13.3.2 OSC Staff Notice of Commission Approval – Material Amendments to CDS Rules and Procedures – CDCC Interface

CDS CLEARING AND DEPOSITORY SERVICES INC. ("CDS")

MATERIAL AMENDMENTS TO CDS RULES AND PROCEDURES

CDCC INTERFACE

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission ("Commission") and CDS, the Commission approved on February 14, 2012 amendments filed by CDS to its rules and procedures relating to the *CDCC Interface*. The amendments are effective on February 21, 2012.

Summary of Material Rule and Procedure Amendments

The proposed rule and procedure amendments address the industry's requirement for connectivity between CDS and the Canadian Derivatives Clearing Corporation ("CDCC") in order to implement CDCC's proposed fixed income central counterparty ("Fixed Income CCP") clearing facility. Phase 1 of the implementation of CDCC's Fixed Income CCP facility will process repurchase agreements (repos) in a limited number of Government of Canada or Government of Canada agency securities for Canadian financial market participants. CDCC's Fixed Income CCP facility will receive trade information from CDS and clear the trades prior to their being settled in CDSX between CDCC, as a CDS participant, and another CDS participant.

A copy of a CDS notice and draft of the proposed rule and procedure amendments were published for comment in the Commission's Bulletin on November 5, 2010 [(2010) 33 OSCB 10317]. A subsequent CDS notice describing further revisions to the proposed procedure amendments was published for comment in the Commission's Bulletin on July 8, 2011 [(2011) 34 OSCB 7738] to reflect changes made by the industry and CDCC to certain functional aspects of, and to the timing for implementing, CDCC's Fixed Income CCP. Such revised procedure amendments can be downloaded from CDS' Website at: http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open

Summary of Public Comments

CDS received one comment letter. See appendix A to this notice of approval for a summary of such comments and CDS' response.

Subsequent Revisions to the Material Rule Amendments

In consultation with, and at the request of, its regulators, CDS made a non-significant further revision to the proposed rule amendments that were published for comment in the Commission's Bulletin on November 5, 2010. The revision clarifies that partial settlements of trades received from CDCC as a "Third Party Clearing System" will <u>not</u> be permitted during Phase I of the implementation of CDCC's Fixed Income CCP clearing facility. This clarification is made in order to prevent any inconsistency between CDS Participant Rules and CDS Participant Procedures. More specifically, the functionality enabling partial settlement will not be available in Phase I of the implementation. No reference to such functionality, therefore, is required in the CDS rules.

The CDS rule amendments that were approved by the Commission are provided in Appendix B to this notice of approval (the non-significant revision has been marked to indicate the change from the previously published version).

APPENDIX A

SUMMARY OF COMMENTS

Name of commenter	Summary description of comments	CDS response
CDCC	CDCC is currently a CDS participant. The definition of "Third Party Clearing System" or "TPCS" and Rule 7.2.7(a) should be replaced by the following: "Third Party Clearing System" or "TPCS" means CDCC and any other clearing system to which CDS is authorized to report Trades; such a system must be a CDS Participant. (a) Third Party Clearing System status A TPCS must be a CDS Participant and, other than CDCC, must request such status as a TPCS from CDS.	CDS's practice is, to the furthest extent possible, not to hard-code particular entities into its rules.

APPENDIX B

RULE AMENDMENT

Text of CDS Participant Rules marked to reflect non- significant revisions to the proposed Rules published for comment on November 5 th , 2010	Text of CDS Participant Rules reflecting the adoption of non-significant revisions to the proposed Rules published for comment on November 5 th , 2010
1.2.1	1.2.1
"CDCC" means the Canadian Derivatives Clearing Corporation.	"CDCC" means the Canadian Derivatives Clearing Corporation.
"CDCC Interface" means the process by which CDS reports Trades identified with a Mode of Settlement of SNS to CDCC for clearing prior to such Trades being settled through the CDS Services.	"CDCC Interface" means the process by which CDS reports Trades identified with a Mode of Settlement of SNS to CDCC for clearing prior to such Trades being settled through the CDS Services.
"Mode of Settlement" means one of CNS, TFT, or SNS.	"Mode of Settlement" means one of CNS, TFT, or SNS.
"SNS" means SOLA Netting System.	"SNS" means SOLA Netting System.
"Third Party Clearing" means the process detailed in Rule 7.2.7.	"Third Party Clearing" means the process detailed in Rule 7.2.7.
"Third Party Clearing System" or "TPCS" means a clearing system to which CDS is authorized to report Trades; such a system must be a CDS Participant.	"Third Party Clearing System" or "TPCS" means a clearing system to which CDS is authorized to report Trades; such a system must be a CDS Participant.
"TPCS Mode of Settlement" means an Instruction to CDS by a Participant requiring CDS to report Trade Information to a Third Party Clearing System.	"TPCS Mode of Settlement" means an Instruction to CDS by a Participant requiring CDS to report Trade Information to a Third Party Clearing System.
3.1.3 Action by a Participant	3.1.3 Action by a Participant
CDS shall be entitled to rely on, and each Participant shall be bound by and shall be responsible to CDS and to other Participants for:	CDS shall be entitled to rely on, and each Participant shall be bound by and shall be responsible to CDS and to other Participants for:
(a) every communication, transaction, authorization or instruction validated by an Authentication Mechanism assigned to the Participant; and	(a) every communication, transaction, authorization or instruction validated by an Authentication Mechanism assigned to the Participant; and
(b) every act of, document signed by, or communication, transaction, authorization or instruction given by, any of its Signing Officers or Authorized Individuals;	(b) every act of, document signed by, or communication, transaction, authorization or instruction given by, any of its Signing Officers or Authorized Individuals;
(c) every communication, transaction, authorization or instruction received by CDS from a Third Party Clearing System on behalf of a Participant;	(c) every communication, transaction, authorization or instruction received by CDS from a Third Party Clearing System on behalf of a Participant;
3.3.7 Mandatory Trade Reporting	3.3.7 Mandatory Trade Reporting
All Trades between Participants in Securities that are eligible for Settlement in the Settlement Service shall be reported to CDS and shall include the applicable Mode of Settlement.	All Trades between Participants in Securities that are eligible for Settlement in the Settlement Service shall be reported to CDS and shall include the applicable Mode of Settlement.

3.3.9 Trade Management

At any time prior to Settlement, CDS may delete a particular Trade or any class of Trades from any Service if, on the evidence reasonably available to CDS, CDS considers such action necessary or desirable in the best interests of CDS and of Participants generally or to maintain the integrity of the Services. If a Participant is suspended or terminated, CDS may delete from the Services any or all Trades (but not Central Counterparty Obligations) of that Participant that have not Settled. The deletion prior to Settlement of a Trade from any Service does not affect any rights or obligations between the Participants who are parties to that Trade. which arise from the underlying agreement between such Participants. Where a Trade is submitted to CDS with a Third Party Clearing System Mode of Settlement, and where such Trade is rejected by the TPCS, CDS may, in accordance with the Procedures, and at any time prior to Settlement, modify the Mode of Settlement of a confirmed Trade between two Participants from its initial Mode of Settlement.

4.1.3 Indemnity by Participant Regarding Services Generally

Each Participant shall indemnify and hold harmless CDS, Nominees and all other Participants, and their respective partners, directors, trustees, officers, employees and agents, from and against any loss, damage, cost, expense, liability or claim (including the cost of legal counsel to advise on or defend against such claims) suffered or incurred by or made against it, them or any of them arising from:

- (a) any interruption, malfunction or disruption of any Service to the extent caused or contributed to by any negligent, reckless, willful, fraudulent or dishonest act or omission of the Participant, a Third Party Clearing System, or of any director, trustee, officer, partner, employee, servant, contractor or agent of the Participant or Third Party Clearing System done while acting in the course of office or employment or made possible by information or opportunities afforded by such office or employment;
- (b) any incorrect instructions, information or documentation provided to CDS by the Participant or by a Third Party Clearing System used by the Participant; and
- (c) any breach by the Participant of its obligations, representations or warranties under the Legal Documents.

4.1.4

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(g) the failure of the Participant to provide or cause to be provided a declaration as required;

Text of CDS Participant Rules reflecting the adoption of non-significant revisions to the proposed Rules published for comment on November 5th, 2010

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4.1.3 Indemnity by Participant Regarding Services Generally

Each Participant shall indemnify and hold harmless CDS, Nominees and all other Participants, and their respective partners, directors, trustees, officers, employees and agents, from and against any loss, damage, cost, expense, liability or claim (including the cost of legal counsel to advise on or defend against such claims) suffered or incurred by or made against it, them or any of them arising from:

- (a) any interruption, malfunction or disruption of any Service to the extent caused or contributed to by any negligent, reckless, willful, fraudulent or dishonest act or omission of the Participant, a Third Party Clearing System, or of any director, trustee, officer, partner, employee, servant, contractor or agent of the Participant or Third Party Clearing System done while acting in the course of office or employment or made possible by information or opportunities afforded by such office or employment;
- (b) any incorrect instructions, information or documentation provided to CDS by the Participant or by a Third Party Clearing System used by the Participant; and
- (c) any breach by the Participant of its obligations, representations or warranties under the Legal Documents.

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(g) the failure of the Participant to provide or cause to be provided a declaration as required;

- (h) the reporting of a Trade to, or receipt of a Trade from, a Third Party Clearing System;
- (i) (h) the purchase, sale, redemption or cancellation of Securities by the Issuer as the result of the information contained in a declaration provided by the Participant; or
- (j) (i) any breach by the Participant of its obligations, representations or warranties under the Legal Documents.

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(c) Indemnified Claim

For the purposes of this Rule 4.1.5, an indemnified claim is any loss, damage, cost, expense, liability or claim (including the cost of legal counsel to advise on or defend against such claims) that arises from or is in any way connected with a Service, and which is described in Rule 4.1.3 or Rule 4.1.4, or which relates to (i) Securities held by CDS for the Participant er_(ii) any action taken or omitted by CDS with respect to Securities held for the Participant at the time such action is taken or omitted, or (iii) the reporting of a Trade to or receipt of a Trade from a Third Party Clearing System on the instructions of a Participant.

4.2.3 CDS Liability for Participant Loss

CDS shall be liable to its Participants for any Participant Loss, subject to the limitations set out in Rules 4.2.5 and 4.2.9. A "Participant Loss" means any loss, damage, cost, expense, liability or claim suffered or incurred by a Participant, other than a Loss of Securities, which arises from a Participant's participation in a Service, but only to the extent such was caused or contributed to by any act or omission of CDS or of any director, officer, employee, contractor or agent of CDS done while acting in the course of office, employment or service or made possible by information or opportunities afforded by such office, employment or service. Neither None of DTC nor, NSCC, or a TPCS shall be considered to be an agent of CDS for purposes of this Rule 4.2.3. Notwithstanding the foregoing acceptance of liability. CDS shall not be liable to a Participant for any Participant Loss in respect of which that Participant is required to make indemnification pursuant to Rules 4.1, 10.2 or 10.5, nor for any Participant Loss arising from the Delivery Services.

7.1.1 Overview of Settlement Service

The Settlement Service is a Service established by CDS to provide for the Settlement of Trades in eligible Securities, through the delivery of Securities and the making of payment on the records of CDS. Securities become eligible for CDSX as described in Rule 6.2; the Procedures and User Guides describe the Securities that are eligible for a particular Function in the Settlement Service. The Settlement of a Trade involves several steps:

Text of CDS Participant Rules reflecting the adoption of non-significant revisions to the proposed Rules published for comment on November 5th, 2010

- (h) the reporting of a Trade to, or receipt of a Trade from, a Third Party Clearing System;
- (i) the purchase, sale, redemption or cancellation of Securities by the Issuer as the result of the information contained in a declaration provided by the Participant; or
- (j) any breach by the Participant of its obligations, representations or warranties under the Legal Documents.

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(c) Indemnified Claim

For the purposes of this Rule 4.1.5, an indemnified claim is any loss, damage, cost, expense, liability or claim (including the cost of legal counsel to advise on or defend against such claims) that arises from or is in any way connected with a Service, and which is described in Rule 4.1.3 or Rule 4.1.4, or which relates to (i) Securities held by CDS for the Participant, (ii) any action taken or omitted by CDS with respect to Securities held for the Participant at the time such action is taken or omitted, or (iii) the reporting of a Trade to or receipt of a Trade from a Third Party Clearing System on the instructions of a Participant.

4.2.3 CDS Liability for Participant Loss

CDS shall be liable to its Participants for any Participant Loss, subject to the limitations set out in Rules 4.2.5 and 4.2.9. A "Participant Loss" means any loss, damage, cost, expense, liability or claim suffered or incurred by a Participant, other than a Loss of Securities, which arises from a Participant's participation in a Service, but only to the extent such was caused or contributed to by any act or omission of CDS or of any director, officer, employee, contractor or agent of CDS done while acting in the course of office, employment or service or made possible by information or opportunities afforded by such office, employment or service. None of DTC, NSCC, or a TPCS shall be considered to be an agent of CDS for purposes of this Rule 4.2.3. Notwithstanding the foregoing acceptance of liability, CDS shall not be liable to a Participant for any Participant Loss in respect of which that Participant is required to make indemnification pursuant to Rules 4.1, 10.2 or 10.5, nor for any Participant Loss arising from the Delivery Services.

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- (a) The details of Trades between Participants that are to be Settled through the Service are reported to CDS.
- (b) If the Trade instructions specify a TPCS Mode of Settlement, the Trade is reported to the TPCS.
- (c) (b) If the Trade instructions pass the pre-entry system edits, the Trade is entered into the system to be considered for Settlement.
- (d) (e) A Trade may be Settled either (i) without pre-Settlement netting using the Trade-For-Trade method, or (ii) with pre-Settlement novation and netting using one of the CNS or Flnet Functions to process Central Counterparty Obligations.
- (e) (d) The Settlement of each pending Trade using the Trade-for-Trade method is effected by means of payment and delivery of Securities between Participants. The Settlement of each outstanding Central Counterparty Obligation is effected by means of payment and delivery of Securities between Participants and CDS. Payment is made through the Settlement Service by book entry on the records of CDS. Securities are delivered either by the book delivery on the records of CDS of Securities held in the Depository Service or by the physical delivery of Security Certificates (if the Trade is to be Settled using the Certificate Based Settlement method).
- (f) If the Trade is reported with a TPCS Mode of Settlement, and the Third Party Clearing System has netted the Trade prior to the position's having been reported to CDS, the Trade representing the netted position will Settle on a Trade-for-Trade basis between the Participant and the Third Party Clearing System.
- (g) (e) There are four Settlement processes: the Intraday Continuous Net Settlement Process, the Real Time TFT Settlement Process the Combined Batch Net Settlement/Continuous Net Settlement Process and the FINet Real Time Settlement Process.

7.2.6 Mode of Settlement

Each Trade must include a mode of settlement indicator that is one of Trade-for-Trade, <u>SNS</u> or CNS. The mode of settlement indicator is either included in the instructions when the Trade is reported or confirmed, or is added automatically by the system in accordance with the criteria in the Procedures and User Guides. <u>The system may only change or modify a Mode of Settlement indicator to Trade-for-Trade or CNS; CDSX may not add a Mode of Settlement indicator of SNS. A Trade identified with a TPCS Mode of Settlement shall not be considered for Settlement within CDSX.</u>

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- (f) If the Trade is reported with a TPCS Mode of Settlement, and the Third Party Clearing System has netted the Trade prior to the position's having been reported to CDS, the Trade representing the netted position will Settle on a Trade-for-Trade basis between the Participant and the Third Party Clearing System.
- (g) There are four Settlement processes: the Intraday Continuous Net Settlement Process, the Real Time TFT Settlement Process the Combined Batch Net Settlement/Continuous Net Settlement Process and the FINet Real Time Settlement Process.

7.2.6 Mode of Settlement

Each Trade must include a mode of settlement indicator that is one of Trade-for-Trade, SNS or CNS. The mode of settlement indicator is either included in the instructions when the Trade is reported or confirmed, or is added automatically by the system in accordance with the criteria in the Procedures and User Guides. The system may only change or modify a Mode of Settlement indicator to Trade-for-Trade or CNS; CDSX may not add a Mode of Settlement indicator of SNS. A Trade identified with a TPCS Mode of Settlement shall not be considered for Settlement within CDSX.

7.2.7 Third Party Clearing Systems

(a) Third Party Clearing System status

A TPCS must be a CDS Participant, and must request such status as a TPCS from CDS.

(b) Trade Reporting to a Third Party Clearing System

CDS shall establish those Trades to be reported to a TPCS in accordance with the criteria set out in the Procedures.

(c) Trade-for-Trade Settlement of Trades reported by Third Party Clearing System

<u>Trades reported from a TPCS to CDS shall Settle on a Trade-for-Trade basis in accordance with Rule 7.5.2, with the TPCS as the counterparty to each Trade.</u>

(d) Partial Delivery by Third Party Clearing System

When an outstanding TPCS Obligation is considered for TFT Settlement and the Settlement of the entire TPCS Obligation would not pass the pre-Settlement edit, but a partial Settlement of the TPCS Obligation would pass the pre-Settlement edits, then CDS may modify the original Trade in order to partially Settle that portion of the Trade which would otherwise be eligible for TFT Settlement but for the restriction of Rule 7.5.2(d). Partial Settlement of a TPCS obligation results in the deletion of the original Trade and the creation of two new Trades, one for the amount of the available Securities or Funds, and one for the outstanding remainder. The former Trade will Settle by the delivery of only some of the Securities required and the making of a corresponding partial payment: the latter Trade will remain outstanding, to be reconsidered for Settlement. A pending Trade that constitutes the remainder of a partial Settlement may itself be partially Settled by the same process as defined herein.

7.5.2 Real Time TFT Process

The Real Time TFT Settlement Process:

- (a) is run throughout the time the system is operating;
- (b) processes Settlement of pending Trades that have a Trade-for-Trade mode of settlement indicator (including Pledges.);
- (c) does not novate or net newly reported Trades to create new Central Counterparty Obligations; and
- (d) Settles a Trade only if the entire Trade can be Settled. except when such Trade is reported by a Third Party Clearing System as described in Rule 7.2.7.

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CDS shall establish those Trades to be reported to a TPCS in accordance with the criteria set out in the Procedures.

(c) Trade-for-Trade Settlement of Trades reported by Third Party Clearing System

Trades reported from a TPCS to CDS shall Settle on a Trade-for-Trade basis in accordance with Rule 7.5.2, with the TPCS as the counterparty to each Trade.

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The Real Time TFT Settlement Process:

- (a) is run throughout the time the system is operating;
- (b) processes Settlement of pending Trades that have a Trade-for-Trade mode of settlement indicator (including Pledges.);
- (c) does not novate or net newly reported Trades to create new Central Counterparty Obligations; and
- (d) Settles a Trade only if the entire Trade can be Settled.