

13.3.2 CDS Notice and Request for Comments – Material Amendments to CDS Rules – TRAX

CDS CLEARING AND DEPOSITORY SERVICES INC. (“CDS[®]”)

MATERIAL AMENDMENTS TO CDS RULES

TRAX

NOTICE AND REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED AMENDMENTS TO CDS RULES

CDS is proposing amendments to its Rules to enable the implementation of TRAX[™]. TRAX is a newly developed web application to facilitate communications between transfer agents and participants. TRAX will promote dematerialization, as transactions will be processed electronically to reduce the need to issue, handle and cancel physical certificates.

TRAX will be linked to CDSX[®] in order to provide enhanced processing for deposit and withdrawal of CDSX securities. For deposits, TRAX can be used to facilitate treasury order transactions such as the exercise of stock options and global registry transfers (the movement of a position between registries maintained by the same transfer agent in two countries). For withdrawals, TRAX will facilitate the processing of transactions such as buy-backs.

For a deposit, the transfer agent will initiate the process with a message through TRAX to the participant that includes details of the anticipated deposit (such as the securities to be issued on exercise of an option) and client details. If the participant accepts the transaction (agreeing that the securities should be deposited into its CDSX account), then the securities will be directly registered into CDS nominee name and the deposit will be confirmed. If the particular security is NCI¹, then no certificate will be issued; if the issue is certificated, the certificate in CDS nominee name will be delivered to CDS. This replaces the current process, where the exercise of an option may require the transfer agent to issue a certificate in the name of the client, delivery of the certificate to the participant, re-delivery of the certificate by the participant for transfer into CDS nominee name on a deposit, and the subsequent cancellation of the certificate. For a global registry transfer, the transfer agent will use the same process to ensure the participant’s CDSX position is updated on the effective date; the issuer’s register will then be in balance with the CDSX position.

For a withdrawal, the participant initiates the process. On a buy-back, for example, the issuer’s agent can use TRAX to manage its anticipated trades associated with the buy-back; the participant creates a withdrawal notice corresponding to each of its trades; as those trades settle, the participant confirms the withdrawal notice and the details are sent to the transfer agent through TRAX, including data indicating that the withdrawal is associated with the issuer buy-back. A withdrawal request is also created in CDSX by confirming the withdrawal notices. When the withdrawal request is received, the transfer agent confirms the withdrawal, and reduces the security position on the issuer’s ledger (rather than issuing a certificate on withdrawal that would then have to be cancelled).

For any transaction request made through TRAX, the recipient may accept or reject the request. If the recipient does not take any action, the request is purged from the system after a few days.

The information on pending transactions available through TRAX will also benefit CDS. For example, the identification of buy-back transactions will enable CDS to manage discrepancies that can arise between its records and the records of the transfer agent if a corporate event occurs during a buy-back.

B. NATURE AND PURPOSE OF THE PROPOSED AMENDMENTS

The proposed Rule amendments add a definition of “TRAX”, amend Rules 6 and 11 to include a description of TRAX requests, and define the responsibilities arising in TRAX (confirming that CDS is not responsible for the information transmitted or the performance of any request). The Rule amendments describe the TRAX functionality and obligations for all participants, including limited purpose transfer agent participants.

In reviewing the Rules to draft the TRAX amendments, attention was drawn to Rule 6.2.12. Pursuant to that Rule, each participant depositing a security into CDSX gives a guaranty to CDS and the transfer agent. The wording of the current Rule deals only with physical security certificates. The Rule has been revised to ensure that such a guaranty applies equally to the deposit of an uncertificated security. This is in line with the provisions of the provincial *Securities Transfer Acts* (Ontario Part IV; Quebec Division II).

¹ Non-certificated inventory.

C. IMPACT OF THE PROPOSED AMENDMENTS

The proposed Rule amendments will affect only those participants who decide to use TRAX.

C.1 Competition

The Rule and Procedure amendments and system changes are expected to have no impact on competition.

C.2 Risks and Compliance Costs

CDS has incurred costs in designing the new web application. Transfer agents will incur costs to integrate the new web application with their operating systems. Use of TRAX is not mandatory, so such costs will only be incurred by transfer agents who determine that the benefits of TRAX outweigh any costs. There is expected to be a reduction in both risk and costs for those participants and transfer agents who use TRAX, due to enhanced communication and the reduction in physical security movements.

C.3 Comparison to International Standards

TRAX is a messaging system that does not alter the functionality of CDSX; international standards for clearing agencies are not relevant.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

CDS developed TRAX in response to a request from the transfer agent community to develop solutions to improve communication with participants and to reduce the handling of physical certificates. CDS convened a working group including representatives of participants and of transfer agents. The working group set parameters for TRAX to ensure that it met the objectives, that all necessary data could be communicated and that the TRAX processing could be readily integrated into the operations of participants and transfer agents.

D.2 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 CDS's 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. The LDG reviewed the draft Rule amendments on April 7, 2010. The comments of the LDG are reflected in the proposed text of the Rule amendments. These Rule amendments were reviewed and approved by the Board of Directors² of The Canadian Depository for Securities Limited on April 21, 2010.

D.3 Issues Considered

A primary concern was to ensure that CDSX would process withdrawal and deposit transactions generated as a result of the use of TRAX in a manner identical to the processing of such transactions generated by other means, so that the roles and responsibilities of participants and transfer agents are not changed. In addition, the process for issuer buy-backs was designed to give participants control over the withdrawal request, to ensure that withdrawals were directly linked to the settlements of buy-back trades. At the request of transfer agents, the buy-back processing also includes identifying information to enable the withdrawal to be specially handled, so that the withdrawn securities are canceled and not transferred. The deposit process was designed to enable the exchange of client data between transfer agent and participant, and to enable direct registration into CDS nominee name, to eliminate the issuance of unnecessary physical certificates.

D.4 Consultation

CDS consulted with the joint working group in designing TRAX.

D.5 Alternatives Considered

As TRAX is a new system, designed in response to input from the users, no alternatives were considered.

² 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.

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[®], 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".

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 July 26, 2010.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

In designing TRAX, CDS has created a web-based application that is available through the CDS website. The messaging link between TRAX and CDSX uses the Interlink messaging system, which is already well established as a messaging system for CDSX. Using this link, TRAX messages can generate pending deposit or withdrawal requests within CDSX.

E.2 CDS Participants

The new TRAX web-based application uses established systems and communication links with CDSX. As a result, there will be a limited impact on participant systems, and only for those participants who choose to use TRAX; there are no external development impacts for other CDS participants.

E.3 Other Market Participants

TRAX may be used by a transfer agent that participates in CDSX as a limited purpose transfer agent. The use of TRAX is optional. There are no external development impacts to other participants in the Canadian financial markets.

F. COMPARISON TO OTHER CLEARING AGENCIES

There is no direct comparison with clearing agencies in other jurisdictions.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest. Issuers, transfer agents and participants will benefit from the more direct communication between participants and transfer agents, the ability to monitor pending securities transfer requests, and the reduction in the risks and costs of issuing and handling security certificates.

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

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
Secrétaire de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal, Québec
H4Z 1G3

Télécopieur: (514) 864-6381
Courrier électronique:
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 CDS RULE AMENDMENTS

Appendix "A" contains the text of the current CDS Participant Rules marked to reflect the proposed amendments as well as the text of these Rules reflecting the adoption of the proposed amendments.

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>additions are <u>underlined</u> deletions are struck-out</p> <p>1.2.1 Definitions For the purposes of the Legal Documents, unless otherwise specified: ...</p> <p><u>"TRAX" means the web-based application used to facilitate communication between Participants and Transfer Agents for the purposes described in the Procedures and User Guides.</u></p> <p>6.1.5 TRAX Processing <u>(a) TRAX Requests</u> Participants may use TRAX to process Securities transfer requests received from a Transfer Agent or sent to a Transfer Agent.</p> <p><u>(b) TRAX Execution and Dispute Resolution</u> <u>Each Participant using TRAX is responsible for:</u> <ul style="list-style-type: none"> <u>(i) the accuracy and completeness of information transmitted through TRAX;</u> <u>(ii) accepting or rejecting any TRAX request;</u> <u>(iii) performance of its obligations under a TRAX request; and</u> <u>(iv) the resolution of any disputes arising with respect to its use of the TRAX service, including the acceptance or rejection of a TRAX request, performance or non-performance under an accepted TRAX request, and any consequences arising from such performance or non-performance.</u> </p> <p><u>(c) CDS Responsibility</u> <u>CDS is not responsible for:</u> <ul style="list-style-type: none"> <u>(i) the information transmitted through TRAX;</u> <u>(ii) the enforceability of any TRAX request; or</u> <u>(iii) performance or non-performance by a Participant or Transfer Agent of any accepted TRAX request.</u> </p> <p>6.2.4.1 Deposit of Securities ...</p> <p>6.2.4.2 TRAX Requests for Deposit of Securities <u>A Participant may use TRAX to process Securities transfer requests received from a Transfer Agent. A Participant's acceptance of a transfer request sent by a Transfer Agent through TRAX automatically creates a pending deposit in CDSX. The pending deposit may be confirmed by the Transfer Agent. Upon the confirmation of the deposit by the Transfer Agent, CDS shall process the deposit in accordance with this Rule 6.2.</u></p>	<p>1.2.1 Definitions For the purposes of the Legal Documents, unless otherwise specified: ...</p> <p>"TRAX" means the web-based application used to facilitate communication between Participants and Transfer Agents for the purposes described in the Procedures and User Guides.</p> <p>6.1.5 TRAX Processing (a) TRAX Requests Participants may use TRAX to process Securities transfer requests received from a Transfer Agent or sent to a Transfer Agent.</p> <p>(b) TRAX Execution and Dispute Resolution Each Participant using TRAX is responsible for: <ul style="list-style-type: none"> (i) the accuracy and completeness of information transmitted through TRAX; (ii) accepting or rejecting any TRAX request; (iii) performance of its obligations under a TRAX request; and (iv) the resolution of any disputes arising with respect to its use of the TRAX service, including the acceptance or rejection of a TRAX request, performance or non-performance under an accepted TRAX request, and any consequences arising from such performance or non-performance. </p> <p>(c) CDS Responsibility CDS is not responsible for: <ul style="list-style-type: none"> (i) the information transmitted through TRAX; (ii) the enforceability of any TRAX request; or (iii) performance or non-performance by a Participant or Transfer Agent of any accepted TRAX request. </p> <p>6.2.4.1 Deposit of Securities ...</p> <p>6.2.4.2 TRAX Requests for Deposit of Securities A Participant may use TRAX to process Securities transfer requests received from a Transfer Agent. A Participant's acceptance of a transfer request sent by a Transfer Agent through TRAX automatically creates a pending deposit in CDSX. The pending deposit may be confirmed by the Transfer Agent. Upon the confirmation of the deposit by the Transfer Agent, CDS shall process the deposit in accordance with this Rule 6.2.</p>

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
<p>6.2.12 Guaranty by Participant on Deposit Without the need to sign or otherwise mark any Security presented for registration of transfer, the depositing Participant, by making the request for deposit to its Ledger, guarantees, in favour of CDS and of the Transfer Agent or Security Validator for that Security, the signature of the registered holder and each other endorser of the Security Certificate evidencing the Securities to be deposited. By giving such guaranty, the depositing Participant warrants that at the time of signing,</p> <ul style="list-style-type: none"> (i) each signature was genuine, (ii) each signer was an appropriate person to endorse, and (iii) each signer had legal capacity to sign; <p>but the depositing Participant does not otherwise warrant the rightfulness of the particular transfer. <u>Where the Security being Deposited is not evidenced by a Security Certificate, but is an Uncertificated Security, references to "signer" are to the registered holder and references to "signature" and "signing" are to the instruction of the registered holder in reliance on which the Depositing Participant or CDS instructs the Deposit of the Security.</u></p> <p>If a Participant fails to discharge its liabilities or obligations arising from such guaranty and is suspended, then the Participant shall be considered to be a Defaulter, and the other Members of the applicable Credit Ring shall be liable to make payment to CDS in respect of such failure pursuant to Rule 5. The obligations of a Participant arising from the signature guaranty given pursuant to this Rule do not derogate from any other obligation that the Participant may have arising from the deposit by the Participant of a Defective Security.</p> <p>The applicable Credit Ring is the Defaulter's Category Credit Ring. If the Defaulter is a Receiver, the Category Credit Ring shall be the RCP or Non-Contributing Receivers Category Credit Ring for Canadian dollar Settlements, as the case may be. The Category Credit Ring shall be the Category Credit Ring of which the Defaulter is a Member at the time the suspension occurs, or, if the Defaulter has ceased to be a Participant at the time the suspension occurs, then the Category Credit Ring of which it was a Member immediately before it ceased to be a Participant.</p> <p>6.3.3.1 Withdrawal of Securities ...</p> <p>6.3.3.2 TRAX Requests for Withdrawal of Securities <u>A Participant may use TRAX to notify a Transfer Agent of a pending withdrawal of Securities. Upon a Participant's confirmation in TRAX of a pending withdrawal of Securities, a withdrawal request is automatically created in CDSX and processed in accordance with this Rule 6.3.</u></p> <p>11.3.4 TRAX Processing (a) <u>TRAX Execution and Dispute Resolution</u> Each TA Participant using TRAX is responsible for:</p> <ul style="list-style-type: none"> (i) <u>the accuracy and completeness of information transmitted through TRAX;</u> (ii) <u>performance of its obligations under a</u> 	<p>6.2.12 Guaranty by Participant on Deposit Without the need to sign or otherwise mark any Security presented for registration of transfer, the depositing Participant, by making the request for deposit to its Ledger, guarantees, in favour of CDS and of the Transfer Agent or Security Validator for that Security, the signature of the registered holder and each other endorser of the Security Certificate evidencing the Securities to be deposited. By giving such guaranty, the depositing Participant warrants that at the time of signing,</p> <ul style="list-style-type: none"> (i) each signature was genuine, (ii) each signer was an appropriate person to endorse, and (iii) each signer had legal capacity to sign; <p>but the depositing Participant does not otherwise warrant the rightfulness of the particular transfer. Where the Security being Deposited is not evidenced by a Security Certificate, but is an Uncertificated Security, references to "signer" are to the registered holder and references to "signature" and "signing" are to the instruction of the registered holder in reliance on which the Depositing Participant or CDS instructs the Deposit of the Security.</p> <p>If a Participant fails to discharge its liabilities or obligations arising from such guaranty and is suspended, then the Participant shall be considered to be a Defaulter, and the other Members of the applicable Credit Ring shall be liable to make payment to CDS in respect of such failure pursuant to Rule 5. The obligations of a Participant arising from the signature guaranty given pursuant to this Rule do not derogate from any other obligation that the Participant may have arising from the deposit by the Participant of a Defective Security.</p> <p>The applicable Credit Ring is the Defaulter's Category Credit Ring. If the Defaulter is a Receiver, the Category Credit Ring shall be the RCP or Non-Contributing Receivers Category Credit Ring for Canadian dollar Settlements, as the case may be. The Category Credit Ring shall be the Category Credit Ring of which the Defaulter is a Member at the time the suspension occurs, or, if the Defaulter has ceased to be a Participant at the time the suspension occurs, then the Category Credit Ring of which it was a Member immediately before it ceased to be a Participant.</p> <p>6.3.3.1 Withdrawal of Securities ...</p> <p>6.3.3.2 TRAX Requests for Withdrawal of Securities A Participant may use TRAX to notify a Transfer Agent of a pending withdrawal of Securities. Upon a Participant's confirmation in TRAX of a pending withdrawal of Securities, a withdrawal request is automatically created in CDSX and processed in accordance with this Rule 6.3.</p> <p>11.3.4 TRAX Processing (a) TRAX Execution and Dispute Resolution Each TA Participant using TRAX is responsible for:</p> <ul style="list-style-type: none"> (i) the accuracy and completeness of information transmitted through TRAX; (ii) performance of its obligations under a

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
<p>(iii) <u>TRAX request; and the resolution of any disputes arising with respect to its use of TRAX, including the performance or non-performance under an accepted TRAX request and any consequences arising from such performance or non-performance.</u></p> <p>(b) <u>CDS Responsibility</u> <u>CDS is not responsible for:</u></p> <p>(i) <u>the information transmitted through TRAX;</u> (ii) <u>the enforceability of any TRAX request; or</u> (iii) <u>performance or non-performance by a Participant or TA Participant of any accepted TRAX request.</u></p> <p>11.4.3.1 Deposit of Securities The TA Participant will confirm to CDS when a Deposit has been effected or inform CDS that a Deposit has been rejected. Upon confirmation of a Deposit by the TA Participant, CDS shall credit the Securities Account of the Participant making the Deposit with the Deposited Securities. Regardless of the identity of the Person who delivers the Security to the TA Participant for Deposit, such Person shall be deemed to be acting on behalf of CDS in presenting the Security for registration of transfer into CDS Name.</p> <p>11.4.3.2 TRAX Requests for Deposit of Securities <u>A TA Participant may use TRAX to send Securities transfer requests to a Participant. Upon a Participant's acceptance of a transfer request sent by a TA Participant through TRAX, a pending deposit request is automatically created in CDSX. The pending deposit may be confirmed by the Transfer Agent. Upon the confirmation of the deposit by the Transfer Agent, CDS shall credit the Securities to a Securities Account of the Participant.</u></p>	<p>(iii) TRAX request; and the resolution of any disputes arising with respect to its use of TRAX, including the performance or non-performance under an accepted TRAX request and any consequences arising from such performance or non-performance.</p> <p>(b) CDS Responsibility CDS is not responsible for:</p> <p>(i) the information transmitted through TRAX; (ii) the enforceability of any TRAX request; or (iii) performance or non-performance by a Participant or TA Participant of any accepted TRAX request.</p> <p>11.4.3.1 Deposit of Securities The TA Participant will confirm to CDS when a Deposit has been effected or inform CDS that a Deposit has been rejected. Upon confirmation of a Deposit by the TA Participant, CDS shall credit the Securities Account of the Participant making the Deposit with the Deposited Securities. Regardless of the identity of the Person who delivers the Security to the TA Participant for Deposit, such Person shall be deemed to be acting on behalf of CDS in presenting the Security for registration of transfer into CDS Name.</p> <p>11.4.3.2 TRAX Requests for Deposit of Securities A TA Participant may use TRAX to send Securities transfer requests to a Participant. Upon a Participant's acceptance of a transfer request sent by a TA Participant through TRAX, a pending deposit request is automatically created in CDSX. The pending deposit may be confirmed by the Transfer Agent. Upon the confirmation of the deposit by the Transfer Agent, CDS shall credit the Securities to a Securities Account of the Participant.</p>