



## NOTICE TO MEMBERS

No. 2012-179

September 26, 2012

### REQUEST FOR COMMENTS

#### AMENDMENT TO RULE A-1A AGENCY RELATIONSHIP CRITERIA

On July 30, 2012, The Board of Directors of Canadian Derivatives Clearing Corporation (CDCC) approved the amendment to Section A-1A01 of the CDCC Rules. The purpose of the proposed amendment is to replace the requirement that the agent be a clearing member of CDCC by the requirement that the agent be a participant in good standing of the central securities depository.

Please find enclosed an analysis document as well as the proposed amendment.

#### Process for Changes to the Rules

CDCC is a recognized self-regulatory organization (SRO) by the Autorité des marchés financiers (AMF) and as such, carries on activities as a clearing house and as an SRO in Québec.

The Board of Directors of CDCC has the power to approve the adoption or amendment of Rules of CDCC. Amendments are submitted to the AMF in accordance with the self-certification process.

Comments on the proposed amendments must be submitted within 30 days following the date of publication of the present notice. Please submit your comments to:

*Pauline Ascoli*  
*Assistant Secretary*  
*Canadian Derivatives Clearing Corporation*  
*Tour de la Bourse*  
*P.O. Box 61, 800 Victoria Square*  
*Montréal, Québec H4Z 1A9*  
*E-mail: [legal@m-x.ca](mailto:legal@m-x.ca)*

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#### Canadian Derivatives Clearing Corporation

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A copy of these comments shall also be forwarded to the AMF to:

*Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
Tour de la Bourse, P.O. Box 246  
800 Victoria Square, 22<sup>nd</sup> Floor  
Montréal, Québec H4Z 1G3  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)*

For any question or clarification, Clearing Members may contact the CDCC Member Services.

Glenn Goucher  
President and Chief Clearing Officer

## Agency Relationship Criteria

### AMENDMENT TO CDCC RULES

#### **A. Overview**

CDCC allows for a Clearing Member to use the services of an agent for purposes of meeting its settlement and pledging obligations at the central securities depository, but the current provision requires that the agent be itself a Clearing Member of CDCC; which is a requirement that CDCC proposes to replace by the requirement to be a participant in good standing with the central securities depository instead, in line with what other clearing houses require for this kind of agency relationship.

#### **B. Analysis**

##### Nature and Purpose of Proposed Changes:

Section A-1A01 of the CDCC rules states that a Clearing Member that is not a full member participant in good standing with CDS can enter into an agency agreement with another Clearing Member of the Corporation to act as its agent for purposes of fulfilling its obligations.

In order to facilitate direct membership without requiring a potential new Clearing Member to change clearing firm, CDCC proposes to modify section A-1A01 to remove the requirement that the agent be a Clearing Member of CDCC.

##### Description and Analysis of Impacts:

The proposed change would permit any potential new Clearing Member that is otherwise eligible, to become a Clearing Member without changing the settlement agency agreement it currently has with a clearing firm that is not a CDCC Clearing Members, so long as it is a full participant in good standing of CDS and it meets certain requirements set forth in an agency agreement.

The change made to Section A-1A01, last paragraph, is to remove the reference to “another Clearing Member” and replace it by referencing “a full member participant in good standing with CDS that meets certain requirements established by the Corporation”. The reference to clause (e) of Section A-1A01 is also removed as it is not clear that CO2e Units would be settled through CDS.

##### Drafting Process:

The drafting process was driven by the need to remain consistent with other CCPs active in this market segment.

No other alternatives were considered.

##### Impacts on Technological Systems:

The proposed changes should have no impact on the technological systems of CDCC, Clearing Members or other market participants.

## Benchmarking:

The proposed changes are aligned with the operations of other global CCPs which are active in the Repurchase markets, for example LCH Clearnet SA, in section 2.2.3 of its rulebook, copied for reference hereafter:

### *Section 2.2.3 Third party contractual obligations*

#### *A. Relationship with Settlement Agents and Payment Agents*

##### *A.1. Common provisions*

###### *Article 2.2.3.1*

*A Clearing Member that wishes to use a Settlement Agent and/or a Payment Agent must guarantee that the agreement(s) by which the Settlement Agent and/or the Payment Agent agrees to deliver Securities or to pay cash amounts, as the case may be, to LCH.Clearnet SA on behalf of the Clearing Member is in accordance with the LCH.Clearnet SA's requirements.*

*The provisions which are required to be included in such agreement(s) are outlined in a declaration of compliance the template of which is annexed in the admission file. This declaration of compliance is duly filled in by the Clearing Member and sent back to LCH.Clearnet SA.*

*Any substantial amendment to principles dealt with in the declaration of compliance shall be notified to LCH.Clearnet SA prior to their effectiveness. Notwithstanding the above, such an agreement(s) shall not relieve the Clearing Member from its obligations under the Clearing Rules.*

##### *A.3. Provisions related to Settlement Agents*

###### *Article 2.2.3.5*

*Clearing Members must ensure that they are able to:*

- perform the settlement of all their Transactions irrespective of the currency in which they are settled as described in an Instruction;*
- and, if relevant, provide Securities as Collateral.*

*To that end each Clearing Member shall have entered into appropriate arrangements with the relevant Central Securities Depositories of Reference or Securities Settlement System as described in an Instruction.*

###### *Article 2.2.3.6*

*When the obligations set-up in Articles 2.2.3.5 regarding the settlement and the provision of Securities as Collateral are performed indirectly through a Settlement Agent, the Clearing Member shall sign an agreement with the Settlement Agent.*

[http://www.lch.co.uk/Images/rule%20book%20july%202012\\_tcm6-44081.pdf](http://www.lch.co.uk/Images/rule%20book%20july%202012_tcm6-44081.pdf)

**C. Public Interest**

This amendment to the CDCC Rules is not contrary to the public interest.

**D. Process**

The proposed amendment is submitted for approval by the CDCC Board. Once the approval has been obtained, the proposed amendment, including this analysis, will be transmitted to the Autorité des marchés financiers in accordance with the self-certification process and to the Ontario Securities Commission for information. The proposed amendment and analysis will also be submitted for approval to the Bank of Canada in accordance with the Oversight Regulatory Agreement.

**E. Attached Documents**

- Amended Section A-1A01 of the CDCC Rules

## RULE A-1A MEMBERSHIP IN THE CORPORATION

### Section A-1A01 – Eligibility for Membership

- (a) In order to apply for membership, an applicant must be:
- i) a member or approved participant in good standing with an exchange recognized in a Canadian province; or
  - ii) a bank or an authorized foreign bank to which the Bank Act (Canada), as amended from time to time, applies.
- (b) A Clearing Member that intends to submit Stock Options or Share Futures to the Corporation for clearing must be a full member participant in good standing with CDS.
- (c) A Clearing Member that intends to submit bond Options and/or bond Futures to the Corporation for clearing, must be a full member participant in good standing with CDS.
- (d) A Clearing Member that intends to submit physically settled OTCI transactions to the Corporation for clearing, must ensure that it and/or its Client is in good standing and remains as such at all times with the appropriate Market Centres and/or Delivery Agents. Furthermore, and where appropriate, the Clearing Member and/or its Client need to ensure access to a transportation system for the physical transport of the Underlying Interest to the appropriate Market Centres and/or Delivery Agents.
- (e) A Clearing Member that intends to submit Futures Contracts on Carbon Dioxide Equivalent (CO<sub>2</sub>e) Units with physical settlement to the Corporation for clearing must ensure that at all times it and/or its client is and remains in good standing with the Registry as this term is defined in Section A-102 of the Rules.
- (f) A Clearing Member that intends to submit Fixed Income Transactions to the Corporation for clearing must be a full member participant in good standing with CDS.

The Corporation may in its sole discretion waive the requirements set forth in clauses (b), (c), (d), ~~(e)~~ or (f) if the Clearing Member enters into an agency agreement with a full member participant in good standing with CDS~~another Clearing Member~~, that meets certain requirements established by the Corporation, which agency agreement shall be in form and substance satisfactory to the Corporation, pursuant to which such entity~~other Clearing Member~~ agrees to act as the ~~first~~ Clearing Member's agent for the purpose of fulfilling such Clearing Member's obligations to the Corporation under these Rules and the Application for Membership.

### Section A-1A02 Standards of Membership

Every applicant to become a Clearing Member must meet such standards as may be adopted from time to time by the Board, including the following:

- (a) the applicant must meet the minimum capital requirements then in effect, in accordance with Section A-301;

(b) the applicant must be engaged, or propose to engage, in the clearance of Options or Futures which are the subject of Exchange Transactions or in the clearance of Fixed Income Transactions or other OTCI transactions through the facilities of the Corporation;

(c) the applicant shall demonstrate to the Corporation that it maintains adequate operations facilities and staff and has sufficient and competent personnel for the expeditious and orderly transactions of business with the Corporation and other Clearing Members, and to meet the requirements of these Rules; and

(d) the applicant has deposited with the Corporation its initial deposit with the Clearing Fund in the amount and at the time required by the Rules and has signed and delivered to the Corporation an agreement in such form as the Board shall require.

### **Section A-1A03 Admission Procedure**

Applications for membership shall be in such form and contain such information as the Board shall from time to time prescribe. Officers of the Corporation shall review applications for membership and shall recommend approval or disapproval thereof to the Board. The Corporation may but is not obligated to examine the books and records of any applicant, and take such evidence as it may deem necessary or employ such other means as it may deem desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications. If the officers of the Corporation propose to recommend to the Board that an application for membership be disapproved, it shall first notify the applicant of its proposed recommendation and the grounds therefore, and shall afford the applicant an opportunity to be heard and to present evidence on its own behalf.

If the applicant fails to request a hearing or if, after a hearing, officers of the Corporation still propose to recommend disapproval, officers of the Corporation shall make their recommendation to the Board in writing, accompanied by a statement of the grounds therefore, and a copy thereof shall be furnished to the applicant on request.

The Board shall independently review any recommendation by officers of the Corporation, and if the applicant so requests, afford the applicant further opportunity to be heard and to present evidence. If the Board disapproves the application, written notice of its decision, accompanied by a statement of the grounds thereof, shall be provided to the applicant.

An applicant shall have the right to present such evidence as it may deem relevant to its application.

Nothing contained herein shall be construed as derogating or attempting to derogate from the right of any applicant whose application has been disapproved to avail itself of any right of appeal which is provided to such applicant by applicable law.

### **Section A-1A04 Non-Conforming Member**

(1) A Clearing Member who is or may become insolvent or unable to meet its obligations shall immediately notify the Corporation of its situation by telephone. Such notice shall be confirmed by the Clearing Member by notice in writing to the Corporation sent by facsimile transmission within the next business day.

(2) A Clearing Member who, in the judgement of the Corporation or pursuant to notification to the Corporation under Subsection (1), is or may be insolvent or unable to meet its obligations, becomes a Non-Conforming Member.

(3) Without limiting the application of this Rule, any one of the following events, whether actual or anticipated by the Corporation, constitutes a reasonable ground for the Corporation to determine in its judgement that a Clearing Member is a Non-Conforming Member:

- (a) breach of any term, eligibility, qualification, standard or condition of the Application for Membership or any other violation of these Rules;
- (b) breach of a rule of an Exchange, a Central Securities Depository, an applicable self-regulatory organization or regulatory agency, or of any other recognized, designated or foreign investment exchange or clearing agency;
- (c) refusal of an application for membership, breach of the terms of membership or contractual agreement, or suspension, termination or expulsion from membership of an Exchange, a Central Securities Depository, an applicable self-regulatory organization, Market Centres and/or Delivery Agents, the Registry, or any other recognized, designated or foreign investment exchange or clearing agency;
- (d) refusal of a licence, breach of the terms of its licence or withdrawal or suspension of such licence by a regulatory agency;
- (e) contemplated, threatened or actual action by a regulatory agency, a court of justice or administrative authority against or in respect of the Clearing Member under any provision or process of law or regulation;
- (f) default in a payment, deposit, delivery or acceptance of delivery required or payable under the Application for Membership or these Rules;
- (g) an order, arrangement, proposal, distress or execution is presented, made or approved in any jurisdiction to or by a court of competent jurisdiction relating to the bankruptcy, insolvency, winding up of the Clearing Member or the appointment of an administrator, receiver manager, trustee, or person with similar power in connection with the Clearing Member;
- (h) the determination on reasonable grounds by the Corporation that the Clearing Member is in such financial or operating condition that its continuation as a Clearing Member in good standing would jeopardize the interests of the Corporation or other Clearing Members;
- (i) any of the conditions set out in paragraphs (a) to (h) applies to an Affiliate of a Clearing Member, having, in the reasonable judgement of the Corporation, a material impact on the financial condition of the Clearing Member; or
- (j) such other event as the Board or, if time does not permit action by the Board, the Corporation in its sole discretion reasonably determines to constitute reasonable grounds for such determination.



(4) If a Clearing Member is late in making a payment at Settlement Time, the Corporation shall impose fines and may deem that Clearing Member a Non-Conforming Member, in accordance with Section 7 of the Operations Manual. In addition, the Board may take disciplinary measures set forth in Rule A-5 against the Non-Conforming Member.

(5) Except where the Corporation has been notified under Subsection (1), the Corporation shall, in writing or by telephone, notify a Clearing Member that it has become a Non-Conforming Member. The Corporation may also, in its sole discretion, notify the Board, all Clearing Members, the Exchanges, the appropriate self-regulatory organization or regulatory agency that the Clearing Member is a member of, the regulatory agency of the Corporation, and such other Entities as the Corporation may consider appropriate.

(6) The Corporation can revert the status of a Non-Conforming Clearing Member to a Clearing Member in good standing if the Clearing Member resolves, to the satisfaction of the Corporation, the issue(s) which led to its Non-Conforming status.

### **Section A-1A05 Suspension**

(1) The Board may suspend a Non-Conforming Member, taking into consideration whether the suspension may protect the integrity of the market.

(2) Upon such suspension, the Corporation shall cease to act for the suspended Non-Conforming Member.

(3) The suspension may be total or may be for any function with respect to a particular security or class of securities, with respect to a particular transaction or class of transactions, or with respect to securities or transactions generally. Any suspension may be limited to a particular location or office of the Non-Conforming Member.

(4) The Board may lift the suspension of the Non-Conforming Member if the Corporation in its sole discretion determines that the Non-Conforming Member has corrected the situation which caused the Corporation to suspend the Non-Conforming Member in such a manner that it is unlikely to occur again.

(5) A suspended Non-Conforming Member shall remain liable to the Corporation for all obligations, costs and expenses, including all Margin requirements, including calls whether occurring before or after suspension, and other requirements, arising out of or in connection with such Non-Conforming Member's positions, and shall cooperate fully with the Corporation in respect of all matters arising out of or relating to the settling of or dealing with such positions.

### **Section A-1A06 Notice of Suspension to Clearing Members**

Upon the suspension of a Non-Conforming Member, the Corporation shall notify all Clearing Members, the Exchanges, and the suspended Non-Conforming Member's applicable self-regulatory organization or regulatory agency, the regulatory agency of the Corporation and such other Entities as the Corporation may consider appropriate. Such notice shall state, in general terms, how pending Exchange Transactions, Open Positions, tendered Exercise Notices or Tender Notices, Exercised Positions, Assigned Positions, and other pending matters will be affected, what steps are to be taken in connection therewith, and the right of the suspended Non-Conforming Member to appeal the suspension before the Board.

### **Section A-1A07 Appeal of Suspension**

A Non-Conforming Member suspended pursuant to Section A-1A05 shall receive from the Corporation a written statement of the grounds for its suspension, and shall have the right to appeal its suspension within ten business days from the effective date of the suspension.

Where a suspended Non-Conforming Member appeals its suspension, the Board shall give the appellant the opportunity to be heard as promptly as possible, and in no event more than 14 days after the filing of the notice of appeal.

The appellant shall be notified of the time, place and date of the hearing not less than three business days in advance of such date. At the hearing, the appellant shall be afforded an opportunity to be heard and to present evidence on its own behalf and may, if it so desires, be represented by counsel. As promptly as possible after the hearing the Board shall, by the vote of a majority of its members, affirm or reverse the suspension, and then instruct the Secretary of the Corporation to notify the appellant in writing of the decision. If the decision shall have been to affirm the suspension, the appellant shall be given a written statement of the grounds thereof.

The filing of an appeal of a suspension shall not impair the validity or stay the effect of the suspension appealed from. The reversal of a suspension shall not invalidate any acts of the Corporation taken prior to such reversal pursuant to such suspension and the rights of any person which may arise out of any such acts shall not be affected by the reversal of such suspension.

Nothing contained herein shall be construed as derogating or attempting to derogate from the right of any Clearing Member the suspension of which has been affirmed by the Board to avail itself of any right of appeal which is provided to such Clearing Member by applicable law.

### **Section A-1A08 Termination of Membership**

(1) The Board shall, at its next meeting following the calendar month in which the Non-Conforming Member is suspended, or if an appeal is heard pursuant to Section A-1A07, following the calendar month in which the Board has affirmed the decision to suspend, lift the suspension or terminate the membership in the Corporation of a suspended Non-Conforming Member.

(2) A Non-Conforming Member shall be given the opportunity to be heard by the Board before its membership is terminated.

(3) Fifteen business days before the meeting of the Board at which the termination of a suspended Non-Conforming Member is to be considered, the Corporation shall give to the suspended Non-Conforming Member notice in writing of the meeting and a summary of the reasons for the proposed termination.

(4) A committee of the Board shall not exercise the powers of the Board under this Rule, and the Board and the suspended Non-Conforming Member may mutually agree on a variation of such notification and meeting date.

(5) The suspended Non-Conforming Member shall cease to be a Clearing Member as of the date and hour specified in the written decision of the Board.

(6) The Corporation shall notify the regulatory bodies which have jurisdiction over the Corporation when a meeting of the Board is called to authorize the termination of the membership of a suspended Non-Conforming Member.

(7) The Corporation shall promptly notify other Clearing Members, the Exchanges, the suspended Non-Conforming Member's applicable self-regulatory organization or regulatory agency, the regulatory agency of the Corporation and such other Entities as the Corporation may consider appropriate, that the Board has terminated the membership of a suspended Non-Conforming Member, indicating the effective date of the termination.

#### **Section A-1A09 Voluntary Withdrawal**

(1) A Clearing Member which shall include a Non-Conforming Member (whether or not suspended) may at any time notify the Corporation in writing of its withdrawal as a Clearing Member and shall cease to be a Clearing Member thirty days following said notification.

(2) The Corporation shall promptly notify the Board, the other Clearing Members, the Exchanges, the suspended Non-Conforming Member's applicable self-regulatory organization or regulatory agency, the regulatory agency of the Corporation and such other Entities as the Corporation may consider appropriate, that it has received notice of the Clearing Member's withdrawal from membership in the Corporation and the effective withdrawal date.

#### **Section A-1A10 Transfer/Survival of Obligations**

(1) A Clearing Member may not allocate or transfer any rights or obligations under any Transaction confirmed in its name except as otherwise expressly provided in these Rules or with the prior consent of the Corporation, in its sole discretion.

(2) The liabilities and obligations of a Clearing Member to the Corporation and to other Clearing Members, and of the Corporation and other Clearing Members to the Clearing Member, arising from its membership shall survive the suspension, termination or withdrawal of the Clearing Member's membership as though the former Clearing Member were still a Clearing Member.

(3) Nothing contained herein shall be construed as derogating or attempting to derogate from the right of any suspended or terminated Non-Conforming Member to avail itself of any right of appeal which is provided by applicable law.

#### **Section A-1A11 Reinstatement of membership**

(1) A Clearing Member which has withdrawn as a Clearing Member or had its membership terminated may at any time be considered for reinstatement by the Board provided that the Clearing Member, if it is then eligible for membership, re-applies to become a Clearing Member, pays any entrance or reinstatement fee determined by the Board, meets the standards and qualifications for membership, demonstrates to the satisfaction of the Board that it has discharged all of its liabilities and indebtedness to the Corporation and the other Clearing Members, and the application for membership is accepted by the Board.

(2) The Board may, in its sole discretion and on terms and conditions determined by the Board, approve or reject the new application for membership from a terminated or withdrawn Clearing Member. A committee of the Board shall not exercise the powers of the Board under this Rule.