice, 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 submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Legal Department  
CDS Clearing and Depository Services Inc.  
85 Richmond Street West  
Toronto, Ontario M5H 2C9

Fax: 416-365-1984  
e-mail: [attention@cds.ca](mailto: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<sup>e</sup> Anne-Marie Beaudoin  
Secrétaire générale  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3

Télécopieur: (514) 864-6381  
Courriel électronique: [consultation-en-cours@lautorite.qc.ca](mailto: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](mailto:marketregulation@osc.gov.on.ca)

**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 proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

Appendix "B" contains the proposed changes to CDS Recognition Order issued by the OSC related to Information sharing and disclosure of material events.

**CDS Clearing and Depository Services Inc. ("CDS")**  
**APPENDIX "A"**  
**PROPOSED CDS RULE AMENDMENTS**

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
<p><b>1.2.1 Definitions</b>  For the purposes of the Legal Documents, unless otherwise specified:</p> <p>"CDS Office" means an office at which CDS offers the Services to Participants.</p> <p><u>"CDS Regulator" means the Autorité des marchés financiers, the Bank of Canada or the Ontario Securities Commission.</u></p> <p>"CDS Security Interests" has the meaning set forth in Rule 5.2.2.  .....</p> <p>"Regulatory Body", with reference to any Person, means any board, commission, securities or commodities exchange, association or other body, organization or agency, whether governmental, professional, self-regulatory or otherwise, having jurisdiction over that Person or over any part of the business carried on by it <u>and includes a CDS Regulator with reference to CDS.</u></p> <p><b>3.6 CONFIDENTIALITY</b>  <b>3.6.2 Release of Information</b>  Each Participant authorizes CDS to release any information concerning the Participant or provided by a Participant: <u>in the circumstances listed below.</u></p> <p>(a) <u>CDS may release such information at the request of or with the prior written consent of the Participant.</u></p> <p>(b) <del>(a)</del> <u>CDS may release such information</u> to the auditors of CDS, of the Participant and of other Participants, as may reasonably be required to perform their duties; <del>;</del></p> <p>(c) <del>(b)</del> <u>CDS may release such information</u> to the legal counsel of CDS, as may reasonably be required to perform their duties; <del>;</del></p> <p>(d) <u>CDS may release such information as is legally required to be provided to a CDS Regulator or requested in writing by a CDS Regulator within the regulatory authority of the requesting CDS Regulator. When a CDS Regulator requests the disclosure of such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the request prohibits such notice.</u></p> <p>(e) <del>(e)</del> <u>CDS may release such information if requested by the Issuer of Securities held for the Participant or by any other Person and if CDS is reasonably satisfied that such information is sought for a purpose concerning an effort to influence the voting by Security holders of the Issuer, an offer to acquire Securities of the Issuer or any other matter relating to either the affairs of the Issuer or Transactions in the Securities of the Issuer effected by the Participant. Such</u>if such information shall be limited to information with respect to the Securities held for the Participant and <del>if CDS is</del></p>	<p><b>1.2.1 Definitions</b>  For the purposes of the Legal Documents, unless otherwise specified:</p> <p>"CDS Office" means an office at which CDS offers the Services to Participants.</p> <p>"CDS Regulator" means the Autorité des marchés financiers, the Bank of Canada or the Ontario Securities Commission.</p> <p>"CDS Security Interests" has the meaning set forth in Rule 5.2.2.  .....</p> <p>"Regulatory Body", with reference to any Person, means any board, commission, securities or commodities exchange, association or other body, organization or agency, whether governmental, professional, self-regulatory or otherwise, having jurisdiction over that Person or over any part of the business carried on by it and includes a CDS Regulator with reference to CDS.</p> <p><b>3.6 CONFIDENTIALITY</b>  <b>3.6.2 Release of Information</b>  Each Participant authorizes CDS to release any information concerning the Participant or provided by a Participant in the circumstances listed below.</p> <p>(a) CDS may release such information at the request of or with the prior written consent of the Participant.</p> <p>(b) CDS may release such information to the auditors of CDS, of the Participant and of other Participants, as may reasonably be required to perform their duties.</p> <p>(c) CDS may release such information to the legal counsel of CDS, as may reasonably be required to perform their duties.</p> <p>(d) CDS may release such information as is legally required to be provided to a CDS Regulator or requested in writing by a CDS Regulator within the regulatory authority of the requesting CDS Regulator. When a CDS Regulator requests the disclosure of such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the request prohibits such notice.</p> <p>(e) CDS may release such information if requested by the Issuer of Securities held for the Participant or by any other Person and if CDS is reasonably satisfied that such information is sought for a purpose concerning an effort to influence the voting by Security holders of the Issuer, an offer to acquire Securities of the Issuer or any other matter relating to either the affairs of the Issuer or Transactions in the Securities of the Issuer effected by the Participant. Such information shall be limited to information with respect to the Securities held for the Participant and shall not identify any client or</p>

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<p>reasonably satisfied that such information is sought for a purpose concerning an effort to influence the voting by Security holders of the Issuer, an offer to acquire Securities of the Issuer or any other matter relating to either the affairs of the Issuer or Transactions in the Securities of the Issuer effected by the Participant, provided that any information released under this subsection (c) does shall not identify any client or customer of the Participant;</p> <p>(f) <del>(d)</del> <u>CDS may release such information</u> as may be required from time to time by order, summons, subpoena, statutory direction or other process of, or pursuant to an agreement with, a court, Regulatory Body or other administrative or regulatory agency, having, in the opinion of CDS, jurisdiction over CDS; <u>When CDS is required to disclose such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the terms of any applicable statute, regulation, ruling or order prohibit such notice.</u></p> <p>(g) <del>(e)</del> <u>CDS may release such information</u> pursuant to any statutory or regulatory requirement including National Instrument 54-101 <i>Communication with Beneficial Owners of a Reporting Issuer</i> (as it may be reformulated from time to time) or any similar policy, instrument or Rule adopted or made by the Canadian Securities Administrators;</p> <p>(h) <del>(f)</del> <u>CDS may release such information</u> to any securities exchange, commodities exchange, alternative trading system, securities depository, securities clearing agency, payment clearing system or self-regulatory organization of which the Participant is a member or the services of which the Participant uses in connection with its participation in CDS, or to any insurer of the Participant including the Canadian Investor Protection Fund or the Canada Deposit Insurance Corporation; <u>CDS shall request the recipient to treat such information as confidential.</u></p> <p>(i) <del>(g)</del> <u>CDS may release such information</u> to any self-regulatory organization of which the Participant is a member and to the primary Canadian Regulatory Body for the Participant in regards to compliance with Rule 10.2.3(b); <u>and</u></p> <p>(j) <del>(h)</del> <u>CDS may release such information</u> that is in a statistical, summary or other format, provided the information in that format does not specifically identify a particular Participant, or, if the information concerns debt Securities, provided the information in that format does not identify any industry group.</p> <p>(k) <u>CDS may release such information (i) to a CDS Regulator, (ii) to any other Regulatory Body having, in the opinion of CDS, jurisdiction over CDS, (iii) to the primary Regulatory Body for the Participant, or (iv) to other Participants, concerning an event or circumstance involving the Participant that CDS considers raises concerns about potential material risk in the Services, including a material breach of the Rules or Procedures by the Participant, or a Loss of Securities or Participant Loss caused or contributed to by the Participant. The following conditions shall apply to such release of</u></p>	<p>customer of the Participant.</p> <p>(f) CDS may release such information as may be required from time to time by order, summons, subpoena, statutory direction or other process of, or pursuant to an agreement with, a court, Regulatory Body or other administrative or regulatory agency, having, in the opinion of CDS, jurisdiction over CDS. When CDS is required to disclose such information that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request coincident with making the disclosure unless the terms of any applicable statute, regulation, ruling or order prohibit such notice.</p> <p>(g) CDS may release such information pursuant to any statutory or regulatory requirement including National Instrument 54-101 <i>Communication with Beneficial Owners of a Reporting Issuer</i> (as it may be reformulated from time to time) or any similar policy, instrument or Rule adopted or made by the Canadian Securities Administrators.</p> <p>(h) CDS may release such information to any securities exchange, commodities exchange, alternative trading system, securities depository, securities clearing agency, payment clearing system or self-regulatory organization of which the Participant is a member or the services of which the Participant uses in connection with its participation in CDS, or to any insurer of the Participant including the Canadian Investor Protection Fund or the Canada Deposit Insurance Corporation. CDS shall request the recipient to treat such information as confidential.</p> <p>(i) CDS may release such information to any self-regulatory organization of which the Participant is a member and to the primary Canadian Regulatory Body for the Participant in regards to compliance with Rule 10.2.3(b).</p> <p>(j) CDS may release such information that is in a statistical, summary or other format, provided the information in that format does not specifically identify a particular Participant, or, if the information concerns debt Securities, provided the information in that format does not identify any industry group.</p> <p>(k) CDS may release such information (i) to a CDS Regulator, (ii) to any other Regulatory Body having, in the opinion of CDS, jurisdiction over CDS, (iii) to the primary Regulatory Body for the Participant, or (iv) to other Participants, concerning an event or circumstance involving the Participant that CDS considers raises concerns about potential material risk in the Services, including a material breach of the Rules or Procedures by the Participant, or a Loss of Securities or Participant Loss caused or contributed to by the Participant. The following conditions shall apply to such release of</p>

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<p><u>confidential information: (i) CDS shall give notice to the Participant of the proposed disclosure coincident with making the disclosure, if such notice is, in the determination of CDS, not against the best interests of CDS and Participants generally; (ii) CDS shall determine whether the information will be released to all other Participants or only to a select group of Participants, such as members of a Credit Ring, who are particularly affected by the event or circumstance; (iii) CDS shall identify the Participant involved in the event or circumstance to a CDS Regulator or any other Regulatory Body; and (iv) CDS shall identify the Participant involved in the event or circumstance to other Participants only if, in its judgment, such identification is necessary to enable the other Participants to respond to the potential risk. Where CDS discloses the identity of a Participant involved in the event or circumstance to other Participants, the Participant receiving such disclosure shall keep the identity of the Participant confidential and shall not further disclose the identity to another party unless compelled by law.</u></p> <p>(l) <u>CDS may release such information to other Participants which are involved in litigation brought by or against CDS as the operator of the CDSX system or the provider of other Services to Participants, provided that (i) such information is relevant to the litigation, (ii) CDS shall give prior notice to the Participant of the proposed disclosure, and (iii) the Participant shall be given the opportunity to appeal the proposed disclosure pursuant to Rule 3.2.3. Participants receiving such disclosure shall keep the identity of other involved Participants confidential and shall not further disclose the identity of other involved Participants to another party unless compelled by law.</u></p> <p><u>In releasing any information pursuant to this Rule, CDS shall take reasonable steps to avoid releasing any information that may identify a particular client or customer of a Participant, unless (i) such information is requested in writing by the requestor and the requestor has, in the opinion of CDS, the legal right to obtain such information; or (ii) with respect to information released under subsection (k), such information is necessary to enable Participants to respond to the potential risk.</u></p> <p><u>CDS shall take all reasonable steps to avoid releasing any information that may identify a particular client or customer of a Participant. When CDS is required pursuant to subsection (d) to disclose confidential information concerning a Participant that is directed exclusively to the activities of a particular Participant, CDS shall give notice to the Participant of the request before making the disclosure unless the terms of any applicable statute, regulation, ruling or order prohibit such notice. When CDS releases confidential information pursuant to subsection (f), CDS shall request the recipient to treat such information as confidential.</u></p>	<p>confidential information: (i) CDS shall give notice to the Participant of the proposed disclosure coincident with making the disclosure, if such notice is, in the determination of CDS, not against the best interests of CDS and Participants generally; (ii) CDS shall determine whether the information will be released to all other Participants or only to a select group of Participants, such as members of a Credit Ring, who are particularly affected by the event or circumstance; (iii) CDS shall identify the Participant involved in the event or circumstance to a CDS Regulator or any other Regulatory Body; and (iv) CDS shall identify the Participant involved in the event or circumstance to other Participants only if, in its judgment, such identification is necessary to enable the other Participants to respond to the potential risk. Where CDS discloses the identity of a Participant involved in the event or circumstance to other Participants, the Participant receiving such disclosure shall keep the identity of the Participant confidential and shall not further disclose the identity to another party unless compelled by law.</p> <p>(l) CDS may release such information to other Participants which are involved in litigation brought by or against CDS as the operator of the CDSX system or the provider of other Services to Participants, provided that (i) such information is relevant to the litigation, (ii) CDS shall give prior notice to the Participant of the proposed disclosure, and (iii) the Participant shall be given the opportunity to appeal the proposed disclosure pursuant to Rule 3.2.3. Participants receiving such disclosure shall keep the identity of other involved Participants confidential and shall not further disclose the identity of other involved Participants to another party unless compelled by law.</p> <p>In releasing any information pursuant to this Rule, CDS shall take reasonable steps to avoid releasing any information that may identify a particular client or customer of a Participant, unless (i) such information is requested in writing by the requestor and the requestor has, in the opinion of CDS, the legal right to obtain such information; or (ii) with respect to information released under subsection (k), such information is necessary to enable Participants to respond to the potential risk.</p>



**CDS Clearing and Depository Services Inc. ("CDS")**  
**APPENDIX "B"**  
**PROPOSED OSC RECOGNITION ORDER RELATED TO**  
**INFORMATION SHARING AND DISCLOSURE OF MATERIAL EVENTS**

The Maple Group Acquisition Corporation ("Maple") Notice and Request for Comments dated May 3, 2012 includes a draft Recognition Order for CDS Clearing and Depository Services Inc. which sets out the information sharing and disclosure of material events obligations that will apply to CDS following the acquisition of CDS by Maple:

**PART II – Terms and Conditions Applicable to CDS Ltd. and CDS Clearing**

**16 PROVISION OF INFORMATION**

- 16.1 The recognized clearing agency must, and must cause CDS Clearing to, promptly provide the Commission, on request, any and all data, information and analyses in the custody or control of the recognized clearing agency or any of its affiliates, without limitations, restrictions or conditions, including, without limiting the generality of the foregoing:
- (i) data, information and analyses relating to all its or their businesses, and
  - (ii) data, information and analyses of third parties in its or their custody.
- 16.2 The recognized clearing agency must share information and otherwise cooperate with other recognized or exempt clearing agencies, recognized or exempt exchanges, recognized or exempt quotation and trade reporting systems, registered alternative trading systems, recognized self-regulatory organizations, investor protection funds and other appropriate regulatory bodies.
- 16.3 The disclosure or sharing of information by CDS Ltd. or CDS Clearing pursuant to paragraphs 16.1 or 16.2 will be subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

**17 REPORTING OBLIGATIONS**

- 17.1 The recognized clearing agency must comply with Appendix "E" to this Schedule setting out the reporting obligations, as amended from time to time, regarding the reporting of information to the Commission.

**APPENDIX "E"-- REPORTING OBLIGATIONS**

**2. Immediate Notification**

- 2.1 CDS Ltd. and CDS Clearing must immediately notify the Commission of any event or occurrence that has caused or could reasonably be expected to cause a significant risk to; an adverse material effect on; or a significant or potential disruption to CDS Ltd., CDS Clearing, its participants, any of its services or the Canadian financial markets, including, but not limited to, a participant default; fraudulent activity; or a significant breach of CDS Clearing rules by its participant(s).