ASTANA INTERNATIONAL EXCHANGE

CENTRAL SECURITIES DEPOSITORY

MARKET CONSULTATION PAPER NO. 3 /2021

AMENDMENTS TO AIX CENTRAL SECURITIES DEPOSITORY BUSINESS RULES

I. Overview

1. This consultation paper is issued by Astana International Exchange Central Securities Depository Limited (AIX CSD) in order to invite all interested parties to comment on the amendments to AIX CSD Business Rules.
2. Proposed amendments to AIX CSD Business Rules are introduced in order to:
   (i)   enable the recording of security interest in securities approved to admission in AIX CSD (Admitted Products) and
   (ii)   set up a procedure of financial collateral appropriation in the event of debtor's default.
3. All comments should be in writing and sent to a.satybaldiyev@aix.kz.
4. In sending your comments by email, please state "AIX CSD Consultation Paper No. 3/2021" as the subject and include your name, job title, contacts and organisation you represent in the email body. AIX CSD reserves the right to publish and share with third parties any comments received as part of Market Consultation, unless expressly requested otherwise at the time of making comments.
5. The deadline for providing comments is **March 9, 2021.**
6. Comments received as part of Market Consultation will be considered and will or will not be incorporated in the final draft of revised AIX CSD Business Rules at the discretion of AIX CSD.

II. Background

AIX CSD sees a high demand among its customers for Admitted Products to be used as a financial collateral in their money lending and borrowing transactions. However, currently AIX CSD does not provide that kind of service and does not have appropriate rules and procedures to deal with that transactions.

In turn, on the level of AIFC Regulations the necessary mechanisms are already in existence.[1] AIFC Security Regulations and AIFC Security rules give basis to granting and entitlement of security interest in any kind of property and conditions of that security interest enforceability together with appropriation of financial collateral.

AIX CSD intends to introduce new rules to deal with financial collateral transactions. The ultimate goal is to increase attractiveness of AIFC jurisdiction and, in particular, AIX market. Proposed amendments will facilitate using of securities tradable at AIX market as financial collaterals. This would also implicate additional types of transactions such as lending and borrowing where creditor interests could be secured by financial collateral. For this purpose, new amendments have been drafted.

III. Summary of key modifications

AIX CSD is proposing to amend AIX CSD Business Rules so as to establish procedures of:

i) granting of security interest in Admitted Product and recording that security interest in the AIX CSD system.

ii) discharging of security interest.

iii) appropriation of financial collateral, and exclusion of AIX CSD liability in event of any claims of parties to transaction.

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[1] Correspondingly established in the current framework regulations: AIFC Financial Services Framework Regulations, AIFC Authorised Market Institution Rules, AIFC Security Regulations, AIFC Security Rules, AIX CSD Business Rules.

IV. Draft of proposed amendments for Market Consultation

AMENDMENTS to AIX Central Securities Depository Business Rules

Additional Definitions

Debtor has a meaning given in AIFC Security Regulation (AIFC Regulation No7 of 2017)

Security Interest has a meaning given in AIFC Security Regulation (AIFC Regulation No7 of 2017)

Secured Party has a meaning given in AIFC Security Regulation (AIFC Regulation No7 of 2017)

4.3–1 Security Interest

4.3–1.1.   A **Participant** may by **Notice** to **Depository** and submitting other relevant documentation in accordance with **Procedure**, require **Depository** to record the **Security Interest** of another **Participant** who is a **Secured Party**, in specified **Admitted Product** held in **Account** (other than a Settlement Account) of that Participant, for the purposes of provisions of AIFC Security Rules No3 of 2018. On receipt of such **Notice**, **Depository** may record such **Security Interest** in the relevant **Admitted Product** in the relevant records. **Depository** is not required to ascertain the validity or the terms of any **Security Interest** before recording that **Security Interest**.

A **Participant** who is a **Debtor** by giving **Notice** to record other **Participant Security Interest** is deemed to indemnify **Depository** (and **Nominee**) against any claim, action or loss that may arise against **Depository (**or **Nominee**) or that **Depository** (or **Nominee**) may suffer as a result of effecting the transfer of the **Admitted Product** in accordance with Rule 4.3-1.4.

4.3–1.2.   A **Participant** who is a **Secured Party** in respect of any **Admitted Product** may, by **Notice** to **Depository**, notify **Depository** that its **Security Interest** has been discharged. On receipt of such **Notice**, **Depository** as soon as is reasonably practicable record the discharge of such **Security Interest** in the relevant **Admitted Product** in the relevant records. **Depository** is not required to ascertain the validity or terms of any discharge of **Security Interest** before recording that discharge.

4.3–1.3.   While a **Security Interest** is recorded with Rule 4.3-1.1, and before it has been discharged pursuant to Rule 4.3-1.2, notwithstanding the terms of that **Security Interest**:

a)   the **Debtor** will be entitled to interest, dividends and other Income derived from the **Admitted Product**, including any amount payable on maturity of the **Admitted Product**;

b)   except as provided by Rule 4.3-1.4, neither the **Debtor** nor the **Secured Party** are entitled to give an instruction in respect of the **Admitted Product**; and

c)   except as provided by Rule 4.3-1.4, neither the **Debtor** nor the **Secured Party** are entitled to **Uplift** the **Admitted Product.**

4.3–1.4   Where a **Participant** who is a **Secured Party** is entitled pursuant to section 2.11 of AIFC Security Rules No3 of 2018 to take possession of and dispose of any **Admitted Product**, that **Secured Party** may, by **Notice** to **Depository**, instruct **Depository** to transfer the **Admitted Product** to an **Account** of that **Secured Party**. **Depositary** is not required to ascertain the validity or the entitlement of a **Secured Party** to give such a **Notice** and may accept that **Notice** as being valid and effective without further enquiry. On giving a **Notice** in accordance with this **Rule** and **Procedure**, a **Participant** who is **Secured Party** is deemed to have represented and warranted to **Depository** (and to **Nominee**) that it is authorised

and entitled to give **Notice** and deemed to indemnify **Depository** (and **Nominee**) against any claim, action or loss that may arise against **Depository (**or **Nominee**) or that **Depository** (or **Nominee**) may suffer as a result of effecting the transfer of the **Admitted Product**.

V. Draft of proposed amendments to AIX CSD Procedures

Procedures for Rule 4.3.-1

Procedures for Rule 4.3.-1 – Security interests

1. The procedures set out in this section are only applicable in respect of submitting a **Notice** of **Security Interest** or discharging a **Security Interest** over **Admitted Products** and enforcing a Security, are subject to **AIFC** Security Regulations No.7 of 2017 and **AIFC** Security Rules No.3 of 2018 and shall be interpreted in accordance with their provisions.

2. A record of **Security Interest** over an **Admitted Product** shall be reflected in the **Depositary System** by way of locking the **Admitted Product** in the **Secured Party's** favor. A **Debtor** and a **Secured Party**, in whose favor a lock of **Admitted Product** is to be performed, must have an account in the **Depositary System** with one of the **Participants**.

3. In order to notify of a **Security Interest**, **Participants** that are acting on behalf of parties to the relevant financial collateral agreement shall submit to the **AIX CSD**:

   (a) a **Notice** from the **Participant** of **Debtor** using the CSD-SIN Form, together with

   (b) a copy of the financial collateral agreement under which **Security Interest** is created, and

   (c) an indemnity given by **Debtor** to the **AIX CSD** in the CSD-IND Form.

4. In case when the specific information in relation to a **Security Interest** should be reflected in the **Depository System** (any significant details of the financial collateral agreement), the **Participants** shall enter this information in the field "Additional Information" of the CSD-SIN Form.

5. The CSD-SIN Form shall be signed by the **Participant's** authorised person(s) and submitted through the **SFTP** or in electronic form through the communication channel specified by the **AIX CSD** in a **Notice**.

6. In the event of a corporate action, the list of holders includes the **Debtor** on whose account the **Admitted Product** is locked. Counterparties are directly responsible for adjusting any corporate action in accordance with the agreement between them.

7. Once a **Security Interest** in an **Admitted Product** has been recorded, the **AIX CSD** submits to the parties a Security Interest Report in the CSD-SIR Form through the **SFTP** or in electronic form through the communication channel specified by the **AIX CSD** in a **Notice**.

8. A **Participant** with whom either a **Secured party** and/or **Debtor** have opened an **Account** may request a Security Interest Report at any time by sending an email from the **Participant's** authorised address to ptd@aix.kz.

9. To discharge a **Security Interest**, the **Participant** of a **Secured Party** shall submit:

   (a) a **Notice** in the CSD-SIN Form through the **SFTP** or in electronic form through the communication channel specified by the **AIX CSD** in a **Notice**, and

   (b) an indemnity given by the **Secured Party** to the **AIX CSD** in the CSD-IND Form.

10. The **AIX CSD** unlocks an **Admitted Product** in the **Depository System** after receiving and checking the documents prescribed by point 9 of this Procedures.

11. In the event of a **Debtor** default and when a **Secured Party** is entitled to enforce a **Security Interest**, the **Secured Party** may request the **AIX CSD** transfer all or a part of the **Admitted Product** in respect of which the **Security Interest** has been granted to the **Secured Party's** account with the **AIX CSD**. In that case, the **Secured party** shall submit a **Notice** in the CSD-SIN Form to the AIX CSD (ticking the "Enforcement" box) through the **SFTP** or in electronic form through the communication channel specified by the **AIX CSD** in a **Notice**. The "Additional Information" field in the CSD-SIN Form shall also include the details of a financial collateral agreement entitling the **Secured Party** to enforce the **Security Interest**.

12. The **AIX CSD** notifies the **Participant** of a **Debtor** of upcoming enforcement of a **Security Interest** by sending a scan copy of the **Notice** received by the point 11 of these Procedures within one business day of its receipt.

13. The **AIX CSD** transfers the **Admitted Product** as per a **Notice** of **Secured Party** indicated in the point 11 of these Procedures to the **Secured Party** on the 11th business day from the date of receipt of the **Notice**.

CSD-SIN

AIX CSD LTD SECURITY INTEREST NOTICE			
NO. _____ DATE ____/____/_____			
AIX CSD Participant full name			
Purpose	☐ Record	☐ Discharge	☐ Enforcement
		(tick the appropriate box)	
Debtor full name			
Debtor account number [2]			
Secured Party full name			
Secured Party account number[3]			
Securities Issuer full name			
International Securities Identification Number	☐☐☐☐☐☐☐☐☐☐☐☐ (ISIN code)		
Quantity of Admitted Product			
Additional Information (if applicable)[4]			

Authorised Person	**Authorised Person (Secondary if applicable)**
(First Name, Last Name)	(First Name, Last Name)
(Position)	(Position)
_____ Signature, Stamp	_____ Signature

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[2] To be filled to record a Security Interest.

[3] To be filled by Secured Party for enforcement procedure only.

[4] For an Enforcement, the Secured Party must include a written statement that:
 (i) a default has occurred; and
 (ii) the Secured Party is entitled to enforce a Security Interest in the Admitted Product.

CSD-SIR

AIX CSD LTD SECURITY INTEREST REPORT NO. _____, DATE ___/___/_____					
AS OF ___/___/_____					
Participant full name					
Account number					
Date	**Purpose**	**Quantity of Admitted Product**	**ISIN**	**Counterparty (if applicable)**	**Additional information (if applicable)**

Authorised Person

_____
(First Name, Last Name)

_____
(Position)

_____
Signature, Stamp

CSD-IND

[Participant letterhead]

To: Astana International Exchange Central Securities Depository Limited ("AIX CSD")
55 Mangilik El Avenue, Building 19, Block C3.4
Nur-Sultan, Z05T3D6, Kazakhstan

___ / _____ 20__

INDEMNITY

This Indemnity is made as a deed as of *[date]* by *[name of the secured party/ debtor, accordingly]* *("Participant")*,
WHEREBY:

(A) The Participant and *[name of counterparty] ("Counterparty")* have entered into the Financial Collateral Agreement dated *[date of the agreement]* (the "Financial Collateral Agreement"),

(B) In pursuant of Financial Collateral Agreement provisions, the Participant grants (*if a Debtor*) or is to be granted (*if for a Secured Party*) a security interest in respect of an Admitted Product) ("Security Interest") at AIX CSD, and accepts all relevant AIX CSD procedures related to that service (the "Service").

1. By signing this letter the Participant shall indemnify AIX CSD, its affiliates, and its and their respective directors, officers, employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by AIX CSD arising out of or in connection with any claim made against AIX CSD by the Participant and/or a third party on arising out of or in connection with the provision of the Services, to the extent that such claim arises out of:

    i)   the breach, negligent performance or failure or delay in the execution of the Financial Collateral Agreement by the Participant, its employees, agents or subcontractors,

    ii) AIX CSD's proper execution of an instruction of the Participant that is a secured party to enforce a Security Interest in accordance with AIX CSD Rules and Procedures, regardless of the Counterparty's and/or third party's disagreement with the enforcement.

2. This indemnity shall not cover AIX CSD to the extent that a claim under it results from AIX CSD's negligence or wilful misconduct.

3. If any third party makes a claim, or notifies an intention to make a claim against AIX CSD that may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), AIX CSD shall:

    i)   as soon as reasonably practicable, give written notice of the Claim to the Participant, specifying the nature of the Claim received by it in reasonable detail,

    ii) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Participant (such consent not to be unreasonably conditioned, withheld or delayed),

    iii) give the Participant and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of AIX CSD, so as to enable the Participant and its professional advisers to examine them and make copies (at the Participant's expense) for the purpose of assessing the Claim, and

    iv) be deemed to have given sole authority to the Participant to avoid, dispute, compromise or defend the Claim.

4. If a payment due from a Participant under this clause is taxable (whether by way of direct assessment or withholding at source), the AIX CSD shall be entitled to receive from the Participant such amounts as shall ensure that the net receipt, after tax, to AIX CSD in respect of the payment is the same as it would have been were the payment not taxed.

5. Nothing in this clause shall restrict or limit AIX CSD's general statutory obligation to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
6. Liability under this indemnity shall be unlimited.

IN WITNESS WHEREOF, the Participant intending to be legally bound by the terms hereof, has caused this letter Indemnity to be executed as of the date first above written by its officer or other representative duly authorised.

Executed on behalf of *[name of Participant]*,

Signature: _____

[**Participant signing officer name**,
title]