

**CDS Clearing and Depository Services Inc. (CDS<sup>®</sup>)**

**MATERIAL AMENDMENTS TO CDS RULES**

**AUTOMATIC AND DISCRETIONARY SUSPENSION**

**REQUEST FOR COMMENTS**

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

The proposed rule amendments to the CDS Participant Rules remove the Automatic Suspension rule, amend the Discretionary Suspension rule to include additional criteria for consideration, and insert a provision under the Discretionary Suspension rule to facilitate the continued access to CDS services by CDS Participants who are Canada Deposit Insurance Corporation (“**CDIC**”) members or subsidiaries of member institutions, and who are subject to resolution under the *Canada Deposit Insurance Act* (“**CDIC Act**”).

These proposed changes result from dialogue between CDS and its Participants, regulators and other stakeholders including CDIC and the Office of the Superintendent of Financial Institutions (“**OSFI**”). They are informed by domestic and international clearinghouse standards and recommendations, and by an internal review of the rule books of domestic and international industry peers.

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

A Participant may be suspended from its participation in CDSX for a variety of causes including breach of any of its obligations under the Participant Agreement or Rules, loss of its regulatory licence, or being in an unsound financial or operating condition. The consequences of being suspended can be severe. When a Participant is suspended, it can no longer settle trades or otherwise use CDS services and Participant collateral can be seized by CDS among other actions. A Participant’s loss of access to CDS services and functionality limits the Participant’s ability to directly access Canadian capital markets.

Current CDS Participant Rules distinguish between Automatic and Discretionary Suspension. The former lists criteria that can result in suspension without pause to consider extenuating circumstances, mitigating factors, or a risk based assessment of the impact of the non-performance. This inflexibility puts Participants at risk of having potentially disproportionate action automatically taken against them, such as being ejected from CDS and being prevented from accessing Canadian capital markets for a breach that might only be minor, temporary, curable, or the result of miscommunication or a technical glitch. Automatic suspension risks making a bad situation worse for the Participant, other Participants, CDS and for Canadian capital markets. Under the Automatic Suspension rule, a financial institution in resolution under the *CDIC Act* would be unable to have continued access to CDS services. Such a denial of service to a financial institution Participant, particularly a domestic systemically important bank (“**D-SIB**”), already in distress, could have far-reaching systemic risk implications for Canadian capital markets that could exacerbate market stress.

Decisions to suspend a Participant need to be objective as well as prudent with due consideration given to individual factors as well as broader market considerations. In exercising its discretion, CDS would assess the level of risk posed to CDSX by the non-performance and would determine whether the breach is sufficiently serious to warrant suspension or whether CDS can mitigate risks adequately by using levers in the Rules that fall short of suspension, such as restricting system functionality. If suspension is warranted, CDS would consider the root cause of the non-performance and whether there are extenuating circumstances to excuse the Participant’s non-performance (e.g. ability to cure the non-performance, Participant’s financial viability). In the case where a CDS Participant has gone into resolution under the *CDIC Act*, CDS could allow a Participant to have continued access to CDS services even though it would have otherwise been suspended and denied access to CDS services.

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This proposed rule amendments provide management with the necessary flexibility to make and act upon decisions expeditiously, prudently, and in a manner that is consistent with the public interest to avoid or mitigate harm to CDS, its Participants, or Canadian capital markets. The proposed rule amendments also help CDS respond to Key Consideration 2 and Explanatory Note 3.13.8 of Principle 13 (Participant Default Rules and Procedures) of the CPMI-IOSCO, *Principles for financial market infrastructure* (“**PFMI**”). CDS has an obligation to observe PFMI requirements under its recognition order requirements and under National Instrument 24-102 and Companion Policy CP24-102.

The proposed rule amendments will delete all references to Rule 9.1.1 (Automatic Suspension) in the Participant Rules, will cut-and-paste default criteria from deleted Rule 9.1.1 (Automatic Suspension) to 9.1.2 (Discretionary Suspension), and will add a new paragraph to Rule 9.1.2 concerning Resolution which will be defined in Rule 1.1.

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

(a) *CDS Clearing* – The proposed rule amendments provide CDS with to the appropriate tools to fulfil its role as the operator of a designated systemically important clearing and settlement system.

(b) *CDS Participants* – The proposed rule amendments provide important protection to Participants to minimize the risk of unintended disrupted access to CDS services.

(c) & (d) *Other Market Participants and Securities and Financial Markets in General* – The proposed rule amendments provide CDS management with the flexibility to respond to Participant and CDS needs without causing additional stress to CDS, Participants and Canadian capital markets.

#### **C.1 Competition**

The proposed rule amendments will have a net positive impact on the competitive landscape of Canadian capital markets and CDS Participants by aligning CDS’ suspension rules with prevailing industry practice and emerging international standards.

#### **C.2 Risks and Compliance Costs**

The proposed rule amendments are not expected to result in any compliance costs for CDS, its Participants, or other market participants.

#### **C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty**

Observance of PFMI standards is a requirement under CDS’ recognition orders as well as under National Instrument 24-102 (Clearing Agency Requirements) and related Companion Policy 24-102CP.

The proposed rule amendments will help CDS respond to Key Consideration 2 and Explanatory Note 3.13.8 of Principle 13 (Participant Default Rules and Procedures) of the *Principles for Financial Market Infrastructures* (“**PFMIs**”) published by the Committee on Payments and Market Infrastructures of the International Organization of Securities Commissions (“**CPMI-IOSCO**”) published in April 2012, which relates to appropriate management discretion in default situations and taking appropriate steps to address the resolution of a participant. The proposed rule amendments also align with Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, II-Annex 1 (Resolution of Financial Market Infrastructures (FMIs) and FMI Participants). The proposed rule amendments also support Canada’s commitments to financial institution (“**FI**”) resolution of D-SIBs.

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

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

Throughout its development, the proposed rule amendments were discussed with management, participant committees, CDS regulators, and other stakeholders including the CDIC and OSFI.

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

The proposed rule amendments were reviewed by CDS' Legal Drafting Group ("LDG"). The LDG is an ad hoc advisory committee composed of legal and business representatives of participating CDS Participants.

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

CDS considered the industry practice of other clearinghouses around the world which showed that automatic suspension rules were uncommon and that most organizations have discretionary suspension rules. Many clearinghouses are in the process of adopting continuity of access to service provisions in response to PFMI and FSB guidance or similar local requirements. CDS considered CPMI-IOSCO PFMI requirements, specifically Key Consideration 2 and Explanatory Note 3.13.8 of Principle 13 (Participant Default Rules and Procedures) and Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, II-Annex 1 (Resolution of Financial Market Infrastructures (FMIs) and FMI Participants).

### **D.4 Consultation**

CDS consulted directly with members of the CDS Board during the development of the proposed rule amendments. In addition, CDS management and employees as well as other clearinghouses within the TMX Group were consulted. The concept of the proposed rule amendments was presented to the Risk Advisory Committee on July 12 with no contrary views. The legal drafting of the rule amendments was presented to the Legal Drafting Group on July 14 with no contrary views.

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

CDS considered keeping Rule 9.1.1 but amending it with qualifying language to permit the exercise of discretion; however, the disadvantage of following this approach outweighed any benefit. Such a rule would have created a logical inconsistency in the application of the rule and consequent legal uncertainty with no added benefit to CDS, its Participants, or Canadian capital markets.

Maintaining the status quo with separate Automatic and Discretionary Suspension rules but with amendments to Discretionary Suspension to permit CDIC member financial institutions subject to resolution under the *CDIC Act* to have continued access to CDS Services would not have been effective. Under such an approach, continued access to CDS services by a CDIC member firm CDS Participant in resolution would be disrupted by the triggering of any number of criteria listed in the Automatic Suspension rule.

### **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*, by the British Columbia Securities Commission pursuant to Section 24(d) of the British Columbia *Securities Act* and by the *Autorité des marchés financiers* ("AMF") pursuant to section 169 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 Ontario Securities Commission, the British Columbia Securities Com-

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mission, the *Autorité des marchés financiers* and the Bank of Canada will hereafter be collectively referred to as the “**Recognizing Regulators**”.

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

### **E. TECHNOLOGICAL SYSTEMS CHANGES (E.1, E.2, E.3)**

The proposed rule amendments are not expected to have an impact on technological systems, or require changes to such systems for CDS, CDS Participants, or other market participants.

### **F. COMPARISON TO OTHER CLEARING AGENCIES**

CDS conducted a detailed analysis of default provisions of other Canadian clearinghouses as well as comparable clearing and depository institutions outside of Canada. CDS observed that all comparators had some form of discretionary suspension rule articulated in clearinghouse rules or by-laws and none had automatic suspension rules.

### **G. PUBLIC INTEREST ASSESSMENT**

CDS believes that the proposed rule amendments are not contrary to the public interest.

### **H. COMMENTS**

Comments on the proposed rule amendments must be in made writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin [•Autorité des marchés financiers Bulletin if this is the translated version•] to:

Legal Department  
CDS Clearing and Depository Services Inc.  
Attn: Hugo Maureira  
85 Richmond Street West  
Toronto, Ontario M5H 2C9  
Fax: 416-365-1984  
e-mail: [hmaureira@cds.ca](mailto:hmaureira@cds.ca)

Copies should also be provided to the Autorité des marchés financiers, British Columbia Securities Commission 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  
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Manager, Market Regulation  
Market Regulation Branch  
Ontario Securities Commission  
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Toronto, Ontario, M5H 3S8  
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Doug MacKay  
Manager, Market and SRO Oversight

Bruce Sinclair  
Securities Market Specialist

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British Columbia Securities Commission  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, B.C. V7Y 1L2  
Fax: 604-899-6506  
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Legal Services, Capital Markets Regulation  
British Columbia Securities Commission  
701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, B.C., V7Y 1L2  
Fax: 604-899-6506  
Email: [BSinclair@bcsc.bc.ca](mailto:BSinclair@bcsc.bc.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 the proposed rule amendments as well as text of these rules reflecting the adoption of the proposed amendments.

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**APPENDIX “A”**

**PROPOSED CDS RULE AMENDMENTS**

Text of CDS Participant Rules marked to reflect proposed amendments	Text of CDS Participant Rules reflecting the adoption of proposed amendments
<p>Red – deletion Green – relocation Blue - addition</p>	
<p><b>Table of Contents</b></p> <p><del>9.1.1 Automatic Suspension</del></p>	<p><b>Table of Contents</b></p> <p>[9.1.1 Intentionally Deleted]</p>
<p><b>1.2.1 Definitions</b></p> <p>“Resolution” means the exercise, or likely exercise, by the Canada Deposit Insurance Corporation of its powers under the <i>Canada Deposit Insurance Corporation Act</i> for the purpose of resolving financial or other difficulties of a Participant that is a member institution or subsidiary of a member institution under the <i>Canada Deposit Insurance Corporation Act</i>.</p>	<p><b>1.2.1 Definitions</b></p> <p>“Resolution” means the exercise, or likely exercise, by the Canada Deposit Insurance Corporation of its powers under the <i>Canada Deposit Insurance Corporation Act</i> for the purpose of resolving financial or other difficulties of a Participant that is a member institution or subsidiary of a member institution under the <i>Canada Deposit Insurance Corporation Act</i>.</p>
<p><b>2.1.3 Suspension and Termination</b></p> <p>The circumstances in which a Participant <del>shall be suspended by CDS (automatic suspension) or</del> may be suspended by CDS (discretionary suspension) are set out in Rules <del>9.1.1 and</del> 9.1.2 <del>respectively</del>. If adequate cause exists pursuant to Rule 2.7.5, the Board of Directors may terminate a Participant. A Participant may withdraw upon notice to CDS. A Participant who has withdrawn or has been terminated may apply for reinstatement.</p>	<p><b>2.1.3 Suspension and Termination</b></p> <p>The circumstances in which a Participant may be suspended by CDS (discretionary suspension) are set out in Rule 9.1.2. If adequate cause exists pursuant to Rule 2.7.5, the Board of Directors may terminate a Participant. A Participant may withdraw upon notice to CDS. A Participant who has withdrawn or has been terminated may apply for reinstatement.</p>
<p><b>8.4.6 Designation of Own Ledger for Book Entry Payment Method</b></p> <p>A Participant of a category specified in the Procedures and User Guides may designate one of its own Ledgers to perform for itself certain functions of the Book Entry Payment Method similar to the functions performed by a Qualified Banker for another Participant. Such a Participant may designate one of its own Ledgers as the Ledger to which will be attributed a net positive balance in the Funds Accounts of any of its other selected Ledgers, or a net negative balance in such Funds Accounts that was not an amount used under a Line of Credit. Each Business Day, CDS calculates and provides to each Participant cash recap data for each Ledger of a Participant who chooses this option. Such cash recap data will include the information specified for a Customer in Rule 8.4.4 and in addition will include in the banking activity data the attribution of amounts from the Participant's other Ledgers to its own designated Ledger. CDS shall make an Acceptable Payment to a</p>	<p><b>8.4.6 Designation of Own Ledger for Book Entry Payment Method</b></p> <p>A Participant of a category specified in the Procedures and User Guides may designate one of its own Ledgers to perform for itself certain functions of the Book Entry Payment Method similar to the functions performed by a Qualified Banker for another Participant. Such a Participant may designate one of its own Ledgers as the Ledger to which will be attributed a net positive balance in the Funds Accounts of any of its other selected Ledgers, or a net negative balance in such Funds Accounts that was not an amount used under a Line of Credit. Each Business Day, CDS calculates and provides to each Participant cash recap data for each Ledger of a Participant who chooses this option. Such cash recap data will include the information specified for a Customer in Rule 8.4.4 and in addition will include in the banking activity data the attribution of amounts from the Participant's other Ledgers to its own designated Ledger. CDS shall make an Acceptable Payment to a</p>

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<p>Participant designating its own Ledger of any net positive balance calculated in its cash recap after attribution. A Participant designating its own Ledger shall make an Acceptable Payment to CDS of any net negative balance calculated in its cash recap after attribution. Failure to pay the net negative balance after attribution shall be considered a failure to make payment as referred to in Rule 9.1.42, and accordingly CDS shall may suspend the Participant.</p>	<p>Participant designating its own Ledger of any net positive balance calculated in its cash recap after attribution. A Participant designating its own Ledger shall make an Acceptable Payment to CDS of any net negative balance calculated in its cash recap after attribution. Failure to pay the net negative balance after attribution shall be considered a failure to make payment as referred to in Rule 9.1.2, and accordingly CDS may suspend the Participant.</p>
<p><b>8.4.8 Payment between CDS and Qualified Bankers</b></p> <p>CDS shall make an Acceptable Payment to a Qualified Banker of any net positive balance calculated in its cash recap after attribution. A Qualified Banker shall make an Acceptable Payment to CDS in payment of any net negative balance calculated in its cash recap after attribution. The obligation of CDS or of the Qualified Banker to make such payment is subject to any re-calculation made pursuant to Rule 8.4.13 following the refusal or reversal of attribution. Failure to pay the net negative balance after attribution and any recalculation shall may be considered a failure to make payment as referred to in Rule 9.1.42, and accordingly CDS shall may suspend the Qualified Banker.</p>	<p><b>8.4.8 Payment between CDS and Qualified Bankers</b></p> <p>CDS shall make an Acceptable Payment to a Qualified Banker of any net positive balance calculated in its cash recap after attribution. A Qualified Banker shall make an Acceptable Payment to CDS in payment of any net negative balance calculated in its cash recap after attribution. The obligation of CDS or of the Qualified Banker to make such payment is subject to any re-calculation made pursuant to Rule 8.4.13 following the refusal or reversal of attribution. Failure to pay the net negative balance after attribution and any recalculation may be considered a failure to make payment as referred to in Rule 9.1.2, and accordingly CDS may suspend the Qualified Banker.</p>
<p><b>8.4.13 Refusal or Reversal of Attribution</b></p> <p>(c) Re-Calculation After Refusal or Reversal of Attribution</p> <p>In the event that attribution with respect to a Customer is refused by a Qualified Banker or reversed upon the suspension of the Customer, CDS shall recalculate the amounts owing between CDS and the Customer and between CDS and each Qualified Banker of the Customer, without attribution to that Qualified Banker in respect of that Customer. The Qualified Banker shall not make or receive payment on behalf of the Customer through the Book Entry Payment Method. The Customer shall make an Acceptable Payment to CDS in payment of any negative balance refused by its Qualified Banker and CDS shall pay to the Customer any positive balance refused by its Qualified Banker.</p> <p>Failure by either the Qualified Banker or the Customer to pay the net negative balance after recalculation shall may be considered a failure to make payment as referred to in Rule 9.1.42, and ac-</p>	<p><b>8.4.13 Refusal or Reversal of Attribution</b></p> <p>(c) Re-Calculation After Refusal or Reversal of Attribution</p> <p>In the event that attribution with respect to a Customer is refused by a Qualified Banker or reversed upon the suspension of the Customer, CDS shall recalculate the amounts owing between CDS and the Customer and between CDS and each Qualified Banker of the Customer, without attribution to that Qualified Banker in respect of that Customer. The Qualified Banker shall not make or receive payment on behalf of the Customer through the Book Entry Payment Method. The Customer shall make an Acceptable Payment to CDS in payment of any negative balance refused by its Qualified Banker and CDS shall pay to the Customer any positive balance refused by its Qualified Banker.</p> <p>Failure by either the Qualified Banker or the Customer to pay the net negative balance after recalculation may be considered a failure to make payment as referred to in Rule 9.1.2, and accord-</p>

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<p>ordingly CDS <del>shall</del> may suspend the Qualified Banker or the Customer who so fails to pay.</p>	<p>ingly CDS may suspend the Qualified Banker or the Customer who so fails to pay.</p>
<p><b><del>9.1.1 Automatic Suspension</del></b></p> <p><del>CDS shall suspend a Participant if the Participant fails, by the time required in accordance with the Rules, Procedures and User Guides:</del></p> <ul style="list-style-type: none"> <li><del>(i) to make a required payment in full at CDSX Payment Exchange or Link Payment Exchange;</del></li> <li><del>(ii) to provide Specific Collateral, CCP Collateral or Cross-Border Specific Collateral;</del></li> <li><del>(iii) to make its required Contribution to a Fund, a Collateral Pool or a Link Fund;</del></li> <li><del>(iv) to pay its obligation to CDS as a Surety pursuant to a Line of Credit; or</del></li> <li><del>(v) to pay its proportionate share, as a Member of a Fund Credit Ring, Category Credit Ring or Link Fund Credit Ring, of the obligation of another Member of that Credit Ring.</del></li> </ul>	<p>[9.1.1 Intentionally Deleted]</p>
<p><b>9.1.2 Discretionary Suspension</b></p> <p>CDS <del>shall</del> may suspend a Participant if it determines, in good faith, on the evidence reasonably available to it, that the Participant is in such financial or operating condition that its continuation as a Participant would cause material disruption to the Services or would jeopardize the interests of CDS or other Participants. In exercising its discretion whether or not to suspend a Participant, CDS may consider any information it considers relevant, including the occurrence of any of the following <del>events</del>:</p> <ul style="list-style-type: none"> <li>(i) the Participant fails to make a required payment in full at CDSX Payment Exchange or Link Payment Exchange;</li> <li>(ii) the Participant fails to provide Specific Collateral, CCP Collateral or Cross-Border Specific Collateral;</li> <li>(iii) the Participant fails to make its required Contribution to a Fund, a Collateral Pool or a Link Fund;</li> <li>(iv) the Participant fails to pay its obligation to CDS as a Surety pursuant to a Line of Credit;</li> <li>(v) the Participant fails to pay its proportionate share, as a Member of a Fund Credit Ring, Category Credit Ring or Link Fund Credit Ring, of the obliga-</li> </ul>	<p><b>9.1.2 Discretionary Suspension</b></p> <p>CDS may suspend a Participant if it determines, in good faith, on the evidence reasonably available to it, that the Participant is in such financial or operating condition that its continuation as a Participant would cause material disruption to the Services or would jeopardize the interests of CDS or other Participants. In exercising its discretion whether or not to suspend a Participant, CDS may consider any information it considers relevant, including the occurrence of any of the following:</p> <ul style="list-style-type: none"> <li>(i) the Participant fails to make a required payment in full at CDSX Payment Exchange or Link Payment Exchange;</li> <li>(ii) the Participant fails to provide Specific Collateral, CCP Collateral or Cross-Border Specific Collateral;</li> <li>(iii) the Participant fails to make its required Contribution to a Fund, a Collateral Pool or a Link Fund;</li> <li>(iv) the Participant fails to pay its obligation to CDS as a Surety pursuant to a Line of Credit;</li> <li>(v) the Participant fails to pay its proportionate share, as a Member of a Fund Credit Ring, Category Credit Ring or Link Fund Credit Ring, of the obligation of another Member of that Credit</li> </ul>

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<p>tion of another Member of that Credit Ring;</p> <p>(vi) the Participant ceases to be eligible for participation in CDS or to satisfy the qualifications or standards set by the Rules;</p> <p>(vii) the Participant commits a breach of the provisions of the Legal Documents that CDS in its discretion considers to be a material breach;</p> <p>(viii) the Participant fails to Settle a Central Counterparty Obligation as and when required; or</p> <p>(ix) the registration or licence of the Participant has been cancelled or suspended by a Regulatory Body, the membership of the Participant in a Regulatory Body that is a self-regulatory organization has been suspended or terminated, a Regulatory Body has taken steps to re structure the Participant, or a receiver or trustee has been appointed with respect to the Participant or its assets.</p> <p>Where a Participant is subject to Resolution and the Participant continues to meet its obligations to CDS, to the satisfaction of CDS, CDS may permit the Participant to have continued access to some or all CDS Services, Functions and system functionality in accordance with applicable Rules, Procedures, User Guides and agreements.</p>	<p>Ring;</p> <p>(vi) the Participant ceases to be eligible for participation in CDS or to satisfy the qualifications or standards set by the Rules;</p> <p>(vii) the Participant commits a breach of the provisions of the Legal Documents that CDS in its discretion considers to be a material breach;</p> <p>(viii) the Participant fails to Settle a Central Counterparty Obligation as and when required; or</p> <p>(ix) the registration or licence of the Participant has been cancelled or suspended by a Regulatory Body, the membership of the Participant in a Regulatory Body that is a self-regulatory organization has been suspended or terminated, a Regulatory Body has taken steps to re structure the Participant, or a receiver or trustee has been appointed with respect to the Participant or its assets.</p> <p>Where a Participant is subject to Resolution and the Participant continues to meet its obligations to CDS, to the satisfaction of CDS, CDS may permit the Participant to have continued access to some or all CDS Services, Functions and system functionality in accordance with applicable Rules, Procedures, User Guides and agreements.</p>
<p><b>9.1.3 Limitation of Liability for Suspension</b></p> <p>CDS shall not have any liability to any Participant, including the suspended Participant, for any act or omission <del>in relation to the suspension of a Participant pursuant to Rule 9.1.1 or</del> in relation to the exercise of its discretion whether or not to suspend a Participant pursuant to Rule 9.1.2, other than liability for a fraudulent act. Each Participant irrevocably releases CDS from any such liability. CDS shall not be liable to a Participant for any loss, damage, cost, expense, liability or claim suffered or incurred by the Participant arising from the suspension of a Participant or the exercise by CDS of its discretion whether or not to suspend a Participant, including any loss of opportunity, profit, market, goodwill, interest or use of money or Securities, or any other special, indirect or consequential loss, damage, cost, expense, liability or claim.</p>	<p><b>9.1.3 Limitation of Liability for Suspension</b></p> <p>CDS shall not have any liability to any Participant, including the suspended Participant, for any act or omission in relation to the exercise of its discretion whether or not to suspend a Participant pursuant to Rule 9.1.2, other than liability for a fraudulent act. Each Participant irrevocably releases CDS from any such liability. CDS shall not be liable to a Participant for any loss, damage, cost, expense, liability or claim suffered or incurred by the Participant arising from the suspension of a Participant or the exercise by CDS of its discretion whether or not to suspend a Participant, including any loss of opportunity, profit, market, goodwill, interest or use of money or Securities, or any other special, indirect or consequential loss, damage, cost, expense, liability or claim.</p>