

13.1.4 The Canadian Depository for Securities Ltd. and CDS Clearing and Depository Services Inc. – Amendment to Recognition and Designation Order – ss. 21.2(1) and s. 144 of the Act and Part VI of the OBCA

IN THE MATTER OF  
THE SECURITIES ACT  
R.S.O. 1990, CHAPTER S.5, AS AMENDED ("Act")

AND

IN THE MATTER OF  
THE BUSINESS CORPORATIONS ACT  
R.S.O. 1990, CHAPTER B.16, AS AMENDED ("OBCA")

AND

IN THE MATTER OF  
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED

AND

CDS CLEARING AND DEPOSITORY SERVICES INC.

**AMENDMENT TO RECOGNITION AND DESIGNATION ORDER**

**(Subsection 21.2(1) and Section 144 of the Act and Part VI of the OBCA)**

**WHEREAS** the Ontario Securities Commission ("Commission") issued an order dated February 25, 1997 ("1997 Order"), which became effective on March 1, 1997, recognizing The Canadian Depository for Securities Limited ("CDS Ltd.") as a clearing agency pursuant to subsection 21.2(1) of the Act and designating CDS Ltd. as a recognized clearing agency pursuant to Part VI of the OBCA;

**AND WHEREAS** the Commission issued an order dated July 12, 2005 ("2005 Order") varying and restating the 1997 Order;

**AND WHEREAS** the Commission issued an order dated January 9, 2006 ("2006 Order") varying the 2005 Order (the 2005 Order, as amended by the 2006 Order, referred to as the "Current Recognition Order");

**AND WHEREAS** CDS Ltd. has applied for an order pursuant to section 144 of the Act to vary the Current Recognition Order;

**AND WHEREAS** CDS Ltd. plans to restructure its businesses on or after November 1, 2006 ("Restructuring Date") into separate operating subsidiaries, one of which will be CDS Clearing and Depository Services Inc. ("CDS Clearing");

**AND WHEREAS** CDS Clearing shall assume responsibility for all of the existing securities clearing, settlement, and depository services ("Settlement Services") and necessary assets and liabilities from CDS Ltd.;

**AND WHEREAS** CDS Ltd. shall provide certain support functions to CDS Clearing, including information technology development, maintenance and operations, legal services, risk management, financial management and support, human resources, internal audit, facilities management, and executive governance and communications, and such provision of support functions shall be governed by a services agreement between CDS Ltd. and CDS Clearing;

**AND WHEREAS** the Commission has received certain other representations and undertakings from CDS Ltd. and CDS Clearing in connection with the application of CDS Ltd. to vary the Current Recognition Order;

**AND WHEREAS** the Commission considers it appropriate to set out in the order terms and conditions for the recognition of each of CDS Ltd. and CDS Clearing as a clearing agency under the Act, which terms and conditions are set out in Schedule "A" attached;

**AND WHEREAS** CDS Ltd. and CDS Clearing have each agreed to the respective terms and conditions as set out in Schedule "A";

**AND WHEREAS** the terms and conditions set out in Schedule "A" may be varied or waived by the Commission;

**AND UPON** the Commission being of the opinion that it is not prejudicial to the public interest to vary the Current Recognition Order;

**AND UPON** the Commission being satisfied that it is in the public interest to continue to recognize CDS Ltd. as a clearing agency pursuant to subsection 21.2(1) of the Act;

**AND UPON** the Commission wishing to continue to designate CDS Ltd. as a recognized clearing agency for the purposes of Part VI of the OBCA;

**AND UPON** the Commission being satisfied that it is in the public interest to recognize CDS Clearing as a clearing agency pursuant to subsection 21.2(1) of the Act;

**AND UPON** the Commission wishing to designate CDS Clearing as a recognized clearing agency for the purposes of Part VI of the OBCA;

**IT IS ORDERED** pursuant to section 144 of the Act that the Current Recognition Order be varied and restated in the form of this order;

**THE COMMISSION HEREBY RECOGNIZES** each of CDS Ltd. and CDS Clearing as a clearing agency pursuant to subsection 21.2(1) of the Act, subject to the terms and conditions set out in Schedule "A";

**AND THE COMMISSION HEREBY DESIGNATES** each of CDS Ltd. and CDS Clearing as a recognized clearing agency for the purposes of Part VI of the OBCA.

DATED \_\_\_\_\_, 2006, to be effective on the Restructuring Date.

**SCHEDULE "A" - TERMS AND CONDITIONS**

**PART I – CDS Ltd.**

**1.0 COMPLIANCE OF CDS CLEARING**

1.1 CDS Ltd. shall, at all times, ensure that CDS Clearing meets, and is able to meet, all the terms and conditions of this order, as enumerated in Part II of this Schedule "A".

**2.0 GOVERNANCE**

2.1 CDS Ltd.'s governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholders.

2.2 Without limiting the generality of the foregoing, CDS Ltd.'s governance structure shall provide for:

- (a) fair and meaningful representation on its board of directors and any committee of the board of directors;
- (b) appropriate representation of persons independent of the shareholders on the board of directors and any committees of the board of directors, and, for such purpose, a person is "independent" if the person is not:
  - (i) an associate, partner, director, officer or employee of a shareholder of CDS Ltd.,
  - (ii) an associate, partner, director, officer or employee of a participant of CDS Ltd. or its affiliates or an associate of such director, partner, officer or employee, or
  - (iii) an officer or employee of CDS Ltd. or its affiliates or an associate of such officer or employee; and
- (c) appropriate qualifications, remuneration, conflict of interest guidelines and limitation of liability and indemnification protections for directors, officers and employees of CDS Ltd.

2.3 CDS Ltd. shall not, without the Commission's prior written approval, make significant changes to its governance structure or constating documents.

2.4 CDS Ltd. shall not, without the Commission's prior written approval, enter into any contract, agreement or arrangement that may limit its ability to comply with the terms and conditions contained in this Schedule "A".

**3.0 FITNESS**

3.1 CDS Ltd. shall take reasonable steps to ensure that each officer or director of CDS Ltd. is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that such person will perform his or her duties with integrity.

**4.0 RISK CONTROLS**

4.1 CDS Ltd. shall have clearly defined procedures for the management of risk.

4.2 Without limiting the generality of the foregoing:

- (a) CDS Ltd. shall perform risk management activities in a manner that prevents the spillover of risk arising from activities in its subsidiaries where such risks might negatively impact the financial viability of CDS Ltd. or CDS Clearing; and
- (b) Where CDS Ltd. materially outsources any of its services or systems affecting the Settlement Services to a third party service provider, which shall include affiliates or associates of CDS Ltd., CDS Ltd. shall proceed in accordance with best practices. Without limiting the generality of the foregoing, CDS Ltd. shall:
  - (i) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such outsourcing arrangements,
  - (ii) in entering any such outsourcing arrangement:

- A. assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by CDS Ltd., and
  - B. execute a contract with the third party service provider addressing all significant elements of such arrangement, including service levels and performance standards,
- (iii) ensure that any contract implementing such outsourcing arrangement that is likely to impact the business of CDS Clearing permits the Commission to have access to and inspect all data, information and systems maintained by the third party service provider on behalf of CDS Ltd. for the purposes of determining CDS Ltd.'s compliance with the terms and conditions of this Schedule "A" or securities legislation, and
- (iv) monitor the performance of the third party service provider under any such outsourcing arrangement.

## **5.0 ALLOCATION OF COSTS**

5.1 CDS Ltd. shall ensure that the costs for providing services to its subsidiaries are fairly and equitably allocated.

## **6.0 ALLOCATION OF RESOURCES**

6.1 CDS Ltd. shall, subject to paragraph 6.2 and for so long as CDS Clearing carries on business as a clearing agency, allocate sufficient financial and other resources to CDS Clearing to ensure that CDS Clearing can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of Part II of this Schedule "A".

6.2 CDS Ltd. shall notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial or other resources to CDS Clearing to ensure that it can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of Part II of this Schedule "A".

## **7.0 FINANCIAL VIABILITY**

7.1 CDS Ltd. shall maintain sufficient financial and staffing resources to ensure the proper performance of its services.

7.2 For the purpose of monitoring its financial viability, CDS Ltd. shall calculate, on an unconsolidated basis, the following financial ratios:

- (a) a debt to cash flow ratio, being the ratio of total debt to EBITDA (earnings before interest, taxes, depreciation and amortization) for the most recent 12 months; and
- (b) a financial leverage ratio, being the ratio of total assets to shareholders' equity.

7.3 If CDS Ltd. fails to maintain, or anticipates it will fail to maintain:

- (a) a debt to cash flow ratio less than or equal to 4/1; or
- (b) a financial leverage ratio less than or equal to 4/1;

it shall immediately notify Commission staff. If CDS Ltd. fails to maintain either of the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its Chief Executive Officer will deliver a letter advising the Commission staff of the continued ratio deficiencies and the steps being taken to address the situation.

7.4 On a quarterly basis (together with the financial statements required to be filed pursuant to item 7.5), CDS Ltd. shall report to Commission staff that quarter's monthly calculation of the debt to cash flow ratio and financial leverage ratio.

7.5 CDS Ltd. shall file with Commission staff unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements, prepared in accordance with generally accepted accounting principles, within 90 days of each year end. The quarterly and annual financial statements of CDS Ltd. shall be provided on an unconsolidated and consolidated basis. Any annual report provided to shareholders shall be concurrently filed by CDS Ltd. with Commission staff.

## **8.0 CAPACITY AND INTEGRITY OF SYSTEMS**

8.1 CDS Ltd. will operate the systems ("Systems") for CDS Clearing's Settlement Services and related business operations. CDS Ltd. shall work in concert with CDS Clearing to ensure that the former will:

- (a) on a reasonably frequent basis, and in any event, at least annually:
  - (i) make reasonable current and future capacity estimates,
  - (ii) conduct capacity stress tests of the Systems to determine the ability of those Systems to process transactions in an accurate, timely and efficient manner,
  - (iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of the Systems,
  - (iv) review the vulnerability of the Systems and data centre computer operations to internal and external threats including breaches of security, physical hazards and natural disasters, and
  - (v) maintain adequate contingency and business continuity plans;
- (b) annually, cause to be performed an independent audit of the operations of the Settlement Services in accordance with generally accepted auditing standards; and
- (c) promptly notify Commission staff of material Systems failures and changes.

## **9.0 INFORMATION SHARING**

- 9.1 CDS Ltd. shall share information and otherwise cooperate with the Commission and its staff, other recognized clearing agencies, recognized exchanges, recognized quotation and trade reporting systems, registered alternative trading systems, recognized self-regulatory organizations, the Canadian Investor Protection Fund and any regulatory authority having jurisdiction over CDS Ltd., subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information, and 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.
- 9.2 CDS Ltd. shall permit the Commission to have access to and inspect all data and information in its possession that is required to assess compliance with the terms and conditions of this Schedule "A" or securities legislation, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information, and 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.
- 9.3 CDS Ltd. shall cause its subsidiary, CDS Clearing, to permit the Commission to have access to and inspect all data and information in its possession that is required to assess compliance with the terms and conditions of this Schedule "A" or securities legislation, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information, and 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.
- 9.4 CDS Ltd. shall comply with Appendix "B" setting out the reporting obligations, as amended from time to time, regarding the reporting of information to the Commission.

## **PART II – CDS CLEARING**

### **10.0 GOVERNANCE**

- 10.1 CDS Clearing's governance arrangements shall be designed to fulfill public interest requirements and to promote the objectives of its shareholder and the users ("participants") of the Settlement Services.
- 10.2 Without limiting the generality of the foregoing, CDS Clearing's governance structure shall provide for:
- (a) fair and meaningful representation on its board of directors and any committee of the board of directors;
  - (b) appropriate representation of persons independent of the CDS Ltd. and participants on the board of directors and any committees of the board of directors, and, for such purpose, a person is "independent" if the person is not:
    - (i) an associate, partner, officer or employee of CDS Ltd. or a shareholder of CDS Ltd.,

- (ii) an associate, director, partner, officer or employee of a participant of CDS Clearing or its affiliates or an associate of such director, partner, officer or employee, or
  - (iii) an officer or employee of CDS Clearing or its affiliates or an associate of such officer or employee; and
- (c) appropriate qualifications, remuneration, conflict of interest guidelines and limitation of liability and indemnification protections for directors, officers and employees of CDS Clearing.

10.3 CDS Clearing shall not, without the Commission's prior written approval, make significant changes to its governance structure or constating documents.

10.4 CDS Clearing shall not, without the Commission's prior written approval, enter into any contract, agreement or arrangement that may limit its ability to comply with the terms and conditions contained in this Schedule "A".

**11.0 FITNESS**

11.1 CDS Clearing shall take reasonable steps to ensure that each officer or director of CDS Clearing is a fit and proper person and the past conduct of each officer or director affords reasonable grounds for belief that such person will perform his or her duties with integrity.

**12.0 ACCESS**

12.1 CDS Clearing shall provide any person or company reasonable access to its Settlement Services where that person or company satisfies the eligibility requirements established by CDS Clearing to access the Settlement Services.

12.2 Without limiting the generality of the foregoing, CDS Clearing shall:

- (a) establish written standards for granting access to the Settlement Services; and
- (b) keep records of:
  - (i) each grant of access including, for each participant, the reasons for granting such access, and
  - (ii) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

**13.0 FEES AND COSTS**

13.1 CDS Clearing shall equitably allocate its fees and costs for Settlement Services. The fees shall not have the effect of unreasonably creating barriers to access such Settlement Services and shall be balanced with the criterion that CDS Clearing has sufficient revenues to satisfy its responsibilities.

13.2 CDS Clearing's process for setting fees and costs for Settlement Services shall be fair, appropriate and transparent. The fees, costs or expenses borne by participants in the Settlement Services shall not reflect any cost or expense incurred by CDS Clearing in connection with an activity carried on by CDS Clearing that is not related to the Settlement Services.

**14.0 DUE PROCESS**

14.1 CDS Clearing shall ensure that:

- (a) participants affected by its decisions are given an opportunity to be heard or make representations; and
- (b) it keeps a record, gives reasons and provides for appeals of its decisions to regulatory authorities.

**15.0 RISK CONTROLS**

15.1 CDS Clearing shall have clearly defined procedures for the management of risk which specify the respective responsibilities of CDS Clearing and its participants.

15.2 Without limiting the generality of the foregoing:

- (a) Where a central counterparty service is offered by CDS Clearing, CDS Clearing shall rigorously control the risks it assumes;
- (b) CDS Clearing shall reduce principal risk to the greatest extent possible by linking securities transfers to funds transfers in a way that achieves delivery-versus-payment;
- (c) Final settlement shall occur no later than the end of the settlement day and intraday or real-time finality should be provided where necessary to reduce risks;
- (d) Where CDS Clearing extends intraday credit to participants, including where it operates a net settlement system, it shall institute risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle;
- (e) Assets accepted by CDS Clearing used to settle the ultimate payment obligations arising from securities transactions shall carry little or no credit or liquidity risk. If same-day, irrevocable final funds are not used, CDS Clearing shall take steps to protect participants in Settlement Services from potential losses and liquidity pressures arising from the failure of the payor or its paying agent;
- (f) Where CDS Clearing establishes links to settle cross-border trades, it shall design and operate such links to reduce effectively the risks associated with cross-border settlements;
- (g) CDS Clearing shall only provide services that are governed by the participant rules; and
- (h) Where CDS Clearing materially outsources any of its Settlement Services to a third party service provider, which shall include affiliates or associates of CDS Clearing, CDS Clearing shall proceed in accordance with best practices. Without limiting the generality of the foregoing, CDS Clearing shall:
  - (i) establish and maintain policies and procedures that are approved by its board of directors for the evaluation and approval of such outsourcing arrangements,
  - (ii) in entering any such outsourcing arrangement:
    - A. assess the risk of such arrangement, the quality of the service to be provided and the degree of control to be maintained by CDS Clearing, and
    - B. execute a contract with the third party service provider addressing all significant elements of such arrangement, including service levels and performance standards,
  - (iii) ensure that any contract implementing such outsourcing arrangement permits the Commission to have access to and inspect all data, information and systems maintained by the third party service provider on behalf of CDS Clearing for the purposes of determining CDS Clearing's compliance with the terms and conditions of this Schedule "A" or securities legislation, and
  - (iv) monitor the performance of the third party service provider under any such outsourcing arrangement.

**16.0 FINANCIAL VIABILITY**

16.1 CDS Clearing shall maintain sufficient financial resources to ensure the proper performance of the Settlement Services.

16.2 CDS Clearing shall notify Commission staff as soon as practicable of any decision made to retain all or part of its transaction volatility premiums collected or to be collected.

16.3 For the purpose of monitoring its financial viability, CDS Clearing shall calculate the following financial ratios:

- (a) a debt to cash flow ratio, being the ratio of total debt to EBITDA (earnings before interest, taxes, depreciation and amortization) for the most recent 12 months; and
- (b) a financial leverage ratio, being the ratio of total assets less customer deposits to shareholders' equity.

16.4 If CDS Clearing fails to maintain, or anticipates it will fail to maintain:

(a) a debt to cash flow ratio less than or equal to 4/1; or

(b) a financial leverage ratio less than or equal to 4/1;

it shall immediately notify Commission staff. If CDS Clearing fails to maintain either of the debt to cash flow ratio or the financial leverage ratio for a period of more than three months, its Chief Executive Officer will deliver a letter advising the Commission staff of the continued ratio deficiencies and the steps being taken to address the situation.

16.5 On a quarterly basis (together with the financial statements required to be filed pursuant to item 16.6), CDS Clearing shall report to Commission staff that quarter's monthly calculation of the debt to cash flow ratio and financial leverage ratio.

16.6 CDS Clearing shall file with Commission staff unaudited quarterly financial statements within 60 days of each quarter end and audited annual financial statements, prepared in accordance with generally accepted accounting principles, within 90 days of each year end.

**17.0 OPERATIONAL RELIABILITY**

17.1 CDS Clearing shall adopt procedures and processes that, on an ongoing basis, ensure the provision of accurate and reliable settlement services to participants.

17.2 CDS Clearing shall assist CDS Ltd. in the annual filing, by CDS Ltd., and in accordance with CDS Ltd.'s obligation under section 8.1 of Part I of this Schedule "A", in the audit to Commission staff.

**18.0 CAPACITY AND INTEGRITY OF SYSTEMS**

18.1 For its Systems CDS Clearing shall, or in the case of a third party service provider providing or maintaining such Systems, CDS Clearing shall require that the service provider shall:

(a) on a reasonably frequent basis, and in any event, at least annually:

(i) make reasonable current and future capacity estimates,

(ii) conduct capacity stress tests of the Systems to determine the ability of those Systems to process transactions in an accurate, timely and efficient manner,

(iii) develop and implement reasonable procedures to review and keep current the development and testing methodology of the Systems,

(iv) review the vulnerability of the Systems and data centre computer operations to internal and external threats including breaches of security, physical hazards and natural disasters, and

(v) maintain adequate contingency and business continuity plans;

(b) annually, cause to be performed an independent audit of the operations of the Settlement Services in accordance with generally accepted auditing standards; and

(c) promptly notify Commission staff of material Systems failures and changes.

**19.0 PROTECTION OF CUSTOMERS' SECURITIES**

19.1 CDS Clearing shall employ securities depository, account maintenance and accounting practices and safekeeping procedures that protect participants' securities.

**20.0 RULES**

20.1 CDS Clearing shall establish rules, operating procedures, user guides, manuals or similar instruments or documents (collectively, "rules") that are necessary or appropriate to govern, regulate, and set out all aspects of the Settlement Services offered by CDS Clearing.



- 20.2 The rules shall be consistent with the general goals of:
- (a) ensuring compliance with securities legislation;
  - (b) fostering co-operation and co-ordination with self-regulatory organizations and persons or companies operating marketplaces, clearing and settlement systems and other systems that facilitate the processing of securities transactions and safeguarding of securities; and
  - (c) controlling systemic risk.
- 20.3 The rules will not:
- (a) permit unreasonable discrimination among participants; or
  - (b) impose any burden on competition that is not necessary or appropriate in furtherance of compliance with securities legislation or the objects and mandate of the clearing agency.
- 20.4 CDS Clearing's rules and the process for adopting new rules or amending existing rules shall be transparent to participants and the general public.
- 20.5 CDS Clearing shall file with the Commission all rules and amendments to the rules and comply with the rule protocol attached as Appendix "A" to this Schedule, as amended from time to time.

**21.0 ENFORCEMENT OF RULES AND DISCIPLINE**

- 21.1 The rules of CDS Clearing shall set out appropriate sanctions in the event of non-compliance by participants.
- 21.2 CDS Clearing shall reasonably monitor participant activities and impose sanctions to ensure compliance by participants with its rules.

**22.0 INFORMATION SHARING**

- 22.1 CDS Clearing shall share information and otherwise cooperate with the Commission and its staff, other recognized clearing agencies, recognized exchanges, recognized quotation and trade reporting systems, registered alternative trading systems, recognized self-regulatory organizations, the Canadian Investor Protection Fund and any regulatory authority having jurisdiction over CDS Clearing, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information, and 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.
- 22.2 CDS Clearing shall permit the Commission to have access to and inspect all data and information in its possession that is required to assess compliance with the terms and conditions of this Schedule "A" or securities legislation, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information, and 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.
- 22.3 CDS Clearing shall comply with Appendix "B" to this Schedule setting out the reporting obligations, as amended from time to time, regarding the reporting of information to the Commission.

APPENDIX "A"

**RULE PROTOCOL REGARDING THE REVIEW AND APPROVAL  
OF CDS CLEARING AND DEPOSITORY SERVICES INC. RULES  
BY THE ONTARIO SECURITIES COMMISSION**

**1. Purpose of the Protocol**

On [ , 2006], the Ontario Securities Commission ("Commission") issued a varied and restated recognition and designation order ("Recognition Order") with terms and conditions governing the recognition of each of The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. ("CDS Clearing") as a clearing agency pursuant to subsection 21.2(1) of the *Securities Act* (Ontario). To comply with the Recognition Order, CDS Clearing 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 Clearing which contains any contractual term setting out the respective rights and obligations between CDS Clearing 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 Clearing 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) consequential amendments intended to implement a material rule that has been published for comment pursuant to this protocol which only contain material aspects already contained in the material rule or disclosed in the notice accompanying the material rule;
- (iii) amendments required to ensure consistency or compliance with an existing rule, securities legislation or other regulatory requirement;
- (iv) the correction of spelling, punctuation, typographical or grammatical mistakes or inaccurate cross-referencing; or
- (v) 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 Clearing 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 Clearing 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 Clearing 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 Clearing will file with the Commission the following documents electronically, or by other means as agreed to by Commission staff and CDS Clearing 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 Clearing, 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 Clearing, CDS Clearing 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 Clearing is aware that another clearing agency has a counterpart to the rule, CDS Clearing 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 Clearing has determined that the rule is not contrary to the public interest, and
  - H. an explanation that all comments should be sent to CDS Clearing with a copy to the Commission, and that CDS Clearing 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 Clearing confirmation of receipt of documents filed by CDS Clearing 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 Clearing 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 Clearing 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 Clearing Responses to Commission Staff's Comments**

- (i) CDS Clearing will respond to any comments received to Commission staff in writing.
- (ii) CDS Clearing will provide to Commission staff a summary of all public comments received and CDS Clearing's responses to the public comments, or confirmation of having received no public comments.
- (iii) If CDS Clearing fails to respond to comments from Commission staff within 120 calendar days after receipt of their comment letter, CDS Clearing 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 Clearing to staff's comments or requests for additional information, and (b) receipt of the summary of public comments and CDS Clearing's response to the public comments, or confirmation from CDS Clearing 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 Clearing 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 Clearing 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 Clearing of the decision. CDS Clearing will provide the following information to accompany the publication of the notice of approval:

- (i) a short summary of the material rule;
- (ii) CDS Clearing's 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 Clearing, 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 Clearing 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 Clearing's 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 Clearing 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 Clearing will file with the Commission the following documents electronically, or by other means as agreed to by the Commission staff and CDS Clearing 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 Clearing.

**(b) Effective Date of Technical/Housekeeping Rules**

The technical/housekeeping rule will be effective upon CDS Clearing filing the documents in accordance with subsection (a) or on a date determined by CDS Clearing. Where CDS Clearing 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 Clearing may assume that the Commission staff agree with the classification.

**(c) Confirmation of Receipt**

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

**(d) Disagreement with Classification**

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

- (i) Commission staff will communicate to CDS Clearing, in writing, the reasons for disagreeing with the classification of the rule within 15 business days after receipt of CDS Clearing's filing.
- (ii) After receipt of Commission staff's written communication, CDS Clearing 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 Clearing 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 Clearing 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 Clearing 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 Clearing may make a material rule effective immediately where CDS Clearing determines that there is an urgent need to implement the material rule because of a substantial and imminent risk of material harm to CDS Clearing, 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 Clearing and to its participants.

**(b) Prior Notification**

Where CDS Clearing determines that immediate implementation is necessary, CDS Clearing will advise Commission staff in writing as soon as possible but in any event at least 5 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 Clearing, in writing, of the disagreement, or request more time to consider the immediate implementation, within 3 business days of being advised by CDS Clearing under subsection (b).
- (ii) Commission staff and CDS Clearing will discuss and resolve any concerns raised by Commission staff.
- (iii) If no notice is received by CDS Clearing by the 3rd business day after Commission staff received CDS Clearing's notification, CDS Clearing 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 Clearing 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 Clearing. 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 Clearing.

**APPENDIX "B"**

**REPORTING OBLIGATIONS**

In addition to the notification, reporting and filing obligations set out in Schedule "A" to the Recognition and Designation Order, CDS Ltd. and CDS Clearing shall also comply with the reporting obligations set out below.

**1. Prior Notification**

1.1 CDS Ltd. and CDS Clearing shall provide to Commission staff prior notification of:

- (a) any proposed change to CDS Ltd. and CDS Clearing's corporate governance structure other than significant changes to the governance structure or constating documents for which prior approval is required under item 4 of Schedule "A" to the Recognition and Designation Order;
- (b) a decision to enter into an agreement, memorandum of understanding or other similar arrangement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market; or
- (c) a decision to, either directly or through an affiliate, engage in a new type of business activity or cease to engage in a business activity in which CDS Ltd. and CDS Clearing are then engaged.

1.2 Notwithstanding the requirements of section 1.1(c), CDS Ltd. shall not be required to provide Commission staff with prior notification in the above instances in the event that such instances relate to the business operations of another CDS Ltd. subsidiary.

**2. Immediate Notification**

2.1 CDS Ltd. and CDS Clearing shall provide to Commission staff immediate notice of:

- (a) the appointment of any new director or officer, including a description of the individual's employment history; and
- (b) the resignation or intended resignation of a director or officer or the auditors of CDS Ltd. and CDS Clearing, including a statement of the reasons for the resignation or intended resignation.

2.2 CDS Ltd. and CDS Clearing shall immediately notify Commission staff if either organization:

- (a) becomes the subject of any order, directive or other similar action of a governmental or regulatory authority;
- (b) becomes aware that either organization is the subject of a criminal or regulatory investigation; or
- (c) becomes, or is aware that either organization will become, the subject of a material lawsuit.

2.3 CDS Clearing shall immediately file with Commission staff copies of all notices, bulletins and similar forms of communication that CDS Clearing sends its participants.

2.4 CDS Ltd. and CDS Clearing shall immediately file with the Commission staff any unanimous shareholder agreements to which it is a party.

**3. Quarterly Reporting**

3.1 CDS Ltd. and CDS Clearing shall file quarterly with Commission staff a list of the internal audit reports and risk management reports issued in the previous quarter.

**4. Annual Reporting**

4.1 CDS Ltd. and CDS Clearing shall provide to Commission staff annually:

- (a) a list of the directors and officers of CDS Ltd. and CDS Clearing;
- (b) a list of the committees of the CDS Ltd. and CDS Clearing boards of directors, setting out the members, mandate and responsibilities of each of the committees; and

(c) a list of all participants in each settlement service operated by CDS Clearing.

**5. General**

5.1 CDS Ltd. and CDS Clearing shall continue to comply with the reporting obligations set out in their tailored Automation Review Program document.