

Market Rules

Chapter 3

Administration, Supervision, Enforcement

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1. Introduction

1.1 Scope of Chapter

1.1.1 This Chapter sets forth:

- 1.1.1.1 the dispute resolution mechanism applicable to certain disputes arising under the *market rules*;
- 1.1.1.2 the manner in which the *IMO* and the *market surveillance panel* will fulfill their market monitoring and surveillance responsibilities;
- 1.1.1.3 the procedures pursuant to which the *market rules* may be amended;
- 1.1.1.4 the procedures which govern the protection, use and disclosure of *confidential information* by the *IMO* and *market participants*; and
- 1.1.1.5 the manner in which the *IMO* will monitor, assess and enforce compliance with the *market rules*.

2. Dispute Resolution

2.1 Interpretation and General Procedural Provisions

2.1.1 The provisions of this section 2 shall be liberally construed to secure the most expeditious, just and least expensive determination on its merits of every proceeding conducted hereunder.

2.1.2 Where no procedures are provided for in this section 2, a *mediator* or an *arbitrator* may do whatever is reasonably necessary and permitted by law to enable the effective mediation or adjudication of any matter before the *mediator* or the *arbitrator*.

- 2.1.3 A *mediator* or an *arbitrator* may, in the context of the resolution or the attempted resolution of a dispute pursuant to this section 2, dispense with, supplement or vary the application of all or any part of the provisions of sections 2.4 to 2.7, including as to any prescribed time periods, if special circumstances or the public interest require, or with the consent of the parties to the dispute.
- 2.1.4 The *IMO* shall from time to time *publish* and notify *market participants* of the address for service of the *secretary*.
- 2.1.5 Unless otherwise specified in this section 2 or otherwise directed by the *secretary*, a *mediator* or an *arbitrator*, only one copy of any document is required to be served or filed.
- 2.1.6 The following provisions of the *Arbitration Act, 1991* do not apply to any proceeding conducted under this section:
- 2.1.6.1 subsection 10(1)(b);
 - 2.1.6.2 subsection 13(1)2;
 - 2.1.6.3 subsection 23(1);
 - 2.1.6.4 section 24;
 - 2.1.6.5 subsections 25(3) to 25(5);
 - 2.1.6.6 sections 34, 37, 39, 45, 48 and 53;
 - 2.1.6.7 subsections 54(5) and 54(6); and
 - 2.1.6.8 sections 55 and 56, insofar as they may be applicable to the fees payable to an arbitrator and to the extent that such fees have been approved by the *Ontario Energy Board*.

2.2 Application

- 2.2.1 Subject to sections 2.2.3 and 3.8 and to section 8.8.1 of Chapter 2, the dispute resolution regime provided for in this section 2 shall apply to:
- 2.2.1.1 any dispute between the *IMO* and any *market participant* which arises under the *market rules*, including with respect to any alleged violation or breach thereof, whether or not specifically identified in the *market rules* as a dispute to which this section 2 applies;

- 2.2.1.2 any denial by the *IMO* of authorization to any person to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, out of or through the *IMO-controlled grid*, as to the denial of such authorization;
 - 2.2.1.3 an application by a *generator* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IMO*;
 - 2.2.1.4 a *reviewable decision*;
 - 2.2.1.5 a request by a *market participant* for a *settlement statement re-calculation* pursuant to section 6.8.2A or section 6.8.9 of Chapter 9;
 - 2.2.1.6 a dispute referred to in section 6.8.2B or section 6.8.9 of Chapter 9 with respect to which a *settlement statement re-calculation* is not requested;
 - 2.2.1.7 any dispute between the *IMO*, on the one hand, and any *market participant, commissioning participant, connection applicant or metering service provider*, on the other hand, pursuant to the terms of any agreement or contract referred to in these *market rules* or in any policy, guideline or other document referred to in section 7.7 of Chapter 1 or any *market manual*, unless in respect of a given dispute the agreement or contract or the *licence* of a party to the dispute either provides for an alternative dispute resolution mechanism or provides that the dispute resolution regime provided in this section 2 shall not be applicable; and
 - 2.2.1.8 a dispute between *market participants* referred to in section 2.1A.6A of Chapter 9 in respect of the apportionment of *energy* associated with *connection station service* and with site specific losses.
- 2.2.2 The dispute resolution regime provided for in this section 2:
- 2.2.2.1 shall apply to a dispute between *market participants* referred to in section 2.1A.6A of Chapter 9; and
 - 2.2.2.2 may also apply to any other disputes between *market participants* where all of the *market participants* which are party to the dispute consent in writing to the application thereof.

- 2.2.2A A *market participant* that has, pursuant to section 2.2.2.2, consented to the application of the dispute resolution regime provided for in this section 2 may, prior to the date on which the *secretary* takes the action referred to in section 2.6.2.1 or 2.6.2.2, as the case may be, withdraw its consent in the event that a *respondent* to a crossclaim objects to the application of such regime.
- 2.2.3 The dispute resolution process provided for in this section 2 shall not apply to the following:
- 2.2.3.1 applications by any person to review a *market rule*, which applications shall be governed by section 4;
 - 2.2.3.2 disputes with respect to a proposal to *amend* or not to *amend* any provision of the *market rules*;
 - 2.2.3.3 disputes between the *IMO* and a *market participant* relating to the quantum of the fees chargeable by the *IMO* to the *market participant* to the extent that such fees have been approved by the *Ontario Energy Board*, unless the dispute relates to the manner of calculation of the fees payable by the *market participant* in any given case;
 - 2.2.3.4 [Intentionally left blank]
 - 2.2.3.5 disputes between the *IMO* and a *market participant* relating to a *suspension order* issued by the *IMO*, which shall be governed by sections 6.3.15 to 6.3.20, or to a *termination order* issued by the *IMO*, in respect of which an appeal may be filed with the *Ontario Energy Board* pursuant to section 36 of the *Electricity Act, 1998*;
 - 2.2.3.6 disputes between the *IMO* and a *market participant* to the extent that the *licence* of the *IMO* or of the relevant *market participant* provides for an alternative dispute resolution mechanism;
 - 2.2.3.7 disputes between the *IMO* and a *market participant* relating to the standards, criteria or requirements established by a *standards authority* to the extent that an agreement with the relevant *standards authority* provides for an alternative dispute resolution mechanism;
 - 2.2.3.8 an award of an *arbitrator* made pursuant to this section 2;
 - 2.2.3.9 any dispute with respect to which these *market rules*, other than this section 2, provide for an alternative dispute resolution mechanism;

- 2.2.3.10 any dispute with respect to which these *market rules*, other than this section 2, provide for the non-application of the dispute resolution process provided for in this section 2; and
- 2.2.3.11 a decision of a panel of *independent directors*:
- (a) granting or rejecting an *exemption application*;
 - (b) respecting the terms and conditions of an *exemption*, other than with respect to the quantum of the costs payable by the *exemption applicant* or one or more *market participants* pursuant to Chapter 1, section 14.5;
 - (c) removing or amending an *exemption* or the terms and conditions thereof, other than with respect to the quantum of the costs referred to in Chapter 1, section 14.5;
 - (d) approving or denying the transfer of an *exemption*; or
 - (e) respecting *confidential information* provided to the *IMO* as part of or in respect of an *exemption application* including, without limitation the disclosure thereof; and
- 2.2.3.12 when considering an *exemption application*, including for certainty a reconsideration or transfer of an *exemption*, a determination or decision by a panel of *independent directors* regarding the interpretation of the provisions of any *market rule* or any standard, policy or procedure established by the *IMO* pursuant to the *market rules*; and
- 2.2.3.13 any dispute relating to the *IMO* making estimates and assumptions and limiting participation in the *IMO-administered market* pursuant to the transitional arrangements of Chapter 3, section 3A.1.5.
- 2.2.4 Subject to such rights of appeal or review as may be prescribed by *applicable law*, an award of an *arbitrator* made pursuant to this section 2 is final and binding on the parties. Without limiting the generality of the foregoing, but subject to sections 2.2.5 and 3.8 and to section 8.8.1 of Chapter 2, where any dispute of a kind described in section 2.2.1 or 2.2.2 arises, the parties concerned shall comply with the procedures set forth in this section 2 before commencing a civil or other proceeding in relation to the dispute, including but not limited to the filing of an appeal pursuant to subsection 36(1) of the *Electricity Act, 1998*.
- 2.2.5 Nothing in this section 2 shall prevent a party to a dispute from making application to a court of competent jurisdiction in the Province of Ontario for urgent interlocutory or interim injunctive relief.

2.3 Continuing Obligations and Stay of Orders

- 2.3.1 Subject to section 2.3.3, where a dispute involves the payment or recovery of monetary amounts due under the *market rules*, the amount shall be due and payable at the time specified for payment under the *market rules* notwithstanding initiation of the dispute resolution process.
- 2.3.2 Subject to section 2.3.3, initiation of the dispute resolution process referred to in this section 2 does not stay implementation of an order made or a direction given to a *market participant* by the *IMO* pursuant to the *market rules*.
- 2.3.3 Where a dispute in respect of which the dispute resolution process has been initiated involves the payment of a financial penalty imposed upon a *market participant* by the *IMO* under section 6.2, the obligation of the *market participant* to pay the financial penalty shall be stayed pending the outcome of the dispute resolution process.

2.4 Negotiation

- 2.4.1 Subject to section 2.4.3, parties to a dispute shall, within the time specified in section 2.4.1A, make good faith efforts to negotiate and amicably resolve any dispute between them arising pursuant to the market rules prior to filing a notice of dispute under section 2.5.1. Each person who is a party to a dispute shall, to this end, designate an individual with authority to negotiate the matter in dispute and to participate in such negotiations.
- 2.4.1A Parties to a dispute shall commence the negotiation referred to in section 2.4.1:
- 2.4.1A.1 where the dispute involves an order, direction, instruction or other decision of the *IMO* issued prior to January 1, 2004, within six years of the date of receipt of the order, direction, instruction or decision;
 - 2.4.1A.2 where the dispute involves an order, direction, instruction or other decision of the *IMO* issued on or after January 1, 2004, within two years of the date of receipt of the order, direction, instruction or decision; and
 - 2.4.1A.3 in all other cases, including, without limitation, claims for compensation, where such claims are not the subject matter of the dispute referred to in section 2.4.1A.1, 2.4.1A.2 or 2.4.3, within the limitation periods set out in the Limitations Act, 2002.

2.4.2 In the event that a dispute, other than one to which section 2.4.3 applies, is not settled amicably through good faith negotiations, one of the parties shall file with the other a notice of termination of negotiation in such form as may be established by the *IMO*. Proceedings to resolve the dispute may thereafter be initiated by any party to the dispute by filing a *notice of dispute* in accordance with the procedures set forth in section 2.5.1 within the time set forth in section 2.5.1A.

2.4.3 Section 2.4.1 shall not apply to:

2.4.3.1 an application by a *generator* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IMO*;

2.4.3.2 a dispute relating to a *reviewable decision* referred to in section 5.3.9 of Chapter 6;

2.4.3.3 a request by a *market participant* for a *settlement statement re-calculation* pursuant to section 6.8.2A or section 6.8.9 of Chapter 9;

2.4.3.4 a dispute referred to in section 6.8.2B or section 6.8.9 of Chapter 9 with respect to which a *settlement statement re-calculation* is not requested; or

2.4.3.5 a dispute between *market participants* referred to in section 2.1A.6A of Chapter 9 in respect of the apportionment of *energy* associated with *connection station service* and with site specific losses.

and in each such case the parties to the dispute shall dispense with the negotiation referred to in section 2.4.1 and proceedings may be initiated by any party to the dispute by filing a *notice of dispute* in accordance with the procedures set forth in section 2.5.1 within the applicable time set forth in section 2.5.1A.

2.4.4 The time period for the commencement of the negotiation specified in section 2.4.1A shall, with respect to claims for compensation, commence on the date on which the event that gave rise to the claim for compensation occurred, and not from the date of the submission of the claim for compensation. Such time period shall exclude the time between the submission of the claim for compensation to the *IMO* and when the *IMO* first notifies the claimant that some or all of the claim will not be allowed.

2.5 Notice of Dispute and Response

2.5.1 Subject to section 2.5.1B, the complaining person (the “*applicant*”) shall, within the time specified in section 2.5.1A, serve a written notice of the dispute (the “*notice of dispute*”) on any *respondent* and shall file with the *secretary* a copy of the *notice of dispute*, together with proof of service of the *notice of dispute* on each *respondent*.

2.5.1A A *notice of dispute* shall be filed:

2.5.1A.1 in the case of an application referred to in section 2.2.1.3, within 20 *business days* of the date of receipt of notice by the *generator* of rejection by the *IMO* of the *outage* in respect of which compensation is claimed pursuant to section 6.7.5 of Chapter 5;

2.5.1A.2 in the case of a dispute that involves a *reviewable decision* referred to in section 5.3.9 of Chapter 6, within 20 *business days* of the date of receipt by the *metering service provider* of notice of the revocation of its registration by the *IMO*;

2.5.1A.3 in the case of a request or dispute referred to in section 6.8.2A or 6.8.2B of Chapter 9, within the time specified in section 6.8.8 of Chapter 9;

2.5.1A.4 in the case of a dispute referred to in section 6.8.9 of Chapter 9, within the time specified in section 6.8.10 of Chapter 9;

2.5.1A.4A in the case of a dispute referred to in section 2.1A.6A of Chapter 9, within 20 *business days* of the date of receipt of the first *invoice* that reflects the apportionment that is the subject-matter of the dispute; and

2.5.1A.5 in any other case, within 20 *business days* of the date of receipt of the notice of termination of negotiation referred to in section 2.4.2 to which the dispute relates.

2.5.1B An *applicant* in respect of an application referred to in section 2.5.1A.1 shall not be required to serve the *notice of dispute* on any person and sections 2.5.4 to 2.5.6C and section 2.5.9 shall not apply to such an application.

2.5.2 The *notice of dispute* shall be in such form as may be established by the *IMO*, shall be signed by a person with authority to bind the *applicant* and shall specify, in reasonable detail and to the best of the *applicant*’s knowledge:

2.5.2.1 the nature of and basis for the complaint;

- 2.5.2.2 the *market rules* in issue;
 - 2.5.2.3 the parties to the dispute and the name of any person having knowledge of or who may be directly affected by the dispute;
 - 2.5.2.4 a concise summary of the facts underlying the dispute;
 - 2.5.2.5 the relief sought and a summary of the grounds for such relief; and
 - 2.5.2.6 any documentation upon which the *applicant* intends to rely in support of its complaint.
- 2.5.3 The *notice of dispute* shall be accompanied by a summary of the *notice of dispute* for *publication* in accordance with section 2.9.2.1.
- 2.5.4 A *respondent* shall, within ten *business days* of service of a *notice of dispute*, serve a written response (the “*response*”) on the *applicant* and on any *respondent* to a crossclaim identified in the *response*, and shall file with the *secretary* a copy of the *response*, together with proof of service of the *response* on the *applicant* and on any such *respondent*.
- 2.5.5 The *response* shall be in such form as may be established by the *IMO*, shall be signed by a person with authority to bind the *respondent* and shall specify, in reasonable detail and to the best of the *respondent’s* knowledge:
- 2.5.5.1 the information referred to in sections 2.5.2.1 to 2.5.2.4, to the extent that the *respondent* disagrees with the information relating thereto set forth in the *notice of dispute*;
 - 2.5.5.2 a concise *response* to the allegations made against the *respondent* in the *notice of dispute*;
 - 2.5.5.3 the relief sought, a summary of the grounds for such relief and, where the relief sought includes a counterclaim or crossclaim against the *applicant* or against any other *respondent*, the information referred to in sections 2.5.2.1 to 2.5.2.4 as it pertains specifically to such counterclaim or crossclaim; and
 - 2.5.5.4 any documentation upon which the *respondent* intends to rely in support of its *response*, including as to any counterclaim or crossclaim, and which was not identified by the *applicant*.
- 2.5.6 The *response* shall be accompanied by a summary of the *response* for *publication* in accordance with section 2.9.2.1.

- 2.5.6A A *respondent* to a crossclaim shall, within ten *business days* of service of a *response* or of a response to a crossclaim, serve a written response to the crossclaim on the *applicant* and on any other *respondent* and shall file with the *secretary* a copy of the response to the crossclaim, together with proof of service of the response to the crossclaim on the *applicant* and on any other *respondent*, including a *respondent* to a crossclaim identified in the response to the crossclaim.
- 2.5.6B The response to the crossclaim shall be in such form as may be established by the *IMO*, shall be signed by a person with authority to bind the *respondent* and shall specify, in reasonable detail and to the best of the *respondent's* knowledge:
- 2.5.6B.1 the information referred to in sections 2.5.2.1 to 2.5.2.4, to the extent that the *respondent* disagrees with the information relating thereto set forth in the *response* containing the crossclaim;
- 2.5.6B.2 a concise response to the allegations made against the *respondent* in the *response* containing the crossclaim;
- 2.5.6B.3 the relief sought, a summary of the grounds for such relief and, where the relief sought includes a counterclaim or a crossclaim against the *applicant* or another *respondent*, the information referred to in sections 2.5.2.1 to 2.5.2.4 as it pertains specifically to such counterclaim or crossclaim; and
- 2.5.6B.4 any documentation upon which the *respondent* intends to rely in support of its response to the crossclaim, including as to any counterclaim or crossclaim, and which was not identified by the *applicant* or by the *respondent* whose *response* contains the crossclaim.
- 2.5.6C The response to a crossclaim shall be accompanied by a summary of the response for *publication* in accordance with section 2.9.2.1.
- 2.5.7 Subject to sections 2.5.8 and 2.5.9, the *secretary* shall reject and shall not take any further action:
- 2.5.7.1 with respect to a *notice of dispute*, a *response* or a response to a crossclaim that does not comply with the provision of this section 2.5; or
- 2.5.7.2 with respect to a *notice of dispute* in respect of which the negotiation referred to in section 2.4.1 was not commenced within the applicable time specified in section 2.4.1A.

Where the *secretary* rejects a *notice of dispute*, a *response* or a response to a crossclaim pursuant to this section 2.5.7, the *secretary* shall so notify the *applicant* and the *respondent* filing the *response* or the response to the crossclaim, as the case may be, and shall provide written reasons for the rejection.

- 2.5.8 The *secretary* may accept a *notice of dispute*, a *response* or a response to a crossclaim that does not comply with section 2.5.7 if special circumstances or the public interest require, or with the consent of the parties to the dispute.
- 2.5.9 Where the *secretary* rejects a *response* or a response to a crossclaim pursuant to section 2.5.7:
- 2.5.9.1 such rejection shall be without prejudice to the right of the *applicant* or the *respondent* whose *response* includes the crossclaim, as the case may be, to proceed with the resolution of the dispute in accordance with section 2; and
 - 2.5.9.2 where such rejection relates to a *response*, section 2.6.1 shall not apply to the dispute and the *applicant* may following receipt of the notice referred to in section 2.5.7 request that the *secretary* take the action referred to in section 2.7.1.

2.6 Mediation

- 2.6.1 Subject to sections 2.6.1A and 2.6.1B, no party to a dispute may proceed to arbitration of the dispute until such time as the mediation process described in this section 2.6 has been terminated in accordance with section 2.6.14.
- 2.6.1A Section 2.6.1 shall not apply to:
- 2.6.1A.1 an application by a *generator* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IMO*;
 - 2.6.1A.2 a request by a *market participant* for a *settlement statement recalculation* or other dispute referred to in section 6.8.2A, 6.8.2B or 6.8.9 of Chapter 9;
 - 2.6.1A.3 a dispute that involves a *reviewable decision* referred to in section 5.3.9 of Chapter 6; or
 - 2.6.1A.4 a dispute referred to in section 2.5.9.2.

- 2.6.1B Where all of the parties to a dispute so agree, the parties may dispense with mediation in respect of the dispute. In such a case, the parties shall file with the *secretary* a notice of intent to dispense with mediation in such form as may be established by the *IMO*.
- 2.6.2 Subject to section 2.6.2A, within five *business days* of the filing of a *notice of dispute* in respect of an application to which section 2.6.1A.1 applies or of the earlier of the filing of a *response* or of the expiry of the time for filing a *response* pursuant to section 2.5.4 in all other cases, the *secretary* shall, provided that the *secretary* is satisfied that the dispute is one to which section 2.2.1 or 2.2.2 applies and that the dispute has not been resolved:
- 2.6.2.1 in the case of a dispute referred to in section 2.6.1A, upon receipt of the notice referred to in section 2.6.1B or upon receipt of the request referred to in section 2.5.9.2, take the action referred to in section 2.7.1 or 2.7.1B, as the case may be; or
- 2.6.2.2 in any other case, assign one member of the *dispute resolution panel* who is independent of the parties to inquire into and act as *mediator* in respect of the dispute and shall advise the parties to the dispute as to the identity and address for service of the *mediator*.
- Where the *secretary* is not satisfied that the dispute is one to which section 2.2.1 or 2.2.2 applies, the *secretary* shall so advise the parties.
- 2.6.2A Where a *response* or a response to a crossclaim contains a crossclaim against another *respondent*, the *secretary* shall not take the action referred to in section 2.6.2.1 or 2.6.2.2 until five *business days* following:
- 2.6.2A.1 the filing of the response to a crossclaim in respect of the last crossclaim filed in the same dispute; or
- 2.6.2A.2 the expiry of the time for filing a response to a crossclaim pursuant to section 2.5.6A in respect of the last crossclaim filed in the same dispute,
- whichever is the earlier.
- 2.6.3 The *mediator* shall fix a date, time and place for the mediation session, which date shall be no more than seven *business days* from the date of notice of his or her appointment or such later date as may be agreed by each party to the dispute, and shall attempt to assist the parties to resolve their dispute. The *mediator* may continue the mediation session at such times and places as the *mediator* determines in an effort to assist the parties in resolving their dispute.

- 2.6.4 Each party shall send to the mediation session a representative who has the authority to bind the party.
- 2.6.5 Prior to participating in a mediation session, the parties must sign and file with the *secretary* an agreement that statements made at a mediation session are confidential, are made without prejudice and are not subject to voluntary disclosure in any subsequent proceeding or to be voluntarily produced into evidence for any purpose.
- 2.6.6 Mediation sessions shall be private and there shall be no stenographic record of any mediation session. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of all of the parties, with the consent of the *mediator* and upon such conditions including, but not limited to, conditions relating to confidentiality, as the *mediator* determines appropriate.
- 2.6.7 *Confidential information* disclosed to a *mediator* by the parties or by other persons in the course of the mediation shall not be divulged by the *mediator*. All records, reports or other documents prepared for the mediation and received by a *mediator* while serving in that capacity shall be treated as confidential unless all of the parties to the dispute otherwise agree.
- 2.6.8 The *mediator* may conduct joint and separate meetings with the parties and make oral and written recommendations for settlement. Recommendations for settlement made, and views expressed by, the *mediator* at such meetings or at a mediation session are confidential and are not subject to voluntary disclosure in any subsequent proceeding and are not voluntarily to be produced into evidence for any purpose.
- 2.6.9 The *mediator* may, with the consent of the parties, request an agent, employee, officer or director of the *IMO*, or a member of a panel established by the *IMO*, to provide him or her with any information or documentation which is not *confidential information* and which the *mediator* considers relevant to the conduct of the mediation, and the *mediator* shall provide any such information or documentation to the parties in advance of the mediation session at which such information or documentation is to be considered.
- 2.6.10 The *mediator* may, with the consent of the parties, request an agent, employee, officer or director of the *IMO*, or a member of a panel established by the *IMO*, to provide him or her with any information or documentation pertaining to a party to the dispute which is *confidential information* and which the *mediator* considers relevant to the conduct of the mediation. Such *confidential information* shall not, without the consent of the party to whom the *confidential information* relates, be disclosed by the *mediator* to the other parties to the dispute.

- 2.6.11 Whenever he or she considers necessary, the *mediator* may, with the consent of the parties and upon such conditions relating to confidentiality as the *mediator* determines appropriate, obtain expert advice concerning technical aspects of the dispute. Arrangements for obtaining such advice shall be made by the *mediator* or a party, as the *mediator* shall determine.
- 2.6.12 If an agreement to resolve the dispute is reached through mediation, it shall be reduced to writing, signed by the parties and filed with the *secretary*. The terms of the agreement shall be confidential, provided that if, in the case of a dispute referred to in section 2.2.1, the agreement consists of, embodies or reflects an element which, in the opinion of the Board of Directors of the *IMO*, is an important matter of public policy or interest having regard to the provisions of the *Electricity Act, 1998*, the *IMO* shall *publish* a statement describing such important matter of public policy or interest.
- 2.6.13 The *mediator* may terminate the mediation by written notice of termination whenever, in the judgement of the *mediator*, further efforts at mediation would not contribute to a resolution of the dispute between the parties. The *mediator* shall provide each party with a copy of the written notice of termination and shall file a copy of the notice of termination with the *secretary*, in each case together with a copy of any agreed statement of fact and/or of issues referred to in section 2.6.15.
- 2.6.14 The mediation shall be terminated on the earlier of:
- 2.6.14.1 the date of execution by the parties of the agreement referred to in section 2.6.12;
 - 2.6.14.2 the date of the notice of termination referred to in section 2.6.13; or
 - 2.6.14.3 the date that is ten *business days*, or such longer period as may be agreed by each party to the dispute, from the date of the first mediation session.
- 2.6.15 If the parties are unable to reach any agreement to resolve the dispute on or prior to the date referred to in section 2.6.14.2 or 2.6.14.3 they shall nonetheless make good faith efforts to arrive at an agreed statement of fact and/or of issues relating to the dispute.
- 2.6.16 If the parties are unable to reach any agreement to resolve the dispute on or prior to the date referred to in section 2.6.14.3, the *mediator* shall issue a written notice of termination unless the *mediator* has, prior to that date, issued the written notice of termination referred to in section 2.6.13. The *mediator* shall provide each party with a copy of the notice of termination issued pursuant to this section 2.6.16,

together with a copy of any agreed statement of fact and/or of issues referred to in section 2.6.15, and file a copy of the foregoing with the *secretary*.

- 2.6.17 The parties are responsible for their own costs and legal expenses incurred in respect of the mediation. The parties must bear equally the *costs of the mediation*.
- 2.6.18 Upon termination of the mediation, the *mediator* shall file with the *secretary* an invoice containing an itemized statement of the *costs of the mediation*, together with all bills and other supporting documentation relating thereto.
- 2.6.19 Upon receipt of the invoice referred to in section 2.6.18, the *secretary* shall provide a copy of the invoice to the *IMO* and the *IMO* shall submit an invoice to each of the parties to the mediation in respect of their respective shares of the *costs of the mediation*. Each party shall, within *ten business days* of the date of receipt of such invoice, pay to the *IMO* the amount owing thereunder. Such invoice shall be considered to create an obligation under the *market rules* to pay the amount specified in the invoice and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.
- 2.6.20 Where a *mediator* dies, resigns or otherwise becomes incapable of acting as *mediator* in respect of a dispute prior to termination of the mediation, the *secretary* shall assign another member of the *dispute resolution panel* to inquire into and act as *mediator* in respect of the dispute. With the consent of the parties to the mediation, the new *mediator* may continue the mediation. In the absence of such consent, the *mediator* shall commence the mediation anew and the time period prescribed in section 2.6.14.3 shall be extended accordingly.

2.7 Arbitration

- 2.7.1 Subject to section 2.7.1A, within five *business days* of:
- 2.7.1.1 the earlier of the filing of a *response* or of the expiry of the time for filing a *response* pursuant to section 2.5.4, where the dispute is one to which section 2.6.1A.1, 2.6.1A.2 or 2.6.1A.3 applies;
 - 2.7.1.1A the filing of the request referred to in section 2.5.9.2, where the dispute is one to which that section applies;
 - 2.7.1.2 the filing of a notice of intent to dispense with mediation pursuant to section 2.6.1B, where the dispute is one to which that section applies;
or

2.7.1.3 the filing of the notice of termination referred to in section 2.6.13 or 2.6.16, in any other case,

the *secretary* shall in accordance with the *Governance and Structure By-law* provide the parties with a list of five names of members of the *dispute resolution panel* available to arbitrate the dispute. No person who acted as a *mediator* in respect of a dispute may be included on the list of members available to arbitrate the same dispute.

2.7.1A Where a *response* or a response to a crossclaim filed in respect of a dispute to which section 2.6.1A applies contains a crossclaim against another *respondent*, the *secretary* shall not take the action referred to in section 2.7.1.1 until five *business days* following:

2.7.1A.1 the filing of the response to a crossclaim in respect of the last crossclaim filed in the dispute; or

2.7.1A.2 the expiry of the time for filing a response to a crossclaim pursuant to section 2.5.6A in respect of the last crossclaim filed in the dispute,

whichever is the earlier.

2.7.1B Within five *business days* of the filing of a *notice of dispute* in respect of an application to which section 2.6.1A.1 applies, the *secretary* shall in accordance with the *Governance and Structure By-law* provide the *applicant* with a list of five names of members of the *dispute resolution panel* available to determine the amount of any compensation payable to the *applicant*. Where the *applicant* fails to select an *arbitrator* within ten *business days* of receipt of such list, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the *arbitrator* in respect of the application and shall by written notice so advise the *applicant*. The *arbitrator* shall be deemed to have been appointed as of the date of such notice.

2.7.1C In the case of an application referred to in section 2.7.1B:

2.7.1C.1 sections 2.7.2, 2.7.8, 2.7.9, 2.7.10 and 2.7.32 shall not apply; and

2.7.1C.2 all other sections of this section 2.7 shall be read:

a. without regard to references to a *respondent*; and

b. by replacing all references to the word “party” or “parties” with the word “*applicant*”.

- 2.7.2 The parties shall make good faith efforts to agree on the appointment of one of the members named on the list referred to in section 2.7.1 as the arbitrator to hear the dispute. Where the parties so agree, they shall by written notice so advise the *secretary*. Such member shall be the *arbitrator* for purposes of the resolution of the dispute and shall be deemed to have been appointed as of the date of such notice.
- 2.7.3 [Intentionally left blank]
- 2.7.4 [Intentionally left blank]
- 2.7.5 Where the parties to a dispute have failed to select an *arbitrator* within ten *business days* of receipt of the list referred to in section 2.7.1, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the *arbitrator* in respect of the dispute and shall by written notice so advise the parties. The *arbitrator* shall be deemed to have been appointed as of the date of such notice.
- 2.7.6 An *arbitrator* shall be independent of the parties and shall act impartially. An *arbitrator* who is or becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to the *secretary* and the parties.
- 2.7.7 An *applicant* shall, within thirty days of the appointment of the *arbitrator*, serve on any *respondent*, and file with the *arbitrator*, a written statement containing its submissions on each issue in dispute. At the same time, the *applicant* shall serve and file a list of all documents which it intends to file at the arbitration, copies of all such documents, and a list of witnesses intended to be called or to provide written evidence-in-chief at the hearing of the arbitration together with a concise written summary of the anticipated evidence of each witness. The *applicant* must indicate if it will be represented by legal counsel or some other representative and provide such person's name and address for service.
- 2.7.8 A *respondent* shall, within thirty days of the date of receipt of the *applicant's* materials referred to in section 2.7.7, serve on an *applicant* and on any other *respondent*, and file with the *arbitrator*, a written statement containing its submissions on each issue in dispute. At the same time, the *respondent* shall serve and file a list of all documents which it intends to file at the arbitration, copies of all such documents, and a list of witnesses intended to be called or to provide written evidence-in-chief at the hearing of the arbitration together with a concise written summary of the anticipated evidence of each witness. A *respondent* must indicate if it will be represented by legal counsel or some other representative and provide such person's name and address for service.

- 2.7.9 The *applicant* may, within ten days of receipt of the *respondent's* materials referred to in section 2.7.8, serve and file written reply submissions.
- 2.7.10 Where a *respondent* has made a counterclaim or a crossclaim in his or her *response*, the *respondent* shall, for purposes of the application of sections 2.7.7 to 2.7.9 and, where appropriate, of section 2.7.19, be treated as an *applicant* and the person against whom the counterclaim or the crossclaim has been made shall be treated as a *respondent* in respect of the counterclaim or crossclaim.
- 2.7.11 The *arbitrator* shall fix a date, time and place for the hearing following:
- 2.7.11.1 in the case of an application referred to in section 2.7.1B, the filing of the *applicant's* materials referred to in section 2.7.7; and
- 2.7.11.2 in all other cases, the service and filing of the *respondent's* materials referred to in section 2.7.8 or, where applicable, the materials of a *respondent* to the counterclaim or crossclaim referred to in section 2.7.10, which date shall be no more than sixty days from the date of the service and filing referred to in section 2.7.8 or, where applicable, of the service and filing referred to in section 2.7.10, whichever is the later, or such later date as may be agreed by each party to the arbitration. The *arbitrator* shall file with the *secretary* a notice of the date, time and place so fixed.
- 2.7.12 A *market participant* who might be directly affected by the award of the *arbitrator* in a dispute referred to in section 2.2.1 or 2.2.2.1 and, in the case of an application referred to in section 2.7.1B or of a dispute referred to in section 2.2.2.1, the *IMO*, may apply to the *arbitrator*, on notice to the parties, no less than five *business days* prior to the date of the hearing, for leave to intervene at the hearing. Parties may make submissions on the application for leave to intervene. The *arbitrator* may, in his or her sole discretion, grant leave to intervene to any *market participant* who demonstrates that it has an interest in the subject matter of the arbitration and may be directly affected by the decision in the arbitration, on such terms and subject to such rights of participation as the *arbitrator* considers reasonable.
- 2.7.13 The procedures governing the arbitration shall be determined by the *arbitrator*, except as provided for herein and by sections 19 to 22, 25 (other than 25(3) to 25(5)) to 33, 36, 36 and 40 to 44 of the *Arbitration Act, 1991*.
- 2.7.13.1 In the case of a dispute referred to in section 6.8.9 of Chapter 9, the *arbitrator* shall dismiss the *notice of dispute* and take no further action with respect to the *notice of dispute* if the element of the *final settlement statement* that is the subject-matter of the *notice of dispute*

is identical to the same element in the corresponding *preliminary settlement statement* unless the *market participant* demonstrates that it could not, with the exercise of due diligence, have filed a *notice of disagreement* in respect of that *preliminary settlement statement*.

- 2.7.14 Nothing in writing shall be accepted in evidence at the hearing nor any witness be permitted to give evidence at the hearing, in both cases by or on behalf of an *applicant* or a *respondent*, except with leave of the *arbitrator*, unless the party has complied with the requirements set forth in section 2.7.7 or 2.7.8, as the case may be.
- 2.7.15 Any party to a dispute may apply to the *arbitrator* for, and the *arbitrator* may order, such further and other production as the arbitrator sees fit, provided that the *arbitrator* may not order the production by the *market surveillance panel* of *confidential information* which relates to a person who is not a party to the dispute. Evidence may be admitted by the *arbitrator* even if not admissible as evidence in a court of law.
- 2.7.16 The *arbitrator* may, with the consent of all parties, request an agent, employee, officer or director of the *IMO*, or a member of a panel established by the *IMO*, to provide him or her with any information or documentation which is not *confidential information* and which the *arbitrator* considers relevant to the conduct of the arbitration, and the *arbitrator* shall provide any such information or documentation to the parties in advance of the hearing at which such information or documentation is to be considered.
- 2.7.17 The *arbitrator* may, with the consent of the parties, request an agent, employee, officer or director of the *IMO*, or a member of a panel established by the *IMO*, to provide him or her with any information or documentation pertaining to a party which is *confidential information* and which the *arbitrator* considers relevant to the conduct of the arbitration. Subject to section 2.8.1, the *arbitrator* shall provide any such information or documentation to the parties in advance of the hearing at which such information or documentation is to be considered.
- 2.7.18 Whenever he or she considers necessary, the *arbitrator* may, upon such conditions as to confidentiality as the *arbitrator* determines appropriate and upon notice to the parties, obtain expert advice concerning technical aspects of the dispute. Arrangements for obtaining such advice shall be made by the *arbitrator* or a party, as the *arbitrator* shall determine, provided that where such arrangements are made by the *arbitrator*, the *arbitrator* shall provide to the parties advance notice of the identity of the expert advisor.
- 2.7.19 At the hearing, the *applicant* shall provide its case in chief, followed by the *respondent* in response, and then the *applicant* in reply.

- 2.7.20 Witnesses shall be examined under oath or affirmation and shall be made available for cross-examination. Nothing in this section 2.7.20 shall preclude the *arbitrator* from dispensing with the oral examination-in-chief of a witness provided that a written statement of the witness's evidence is provided in such form as the *arbitrator* determines appropriate.
- 2.7.21 Subject to section 2.8.1, the arbitration shall be open to the public and all documents filed will form part of the public record of the proceedings.
- 2.7.22 The *arbitrator* shall deliver his or her award in writing, with reasons, within 30 days of completion of the hearing or within such longer period as may be agreed by each party to the dispute.
- 2.7.23 The *arbitrator* shall file a copy of his or her award with the *secretary*.
- 2.7.24 Where, in the case of a dispute referred to in section 2.2.1.1, the *arbitrator* concludes that a *market participant* has violated a provision of the *market rules*, the *arbitrator* may in his or her award impose such financial penalties, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable, provided that:
- 2.7.24.1 no financial penalty shall be imposed on a *market participant* unless the *arbitrator* determines that the breach of the *market rules* could have been avoided by the exercise of due diligence by the *market participant* or that the *market participant* acted intentionally; and
- 2.7.24.2 in fixing the amount of the penalty, the *arbitrator* shall have regard to the criteria set forth in section 6.6.7.
- An award of the *arbitrator* under this section shall be deemed to be a decision or order of the *IMO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*.
- 2.7.25 Where, in the case of a dispute referred to in section 2.2.1.1 the *arbitrator* concludes that the *IMO* has violated, misinterpreted or misapplied a *market rule*, the *arbitrator* may, subject to section 13 of Chapter 1 and to any other provision of these *market rules* pertaining specifically to liability, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable. Without limiting the generality of the foregoing, where the *arbitrator* determines that the breach, misinterpretation or misapplication of a *market rule* by the *IMO* was intentional or could have been avoided by the exercise of due diligence by the *IMO*, the *arbitrator* shall direct the *IMO* to comply with the *market rules* or to interpret or apply the *market rules* in a

particular manner. Any such direction may be included in the summary referred to in section 2.9.2.4.

- 2.7.25A Subject to section 13 of Chapter 1 and to any other provision of these *market rules* pertaining specifically to liability, the *arbitrator* may, in the case of a dispute referred to in section 2.2.1.2, 2.2.1.4 or 2.2.1.5, in addition to the orders referred to in section 2.7.26, 2.7.27 or 2.7.29, as the case may be, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable.
- 2.7.26 Where a dispute referred to in section 2.2.1.1 relates to the terms and conditions upon which the *IMO* has authorized a person to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*, the *arbitrator* may confirm the order of the *IMO* or set aside the order of the *IMO* and order the *IMO* to authorize the person to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* on such other terms and conditions, if any, which the *arbitrator* determines are just and reasonable. An award of the *arbitrator* under this section 2.7.26 may include the direction to the *IMO* referred to in section 2.7.25 and shall be deemed to be a decision or order of the *IMO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*.
- 2.7.27 The *arbitrator* may:
- 2.7.27.1 in the case of a dispute referred to in section 2.2.1.2, confirm the order of the *IMO* or set aside the order of the *IMO* and order the *IMO* to authorize the person to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*, on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable;
 - 2.7.27.2 in the case of a dispute referred to in section 2.2.1.5, confirm that no *settlement statement re-calculation* is required or order the *IMO* to effect a *settlement statement re-calculation*; or
 - 2.7.27.3 in the case of a dispute referred to in section 2.2.1.6, make such orders or directions as the *arbitrator* considers just and reasonable,

and an award of the *arbitrator* under this section 2.7.27 may include the direction to the *IMO* referred to in section 2.7.25 and shall be deemed to be a decision or order of the *IMO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*.

- 2.7.28 In the case of an application referred to in section 2.2.1.3, the *arbitrator* may determine that no compensation is payable to the *applicant* or may order the *IMO* to pay compensation to the *applicant* in such amount and within such time as may be fixed by the *arbitrator* in accordance with any applicable provisions of section 6.7.5 of Chapter 5.
- 2.7.29 In the case of a dispute referred to in section 2.2.1.4:
- 2.7.29.1 where the dispute relates to the *reviewable decision* referred to in section 2.1.2 of Chapter 6, the *arbitrator* may confirm the order of the *IMO* or set aside the order of the *IMO* and order the *IMO* to authorize the person to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* in respect of the relevant *connection point* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IMO* referred to in section 2.7.25 and shall be deemed to be a decision or order of the *IMO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*;
- 2.7.29.2 where the dispute relates to the *reviewable decision* referred to in section 5.3.9 of Chapter 6, the *arbitrator* may confirm the order or decision of the *IMO* or set aside the order or decision of the *IMO* and order the *IMO* to reinstate the registration of the *metering service provider* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable and the award of the *arbitrator* may include the direction to the *IMO* referred to in section 2.7.25;
- 2.7.29.3 where the dispute relates to the *reviewable decision* referred to in section 5.1.12 of Chapter 6, the *arbitrator* may confirm the order or decision of the *IMO* or set aside the order or decision of the *IMO* and order the *IMO* to register the person as a *metering service provider* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IMO* referred to in section 2.7.25; or

- 2.7.29.4 where the dispute relates to the *reviewable decision* referred to in section 4.4.3, 4.4.12 or 6.1.5 of Chapter 6, the *arbitrator* may confirm the order or decision of the *IMO* or set aside the order or decision of the *IMO* and order the *IMO* to register the *metering installation* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IMO* referred to in section 2.7.25.
- 2.7.29A In the case of a dispute referred to in section 2.2.21, the *arbitrator* may:
- 2.7.29A.1 determine an alternative apportionment of the *energy* associated with *connection station service* and with site specific losses amongst all applicable *market participants*; and
- 2.7.29A.2 determine whether, and the extent to which, any such alternative apportionment should be applied, by means of payments amongst the applicable *market participants*, to any period prior to the date on which the *IMO* gives effect to the proportions filed pursuant to section 2.1A.6B of Chapter 9.
- 2.7.29B In the case of a dispute referred to in section 6.8.2A or section 6.8.9 of Chapter 9, the *arbitrator* may, in considering whether to approve a request for a *settlement statement re-calculation*, take into account:
- 2.7.29B.1 the dollar amount that is the subject-matter of the dispute;
- 2.7.29B.2 the time elapsed since the event that is the subject-matter of the dispute took place; and
- 2.7.29B.3 the *IMO's* ability to perform such a *settlement statement re-calculation*.
- 2.7.30 In the case of a dispute referred to in section 2.2.2.2, the *arbitrator* may make such award, including but not limited to an award of damages, as is just and reasonable in the circumstances.
- 2.7.31 [Intentionally left blank]
- 2.7.32 Subject to section 2.7.32A, the *arbitrator* may make such award as to costs as he or she determines just and reasonable provided that, except in exceptional cases:
- 2.7.32.1 where in the context of a dispute referred to in section 2.2.1 the award consists of damages for breach of the *market rules*, costs, including the *costs of the arbitration*, shall be awarded to the successful party;

- 2.7.32.2 where the award consists of the imposition of penalties on a *market participant*, costs, including the *costs of the arbitration*, shall be awarded to the *IMO*; and
- 2.7.32.3 where the award consists of the direction to the *IMO* to comply with the *market rules* or to interpret or apply a *market rule* in a particular manner pursuant to section 2.7.25, costs, including the *costs of the arbitration*, shall be awarded to the *market participant* seeking the direction.
- 2.7.32A Where an award relates to an application referred to in section 2.7.1B and:
- 2.7.32A.1 the award consists of a determination by the *arbitrator* that the *applicant* is not entitled to any compensation pursuant to section 6.7.5 of Chapter 5; or
- 2.7.32A.2 no award as to costs is made pursuant to section 2.7.32B, the *applicant* shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration and, subject to any determination of the *arbitrator* pursuant to section 2.7.33, shall bear the *costs of the arbitration*.
- 2.7.32B Where an award relates to an application referred to in section 2.7.1B and the award consists of a determination by the *arbitrator* that the *applicant* is entitled to compensation pursuant to section 6.7.5 of Chapter 5, the *arbitrator* may determine that some or all of:
- 2.7.32B.1 the *applicant's* costs and legal expenses associated with his or her participation in the arbitration; and
- 2.7.32B.2 the *applicant's* share of the *costs of the arbitration*,
- be recovered by the *applicant*. Where the *arbitrator* makes such an award as to costs, the amount of such recoverable costs shall be paid by the *IMO* and recovered by the *IMO* in the same manner as the compensation referred to in section 6.7.5 of Chapter 5.
- 2.7.33 A person who intervenes in an arbitration shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration. The *arbitrator* may, in appropriate circumstances, require that an intervenor bear a portion of the *costs of the arbitration*.

- 2.7.34 An award of the *arbitrator* shall be enforceable in the manner provided in the *Arbitration Act, 1991*.
- 2.7.35 Where, in the case of a dispute referred to in section 2.2.1, the award consists of the payment of monies to the *IMO* or to a *market participant*, such award shall be considered to create an obligation under the *market rules* to pay the amount stated in the award and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly. Except as may otherwise be provided in the award, any monies payable pursuant to an award shall be payable within 30 days of the date of the award.
- 2.7.36 Failure to comply with an award of an *arbitrator* in respect of a dispute referred to in section 2.2.1 constitutes a breach of the *market rules*.
- 2.7.37 Upon completion of an arbitration, the *arbitrator* shall file the record of the arbitration proceedings with the *secretary*. Where such record contains *confidential information* in respect of which a claim for confidentiality has been confirmed by the *arbitrator* pursuant to section 2.8.1, the *confidential information*, together with the stenographic record of any *in camera* hearings relating thereto, shall be sealed in an envelope clearly marked “CONFIDENTIAL” or otherwise identified as confidential and protected from disclosure prior to filing with the *secretary*.
- 2.7.38 Upon completion of the arbitration, the *arbitrator* shall file with the *secretary* an invoice containing an itemized statement of the *costs of the arbitration*, together with copies of all bills and other supporting documentation relating thereto.
- 2.7.39 Upon receipt of the invoice referred to in section 2.7.38, the *secretary* shall submit a copy of the invoice to the *IMO* and the *IMO* shall submit an invoice to each of the parties to the arbitration and, where applicable, each intervenor, in respect of their respective shares of the *costs of the arbitration*. Each such person shall, within ten *business days* of receipt of such invoice, pay to the *IMO* the amount owing thereunder. Such invoice shall be considered to create an obligation under the *market rules* to pay the amount specified in the invoice and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.
- 2.7.40 Where an *arbitrator* dies, resigns, is removed or otherwise becomes incapable of acting as an *arbitrator* in respect of a dispute prior to completion of the arbitration, a replacement shall, with the consent of all of the parties to the arbitration, be selected by the *secretary* from among the remaining members of the *dispute resolution panel* in accordance with the *Governance and Structure By-law*. In the absence of such consent, the *secretary* shall forthwith provide the parties with a further list of five names of members of the *dispute resolution panel*

available to fill the vacancy and the parties shall make good faith efforts to agree on the appointment of one of the members named in the list as the replacement *arbitrator*. Where the parties so agree, they shall so advise the *secretary*.

2.7.41 [Intentionally left blank]

2.7.42 Where the parties have failed to select a replacement *arbitrator* within ten *business days* of receipt of the list referred to in section 2.7.40, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the replacement *arbitrator* and shall by written notice so advise the parties.

2.7.43 With the consent of the parties to the arbitration, once the *arbitrator* has been replaced, the *arbitrator* may continue the arbitration. In the absence of such consent, the replacement *arbitrator* shall commence the arbitration anew.

2.8 Confidentiality

2.8.1 Any party may claim that a document, or information contained in a document, to be produced in the context of the arbitration of a dispute is *confidential information*. The party making such a claim shall provide to the *arbitrator* in writing the basis for its assertion. If the claim of confidentiality is confirmed by the *arbitrator*, having regard, where applicable, to the provisions of section 5, the *arbitrator* shall establish requirements for the protection of such document or information as may be necessary to protect the confidentiality and commercial value of such document or information, including requirements for disclosure of same only to counsel and/or other independent advisor who has filed an undertaking as to confidentiality satisfactory to the *arbitrator* and for in camera hearings at which only representatives of the disclosing party and such counsel and/or other independent advisor may be present.

2.8.2 Members of the *dispute resolution panel* shall enter into such confidentiality agreement as may be required by the Board of Directors of the *IMO*.

2.9 Record-Keeping and Publication

2.9.1 Subject to section 2.9.1A, the *secretary* shall maintain a record of all dispute resolution proceedings conducted under this section 2. Upon the completion of a given dispute resolution proceeding, the *secretary* shall transfer the record to the *IMO*, addressed to the Chair of the Board of Directors of the *IMO* for archiving. The Chair shall be responsible for ensuring that all measures are taken to prohibit access by any other person to any portion of such record which may be sealed and

marked “CONFIDENTIAL” or otherwise identified as being confidential, except as may be required by *applicable law* or permitted by the provisions of section 5.

- 2.9.1A For the purposes of section 2.9.1, the record referred to therein shall not include any record pertaining to or arising from the mediation of a dispute other than:
- 2.9.1A.1 the name and address for service of the person appointed to act as the *mediator* in respect of the dispute;
 - 2.9.1A.2 the agreement referred to in section 2.6.5;
 - 2.9.1A.3 the settlement agreement referred to in section 2.6.12;
 - 2.9.1A.4 the notice of termination of mediation referred to in section 2.6.13 or 2.6.16;
 - 2.9.1A.5 the agreed statement of fact and/or issues referred to in section 2.6.13 or 2.6.16; and
 - 2.9.1A.6 information and documentation pertaining to the *costs of the mediation*, including the invoice referred to in section 2.6.18.
- 2.9.2 The *secretary* shall arrange for *publication* by the *IMO* of the following:
- 2.9.2.1 upon:
 - a. receipt of notice of termination referred to in section 2.6.13 or 2.6.16;
 - b. receipt of a notice of intent to dispense with mediation pursuant to section 2.6.1B;
 - c. in the case of a dispute referred to in section 2.6.1A other than section 2.6.1A.1, receipt of the *response* or, where no *response* is filed within the time specified in section 2.5.4, upon the expiry of that time; or
 - d. in the case of an application referred to in section 2.6.1A.1, upon receipt of the *notice of dispute*,as the case may be, the summaries referred to in sections 2.5.3, 2.5.6 and 2.5.6C as may be applicable;
 - 2.9.2.2 notice of the appointment of an *arbitrator* and the address for service of the *arbitrator*;

2.9.2.3 notice of the date, time and place fixed for hearing pursuant to section 2.7.11; and

2.9.2.4 a summary of the award of an *arbitrator* filed pursuant to section 2.7.23, which may include the information required by section 2.7.25.

2.9.3 The *IMO* shall *publish* the fees payable to members of the *dispute resolution panel* involved in the resolution or the attempted resolution of a dispute pursuant to this section 2, as such fees may from time to time be fixed in accordance with the provisions of the *Governance and Structure By-law*.

2.10 Audit

2.10.1 The activities of the *dispute resolution panel* shall be audited in accordance with procedures adopted from time to time by the *IMO*.

3. Market Surveillance

3.1 Introduction

3.1.1 This section 3 sets forth the rules pursuant to which activities in the *IMO-administered markets* and the conduct of *market participants* will be monitored to:

3.1.1.1 identify inappropriate or anomalous market conduct including, but not limited to, unilateral or interdependent behaviour resulting in abuses and possible abuses of market power and gaming;

3.1.1.2 identify actual or potential design or other flaws and inefficiencies in the *market rules* and other rules and procedures of the *IMO*;

3.1.1.3 identify actual or potential design or other flaws in the overall structure of the *IMO-administered markets* and assess whether any one or more specific aspects of the underlying structure of the *IMO-administered markets* is consistent with the efficient and fair operation of a competitive market; and

- 3.1.1.4 recommend remedial actions to mitigate the conduct, flaws, and inefficiencies referred to above.
- 3.1.2 The activities described in this section 3 will be carried out by the *market assessment unit* of the *IMO* established in accordance with section 3.2.1 and by the *market surveillance panel* of the *IMO* established in accordance with the provisions of the *Electricity Act, 1998*.
- 3.1.3 Nothing in this section 3 shall preclude the disclosure or reproduction of *confidential information* as an unidentifiable component of an aggregate sum.
- 3.1.4 Notwithstanding any other section of the *market rules*, the *market surveillance panel* shall make an order permitting the disclosure of *confidential information* obtained pursuant to section 3 if, after giving the person from whom the information or material was obtained and any other person who, in the opinion of the *market surveillance panel*, is an interested party an opportunity to be heard, the *market surveillance panel* is of the opinion that disclosure is in the public interest.

3.2 Establishment and Staffing of Market Assessment Unit

- 3.2.1 A *market assessment unit* shall be established by the *IMO* and composed of *IMO* staff with the experience and qualifications necessary to fulfil the functions referred to in this section 3. Such qualifications may include professional training pertinent to and experience in the operation of markets analogous to the *IMO-administered markets*, in the electricity industry, and in the field of competition law, economics and public policy.
- 3.2.2 The Chief Executive Officer of the *IMO* shall ensure that the *market assessment unit* and the *market surveillance panel* have reasonable resources to perform their respective duties and obligations within the overall budgetary constraints of the *IMO*, and have full access to data in the power, possession and control of the *IMO* and the full cooperation of all officers, employees, agents and members of panels established by the *IMO* for purposes of the fulfillment of their respective responsibilities under this section 3. Where either the *market assessment unit* or the *market surveillance panel* believe in good faith that such resources, full access or full cooperation are not being provided, the *market assessment unit* or the *market surveillance panel*, as the case may be, may raise such issues with the Chair of the *IMO Board*.
- 3.2.3 The staff forming the *market assessment unit* shall report to and be under the management and administration of the Chief Executive Officer of the *IMO*. Where the staff forming the *market assessment unit* believe their functioning is

being adversely affected by a decision of the Chief Executive Officer of the *IMO*, they may bring such decision to the attention of the *market surveillance panel* which shall attempt to resolve such disagreement with the Chief Executive Officer of the *IMO*. If the *market surveillance panel* and the Chief Executive Officer of the *IMO* are not able to resolve such disagreement then either one may bring the matter to the attention of the Chair of the *IMO Board*.

- 3.2.4 The *market assessment unit* shall also report to and take direction from the Chair of the *market surveillance panel* on all matters pertaining to the responsibilities of the *market assessment unit* pursuant to this section 3.

3.3 Market Monitoring Functions

- 3.3.1 The *market assessment unit* shall, under the supervision and direction of the *market surveillance panel*, monitor, evaluate and analyze the conduct of *market participants* and the structure and performance of, and activities in, the *IMO-administered markets* including, but not limited to, conduct or activities that provide indications of the phenomena identified in sections 3.1.1.1, 3.1.1.2 and 3.1.1.3.

3.3.1.1 [Intentionally left blank]

3.3.1.2 [Intentionally left blank]

3.3.1.3 [Intentionally left blank]

- 3.3.2 The *market assessment unit* shall, under the supervision and direction of the *market surveillance panel*, develop an information requirements system and criteria for evaluation that will enable it and the *market surveillance panel* to effectively carry out the monitoring function referred to in section 3.3.1. To this end, the *market assessment unit* will, under the supervision and direction of the *market surveillance panel*, initially develop:

3.3.2.1 a detailed catalogue of all of the data and/or categories of data it will have the need or means of acquiring directly from *market participants*; and

3.3.2.2 a catalogue of the monitoring indices that it will use to evaluate and analyze the data so acquired.

- 3.3.2A For the purpose of carrying out the monitoring activities described in section 3.1.1, the *market surveillance panel* has the powers to compel the production of information from *market participants* and to enter upon the premises of *market participants* as authorized by the *Electricity Act, 1998*.
- 3.3.3 The *market assessment unit* shall, under the supervision and direction of the *market surveillance panel*, establish procedures it and the *market surveillance panel* will use to handle the data they will have the need or means of acquiring and creating, including procedures for protecting *confidential information*. Such procedures shall not conflict or be inconsistent with the provisions of section 5 and shall be included in the *information confidentiality catalogue*.
- 3.3.3A No *confidential information* pertaining to a particular *market participant* and acquired by the *market assessment unit* for the purpose of carrying out the monitoring functions referred to in section 3.3.1 shall be disclosed by the *market assessment unit* or by the *market surveillance panel* to any member of the *IMO Board* other than the *independent directors* and, with concurrence of the *independent directors* by majority vote, the Chief Executive Officer of the *IMO*.
- 3.3.4 The catalogue referred to in section 3.3.2.1 will be published by the *IMO* and notice thereof shall be provided to *market participants* for comment prior to its adoption. The catalogue referred to in section 3.3.2.2 will be *published* by the *IMO* and notice thereof shall be provided to *market participants* for comment prior to its adoption unless the *independent directors*, by majority vote and on the recommendation of the *market surveillance panel*, determine that *publication* and notification of such catalogue is reasonably likely to compromise the work of the *market assessment unit* or the *market surveillance panel*.
- 3.3.5 The *market surveillance panel* retains the sole discretion to adopt the catalogues referred to in section 3.3.2 notwithstanding any comments received in opposition thereto.
- 3.3.5A *Market participants* must provide the *market assessment unit* with the data referred to in the catalogue described in section 3.3.2.1 once published in accordance with section 3.3.6.
- 3.3.6 Once the catalogue referred to in section 3.3.2.1 has been adopted by the *market surveillance panel*, it shall be *published* by the *IMO* and included in the applicable market manual. The catalogue shall be the subject of such re-evaluation and refinement by the *market assessment unit*, under the supervision and direction of the *market surveillance panel*, as the *market surveillance panel* deems appropriate. The procedures set forth in sections 3.3.4, 3.3.5 and 3.3.5A and in this section 3.3.6 apply equally to all changes to the catalogue.

- 3.3.7 Once the catalogue referred to in section 3.3.2.2 has been adopted by the *market surveillance panel*, it shall be *published* by the *IMO* and included in the applicable market manual unless the *independent directors*, by majority vote and on the recommendation of the *market surveillance panel*, determine that *publication* of all or part of such catalogue is reasonably likely to compromise the work of the *market assessment unit* or the *market surveillance panel*. The part or parts of each catalogue that would not comprise their work shall be *published*. The catalogue shall be the subject of such re-evaluation and refinement by the *market assessment unit*, under the supervision and direction of the *market surveillance panel*, as the *market surveillance panel* deems appropriate. The procedures set forth in sections 3.3.4 and 3.3.5 and in this section 3.3.7 apply equally to all changes to the catalogue.
- 3.3.8 Wherever in this section 3 the *independent directors* are authorized to take action or make decisions they shall disclose the action taken or decision made to the other members of the *IMO Board* so long as no *confidential information* is disclosed in so doing.
- 3.3.8.1 [Intentionally left blank]
- 3.3.8.2 [Intentionally left blank]
- 3.3.8A In addition to the activities identified in 3.3.1, above, the *market assessment unit* shall, at the request of the Chief Executive Officer of the *IMO*, perform the functions referred to in sections 1.3 to 1.6 inclusive of Appendix 7.6 of Chapter 7.
- 3.3.8B Nothing in this section 3 shall preclude the *market surveillance panel* or the *market assessment unit*, under the supervision and direction of the *market surveillance panel*, from conducting such monitoring, evaluation or analyses as it determines appropriate at any given time.
- 3.3.9 The *market assessment unit* shall, no less than quarterly and more frequently if so requested by the *market surveillance panel*, prepare and submit to the *market surveillance panel* routine reports on matters pertaining to its responsibilities pursuant to this section 3 and to Appendix 7.6 of Chapter 7. Such reports shall contain such information and be in such form as may be specified by the *market surveillance panel*.
- 3.3.9.1 [Intentionally left blank]
- 3.3.9.2 [Intentionally left blank]

- 3.3.10 The *market surveillance panel* shall, no less than annually and more frequently if so requested by the Chair of the *IMO Board*, submit to the Chair of the *IMO Board* routine reports on matters pertaining to its responsibilities pursuant to this section 3, including a summary of the reports of the *market assessment unit* referred to in section 3.3.9 and a summary of all complaints or referrals filed and investigations commenced under section 3.4. Once annually, such reports shall contain the *market surveillance panel's* general assessment as to the state of competition within, and the efficiency of, the *IMO-administered markets*.
- 3.3.10A Any of the *market surveillance panel*, the Chair of the *IMO Board*, and the Chief Executive Officer of the *IMO* may, from time to time, in their discretion, consult with one another; provided, however, that no *confidential information* shall be disclosed to the Chief Executive Officer of the *IMO* without the prior concurrence of the *independent directors* by majority vote.
- 3.3.11 The *market assessment unit* shall forthwith report to the *market surveillance panel* any evidence of the phenomena referred to in section 3.3.1 and to the Chief Executive Officer of the *IMO* any evidence of the phenomena referred to in section 3.1.1.2 which may be revealed by the monitoring, evaluations and analyses conducted by the *market assessment unit*.
- 3.3.12 Where the *market assessment unit*, in carrying out its responsibilities pursuant to this section 3 or Appendix 7.6 of Chapter 7, identifies that a *market participant* is or may be breaching or violating a provision of the *market rules*, or that an amendment to the *market rules* may be required, the *market assessment unit* shall prepare and submit a report to that effect to the Chair of the *IMO Board* with a copy to the Chair of the *market surveillance panel* and the the Chief Executive Officer of the *IMO*.
- 3.3.13 Where the *market assessment unit* or the *market surveillance panel*, in carrying out its responsibilities pursuant to this section 3 or Appendix 7.6 of Chapter 7, identifies that a *market participant* is or may be acting contrary to or in non-compliance with statutory authority falling within the jurisdiction of a person, board, agency or tribunal including, but not limited to, the federal Competition Bureau, the federal Competition Tribunal or the *Ontario Energy Board*, the *market assessment unit* or the *market surveillance panel* shall prepare and submit a report to that effect to the Chair of the *IMO Board*. Except in urgent cases, such report shall first be provided to the *market surveillance panel* for comment. In urgent cases, the report shall be transmitted to the *market surveillance panel* forthwith following submission of the report to the Chair of the *IMO Board*. In either case, the *market surveillance panel* shall thereafter forward such information to the Chair of the relevant authority.

3.4 Investigations and Reviews

3.4.1 The *market surveillance panel* may conduct an investigation into any activities in the *IMO-administered markets* or the conduct of a *market participant* identified as a result of the activities conducted under section 3.1.1.1.

3.4.1.1 [Intentionally left blank]

3.4.1.2 [Intentionally left blank]

3.4.1A The *market surveillance panel* may undertake reviews of actual or potential design or other flaws and inefficiencies in the *market rules* and other rules and procedures of the *IMO* identified as a result of its activities under section 3.1.1.2 with the prior concurrence of either the Chief Executive Officer of the *IMO* or the Chair of the *IMO Board*.

3.4.1B The *market surveillance panel* may undertake reviews of actual or potential design or other flaws in any one or more specific aspects of the underlying structure of the *IMO-administered markets* identified as a result of its activities under section 3.1.1.3 with the prior concurrence of the Chair of the *IMO Board*.

3.4.2 The *market surveillance panel* shall, at the request of the Chair of the *IMO Board*, conduct or resume an investigation or review into any matter that may be the subject of investigation by the *market surveillance panel* pursuant to section 3.4.1 or of a review pursuant to section 3.4.1A or 3.4.1B.

3.4.3 Any person other than the Chair of the *IMO Board* wishing the *market surveillance panel* to conduct an investigation into any matter referred to in section 3.4.1, or any board, agency or tribunal wishing to refer any such matter to the *market surveillance panel* for investigation, shall make a complaint or referral in writing setting out:

3.4.3.1 the name and address of the complainant or person referring the matter;

3.4.3.2 the particulars of the complaint or referral;

3.4.3.3 any information or facts supporting the complaint or referral; and

3.4.3.4 the signature of the person making the complaint or referral or, where that person is not an individual, the signature of an officer or duly authorized representative of the person.

- 3.4.4 The *market surveillance panel* may refuse to commence an investigation into any matter referred to it pursuant to section 3.4.3 where, in its sole discretion, the *market surveillance panel* is of the view that an investigation is not warranted and shall, where an investigation is commenced, have the right to terminate the investigation, if it determines that the complaint or referral is:
- 3.4.4.1 frivolous, vexatious, otherwise not material or was not or is no longer warranted; or
- 3.4.4.2 within the jurisdiction of another person, board, agency or tribunal,
- in which case the *market surveillance panel* shall prepare and deliver a report to the Chair of the *IMO Board* in accordance with section 3.4.13 and shall so advise the person who filed the complaint or made the referral. Decisions of the *market surveillance panel* not to commence or, once commenced, to terminate an investigation may be reviewed by the Chair of the *IMO Board*.
- 3.4.5 The *market surveillance panel* may, prior to making a decision pursuant to section 3.4.4, request that the person making the complaint or referral provide additional information relating thereto.
- 3.4.6 Where the *market surveillance panel* reasonably determines that notification will not jeopardize an investigation, the *market surveillance panel* shall, upon determining that there is a *prima facie* case in respect of the conduct of a person subject to a complaint or referral, inform the person who is the subject of the complaint or referral that the person is the subject of an investigation and shall inform that person or cause that person to be advised of the outcome of the investigation. On the written request of the person making the complaint or referral, the *market surveillance panel* shall inform that person or cause that person to be advised of the outcome of the investigation.
- 3.4.7 For the purposes of carrying out an investigation, the *market surveillance panel* has the power to examine and compel production of any documents or other things, to summon and compel testimony, and to enter upon premises and search and seize as authorized by the *Electricity Act, 1998*.
- 3.4.8 [Intentionally left blank]
- 3.4.8.1 [Intentionally left blank]
- 3.4.8.2 [Intentionally left blank]
- 3.4.8.3 [Intentionally left blank]

- 3.4.8.4 [Intentionally left blank]
- 3.4.9 [Intentionally left blank]
- 3.4.10 [Intentionally left blank]
- 3.4.11 [Intentionally left blank]
- 3.4.12 On completion of an investigation, the *market surveillance panel* shall prepare a written report that sets out, among other information:
- 3.4.12.1 the matter that was investigated;
 - 3.4.12.2 whether the matter came to the attention of the *market surveillance panel* by way of a referral or complaint or whether the *market surveillance panel* decided on its own initiative to investigate the matter;
 - 3.4.12.3 the findings of the *market surveillance panel* including, without limitation, and where appropriate, that it was unable to reach firm conclusions on the matter investigated and the reasons for such inability;
 - 3.4.12.4 where the findings of the *market surveillance panel* include findings to the effect that a *market participant* has engaged in inappropriate conduct, any response provided by the *market participant* to such findings pursuant to section 3.4.14; and
 - 3.4.12.5 the recommendations, if any, of the *market surveillance panel* and the reasons for the recommendations.
- 3.4.13 Where the *market surveillance panel* makes a determination either not to commence or to terminate an investigation pursuant to section 3.4.4, it shall prepare and submit to the Chair of the *IMO Board* a report that sets out:
- 3.4.13.1 the nature of the complaint or referral; and
 - 3.4.13.2 the reasons for which the *market surveillance panel* determined that no investigation was warranted or that the investigation should be terminated, as the case may be.
- 3.4.14 Where the *market surveillance panel* intends to include in a report referred to in section 3.4.12 findings to the effect that a *market participant* has engaged in inappropriate conduct including, but not limited to, a breach of the *market rules*, it must discuss its findings with the *market participant* before including the findings

in the report and must give the *market participant* a reasonable opportunity to respond in writing to the allegations. Where the *market participant* has not made any *response* within such reasonable time, the *market participant* shall be deemed to have elected to make no *response*.

- 3.4.15 Where a report of the *market surveillance panel* made under section 3.4.12 contains recommendations relating to the abuse or possible abuse of market power, the *IMO* shall, within thirty days after receiving the report, inform the *Ontario Energy Board* of the action which the *IMO* has taken or intends to take in response to the report.
- 3.4.16 Reports of the *market surveillance panel* of the results of its examinations under sections 3.4.1A and 3.4.1B and its recommendations, if any, in respect thereof shall be made to the Chair of the *IMO Board* and, subject to the provisions of section 3.5.1 if a report contains *confidential information* pertaining to a *market participant*, the Chief Executive Officer of the *IMO*.
- 3.4.17 Reports of the *market surveillance panel* in respect of investigations under section 3.4.1 shall be made to the Chief Executive Officer of the *IMO* subject to the provisions of section 3.5.1 if a report contains *confidential information* pertaining to a *market participant*.
- 3.4.18 Where the *market surveillance panel* determines that action is urgently required in respect of the matters which are revealed during the course of an investigation, the *market surveillance panel* may make an interim report to that effect to the Chair of the *IMO Board* containing the applicable recommendations.

3.5 Dissemination of Reports

- 3.5.1 A report of the *market assessment unit* or the *market surveillance panel* under this section 3 that contains *confidential information* pertaining to a *market participant* shall be provided to the Chair of the *IMO Board* on a confidential basis for distribution to the *independent directors* of the *IMO*. Such report may, in the case of reports referred to in section 3.3.12 or 3.4.18 and after prior consultation with the Chair of the *IMO Board*, also be provided on a confidential basis to the *Ontario Energy Board* and to such other persons as the Chair of the *IMO Board* or the *market surveillance panel*, as the case may be, determines appropriate. Such report shall, in the case of reports referred to in sections 3.4.12 and 3.4.13, be provided, after prior consultation with the Chair of the *IMO Board*, on a *confidential basis* to the *Ontario Energy Board* and to such other persons as the *market surveillance panel* determines appropriate. On the direction of the Chair of the *IMO Board*, the *market surveillance panel* shall consult or cooperate with

the *Ontario Energy Board* or such other persons in respect of the provisions of the report. Such reports may, in the case of reports referred to in sections 3.4.16 and 3.4.17 containing *confidential information* on a *market participant*, with the concurrence of the *independent directors* by majority vote, be provided to the Chief Executive Officer of the *IMO*.

- 3.5.2 The *market surveillance panel* or the *market assessment unit*, as the case may be, shall prepare, for submission to the remaining members of the *IMO Board* and, after prior consultation with the Chair of the *IMO Board*, to such other persons as may be appropriate, an edited version of the reports referred to in section 3.5.1 from which all *confidential information* has been removed, unless in the opinion of the *market surveillance panel*, such submission is reasonably likely to compromise the work of the *market surveillance panel* or the *market assessment unit*.
- 3.5.3 A report of the *market surveillance panel* made pursuant to section 3.4.12 or 3.4.13 in respect of an investigation relating to the conduct of a *market participant* shall be provided to the *market participant* unless in the opinion of the *market surveillance panel*, such disclosure is reasonably likely to compromise the work of the *market surveillance panel* or the *market assessment unit* in which case the report provided to the *market participant* shall have deleted therefrom such portions that would so compromise the work of the *market surveillance panel* or the *market assessment unit*. Where such report contains *confidential information* pertaining to more than one *market participant*, the *market surveillance panel* shall prepare such number of reports as may be necessary to ensure that the report received by each *market participant* does not contain any *confidential information* pertaining to any other *market participant*.
- 3.5.4 The edited versions of the reports described in section 3.5.2 shall be *published* by the *IMO* unless either the *IMO Board* by majority vote decides not to *publish* such a report or, in the opinion of the *market surveillance panel*, such disclosure is reasonably likely to compromise the work of the *market surveillance panel* or the *market assessment unit*.
- 3.5.5 A report of the *market assessment unit* or the *market surveillance panel* under this section 3 that does not contain *confidential information* pertaining to a *market participant* shall be provided to the *IMO Board* and shall be *published* by the *IMO* unless either the *IMO Board* by majority vote decides not to *publish* such a report or, in the opinion of the *market surveillance panel*, such disclosure is reasonably likely to compromise the work of the *market surveillance panel* or the *market assessment unit*.

3.6 Expert and Other Assistance

- 3.6.1 The *market surveillance panel* may, subject to the by-laws of the *IMO* and to budgetary approval of the Chief Executive Officer of the *IMO*, hire such consulting assistance and seek such expert external advice as may be necessary for the purpose of the conduct by it or by the *market assessment unit* of the monitoring or investigative activities described in this section 3. Where the Chief Executive Officer of the *IMO* does not approve such request, the *market surveillance panel* may appeal such decision to the Chair of the *IMO Board*.
- 3.6.2 Consultants and expert external advisors hired pursuant to section 3.6.1 shall enter into such confidentiality agreement as may be required by the Chair of the *IMO Board*.
- 3.6.3 In carrying out an investigation, the *market surveillance panel* may make use of the services of the *market assessment unit*.

3.7 [Intentionally left blank]

- 3.7.1 [Intentionally left blank]
- 3.7.1.1 [Intentionally left blank]
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- 3.7.3.1 [Intentionally left blank]
- 3.7.3.2 [Intentionally left blank]
- 3.7.3.3 [Intentionally left blank]
- 3.7.4 [Intentionally left blank]
- 3.7.5 [Intentionally left blank]

3.8 Dispute Resolution and Other Relief

- 3.8.1 The dispute resolution procedures under section 2 shall not apply to the activities of the *market surveillance panel* or the *market assessment unit* under this section 3 other than the provisions of this section 3 that make reference to Appendix 7.6 of Chapter 7.
- 3.8.2 Nothing in this section 3 shall prevent the *IMO* or any other person from asserting any rights they may have under any *applicable law* or under the *market rules*.

3.9 Publication and Provision of Data

- 3.9.1 *Market participants* may request that the *market assessment unit* or the *market surveillance panel* provide data which is not *confidential information* collected or created in the course of the monitoring activities described in section 3.3.1 and which is not data otherwise required to be *published* by the *IMO* pursuant to the *market rules*. Such data may, with the approval of the Chair of the *IMO Board*, be provided unless, in the opinion of the *market surveillance panel*, such disclosure is reasonably likely to compromise the work of the *market surveillance panel* or the *market assessment unit*. Where the provision of data imposes a significant burden or expense on the *IMO*, the data may be provided on payment of a reasonable fee.

3.10 Audit

- 3.10.1 The activities of the *market surveillance panel* shall be audited in accordance with procedures adopted from time to time by the *IMO* in consultation with the *market surveillance panel*.

4. Rule Amendments

4.1 Introduction and Interpretation

- 4.1.1 This section 4 sets forth the procedures pursuant to which *amendments* to the *market rules* may be made by the *IMO* and embodies the mechanism for review of the *market rules* for purposes of the application of subsection 35(4) of the *Electricity Act, 1998*.

- 4.1.2 This section 4 must be read and construed subject to the *Governance and Structure By-law*.

4.2 Amendment Process Generally

- 4.2.1 Under section 32 of the *Electricity Act, 1998*, the *IMO Board* has the authority and responsibility to *amend* these *market rules*. The *technical panel* is authorized, through the *Governance and Structure By-law*, to support the *IMO Board* in the development and consideration of *amendments* to the *market rules*. The *urgent rule amendment committee* is authorized, through the *Governance and Structure By-law*, to support the *IMO Board* in the development, consideration and making of *urgent rule amendments*.
- 4.2.2 In formulating *amendments* to the *market rules*, the *IMO Board*, the *technical panel* and the *urgent rule amendment committee* shall take into consideration the objects of the *IMO* as set forth in the *Electricity Act, 1998*.
- 4.2.3 The *IMO Board* may review, from time to time, the work and proceedings of the *technical panel* and issue to the *technical panel* such directions as the *IMO Board* from time to time determines appropriate. Such directions may relate to one or more proceedings respecting particular proposed *amendments* to or reviews of the *market rules* or may be of more general application. For certainty, such directions may include termination of the consideration of a particular proposed *amendment* to, or review of, the *market rules*. The *technical panel* shall comply with such directions. In addition, nothing in this section 4 shall prohibit the *technical panel* from consulting with the *IMO Board* regarding the role the *technical panel* will play in reviewing a request for an *amendment* or review of the *market rules*.
- 4.2.4 A *market participant* or any other interested person may file a written submission (the “*amendment submission*”) with the *IMO*, at such address as may be *published* by the *IMO* from time to time, to propose one or more *amendments* to the *market rules* or to identify any provision of the *market rules* in respect of which the *market participant* or the other interested person considers that an *amendment* or review may be necessary or desirable. The *amendment submission* shall include a statement of the reasons for which an *amendment* to or review of the *market rules* may be necessary or desirable.

4.2A Rule Amendments Initiated by the IMO Board

- 4.2A.1 The *IMO Board* may at any time determine on its own initiative or at the request of any person that an *amendment*, including a *minor amendment*, to or a review of

a *market rule* may be necessary or desirable and shall *publish* and give notice of its intention to consider such *amendment* or review, together with a statement of the reason for which such *amendment* or review may be necessary or desirable:

4.2A.1.1 to all *market participants*;

4.2A.1.2 to the *technical panel*;

4.2A.1.3 where such *amendment* or review relates to or may affect any provision of section 2, to the *secretary* of the *dispute resolution panel*; and

4.2A.1.4 where such *amendment* or review relates to or may affect any provision of section 3, to the Chair of the *market surveillance panel*,

inviting such persons to make, within such reasonable period as shall be specified in the notice, written submissions to the *IMO Board* concerning the matter. The reasonable period shall not be less than 7 days.

4.2A.2 Sections 4.3.9 to 4.3.11 and 4.3.13 to 4.3.20 shall apply, with such modifications as the context may require, to consideration by the *IMO Board* of a proposed *amendment*, other than a *minor amendment* which shall be made in accordance with section 4.7, or review pursuant to this section 4.2A, it being understood that the references in those sections to the *technical panel* shall be considered references to the *IMO Board*, unless and to the extent that the *IMO Board* directs the *technical panel* to participate in the matter.

4.2A.3 Sections 4.7.1 to 4.7.6, other than sections 4.7.1.1 and 4.7.1.2, apply with such modifications as the context may require to consideration by the *IMO Board* of a *minor amendment* pursuant to this section 4.2A, it being understood that the references in those sections to the *technical panel* shall be considered references to the *IMO Board*, unless and to the extent that the *IMO Board* directs the *technical panel* to participate in the matter.

4.3 Requests for Review or Amendment of Market Rules

4.3.1 The provisions of this section 4.3 apply to requests made by the *IMO Board*, and *amendment submissions* made by a *market participants* or any other interested person for an *amendment* or review of the *market rules*, and do not apply:

4.3.1.1 except as expressly provided in section 4.4.3 or 4.2A.2, to proposed *amendments* to which sections 4.4 or 4.2A, respectively, apply;

- 4.3.1.2 to *urgent amendments* to the *market rules*, which shall be made in accordance with section 4.6; and
- 4.3.1.3 to *amendments* to the *market rules* which are required to be made or reconsidered further to an order of the *Ontario Energy Board* pursuant to sections 33(6), 34(6), 35(6) or 38(4) of the *Electricity Act, 1998*, which shall be made in accordance with section 4.8.
- 4.3.2 Upon receipt of the *amendment submission*, the *technical panel* may request that the person submitting the *amendment submission* provide further particulars with respect to the *amendment submission*.
- 4.3.3 [Intentionally left blank]
- 4.3.4 [Intentionally left blank]
- 4.3.5 The *technical panel* shall report to the *IMO Board* and, where applicable, give notice to the *market participant* or other interested person who made an *amendment submission* as to whether the proposed *amendment* or the request for consideration of an *amendment* or review is, in the opinion of the *technical panel*:
- 4.3.5.1 of such a nature that consideration of the *amendment submission* is warranted and the extent of the consultation that the *technical panel* intends to take with *market participants* and other interested persons in the consideration of the *amendment*; or
- 4.3.5.1A of such a nature that it raises only a *minor amendment*, in which case the *amendment submission* shall be dealt with in accordance with the provisions of section 4.7; or
- 4.3.5.1B of such a nature that a clarification or interpretation of the applicable *market rule* is warranted, in which case the *amendment submission* shall be dealt with in accordance with the provisions of section 12 of Chapter 1; or
- 4.3.5.2 with reasons specified in the report and notice, of such a nature that no consideration of the *amendment submission* is warranted,
- provided that the *technical panel* shall not make the determination referred to in section 4.3.5.2 where the request was made by the *IMO Board* unless the *IMO Board*, in its request, so permits.

- 4.3.6 The *technical panel* shall nonetheless further consider or not consider the *amendment submission*, as the case may be, if it is directed to do so by the *IMO Board*.
- 4.3.7 Where the *technical panel* decides or is required to further consider an *amendment submission* pursuant to section 4.3.5 or 4.3.6, the *IMO* shall publish and give notice to all *market participants* and to any person who made the *amendment submission*, of the particulars of the *amendment submission* and of any comments which the *technical panel* may wish to make in respect of the *amendment submission*. The notice and *publication* may, at the request of *technical panel*, invite *market participants* and other interested persons to make written submissions to the *technical panel* concerning the *amendment submission*, within such reasonable period as shall be determined by the *technical panel*, and as specified in the *publication* and notice. This reasonable period shall not be less than 7 days.
- 4.3.8 The written submissions referred to in section 4.3.7 must be filed with the *technical panel* within the time specified in the notice and publication and may indicate whether the *market participant* or the other interested person considers that a meeting is necessary or desirable in connection with the *amendment submission* and, if so, the reasons why such meeting is necessary or desirable.
- 4.3.9 The *technical panel* may at any time give notice, and invite *market participants* or other interested persons, to make such additional written submissions within such reasonable time as the *technical panel* determines appropriate.
- 4.3.10 The *technical panel* shall consider all written submissions received within the prescribed time pursuant to section 4.3.8 or 4.3.9 and may, where the *technical panel* considers it necessary or desirable, schedule and hold meetings in accordance with section 4.3.11.
- 4.3.10A In its consideration of an *amendment submission*, the *technical panel* shall also consider any unsolicited written submissions that are received in time for the *technical panel* meeting at which the applicable *amendment submission* is being considered.
- 4.3.11 The *technical panel* shall advise the *IMO Board* of the date, time and place scheduled for any meeting referred to in section 4.3.10 and the *IMO* shall, no less than seven days prior to the date fixed for a meeting, *publish* and give notice of same to *market participants* and to any person who filed written submissions pursuant to section 4.3.8 or 4.3.9. Any *market participant* and any other interested person may attend and, at the discretion of the *technical panel*, participate in any such meetings.

- 4.3.12 Where the *amendment submission* relates to or may affect:
- 4.3.12.1 any provision of section 2, the *technical panel* shall, prior to conducting any meetings pursuant to section 4.3.11 or, in the absence of such meetings, prior to voting on the matter, consult with the *secretary* of the *dispute resolution panel* with respect to the matter; and
 - 4.3.12.2 any provision of section 3, the *technical panel* shall, prior to conducting any meetings pursuant to section 4.3.11 or, in the absence of such meetings, prior to voting on the matter, consult with the Chair of the *market surveillance panel* with respect to the matter,
- and each of the secretary and the Chair shall consult such members of their respective panels as they determine appropriate prior to consulting with the *technical panel*.
- 4.3.13 The *technical panel* shall, as soon as reasonably practicable following any meetings and consultations which may have been held pursuant to sections 4.3.11 and 4.3.12, or any other consultations that the *technical panel* decides are appropriate, convene on one or more occasions as may be necessary to consider and vote on the *amendment* resulting from an *amendment submission*. Prior to the *technical panel* voting on an *amendment*, the *IMO* shall, at the request of *technical panel*, publish, and give notice to all *market participants* and to any person who made the *amendment submission* or written submission to which the proposed *amendment* relates, of the proposed *amendment* that will be the subject of the *technical panel's* vote. The notice and publication shall, at the request of the *technical panel*, invite *market participants* and other interested persons to make written submission to the *technical panel* concerning the subject *amendment*, within such reasonable period as shall be determined by the *technical panel* and specified in the notice and publication. This reasonable period shall not be less than 7 days.
- 4.3.14 Following the conclusion of the deliberations referred to in section 4.3.13, the *technical panel* shall submit a written report to the *IMO Board* setting out:
- 4.3.14.1 the recommendations of the *technical panel* and the reasons for its recommendations;
 - 4.3.14.2 where the recommendations of the *technical panel* include a proposal to amend the *market rules*, a copy of the proposed text of the amendment and a summary of any objections to the *amendment submission* which may have been contained in the written submissions referred to in section 4.3.8, 4.3.9, 4.3.10A or 4.3.13 or brought to the

- attention of the *technical panel* during any meetings held pursuant to section 4.3.11 or otherwise;
- 4.3.14.3 a summary of the procedure followed by the *technical panel* in considering the matter;
- 4.3.14.4 a summary of the views of the *secretary* of the *dispute resolution panel* or the Chair of the *market surveillance panel*, as the case may be, provided during the consultations referred to in section 4.3.12;
- 4.3.14.5 a record of the vote of each member of the *technical panel* in respect of each of the recommendations made in the report;
- 4.3.14.6 a summary of any objections raised by any member of the *technical panel* to the recommendations, if such objecting member so requests; and
- 4.3.14.7 a statement of the objects of the *IMO* considered by the *technical panel* in formulating the *amendment* as required by section 4.2.2.
- 4.3.15 The *IMO* shall publish the recommendations contained in the report of the *technical panel* referred to in section 4.3.14 and give notice thereof to all *market participants* and to any person who made an *amendment submission* or written submission to which the recommendations relate. In this notice and publication, the *IMO* shall, at the request of the *technical panel*, invite *market participants* and other interested persons to make written submissions to the *IMO Board* concerning the subject *amendment*, within seven *business days* of the date of giving of notice, objecting to the *technical panel's* recommendation and setting forth the reasons for the objection. At the request of the *IMO Board*, the *technical panel* shall provide to the *IMO Board* copies of all written submissions received pursuant to section 4.3.8, 4.3.9, 4.3.10A or 4.3.13, together with particulars of any written submissions which were made before the *technical panel* during the course of any meetings that may have been held pursuant to section 4.3.11.
- 4.3.16 [Intentionally left blank]
- 4.3.17 As soon as reasonably practicable following receipt of the report of the *technical panel* referred to in section 4.3.14 or, where written submissions have been requested pursuant to section 4.3.15, following the expiry of the deadline for written submissions referred to in that section, the *IMO Board* shall convene on one or more occasions as may be necessary to consider the report of the *technical panel*, together with any written submissions received pursuant to section 4.3.15, and shall vote on the matter in accordance with the provisions of the *Governance and Structure By-law*.

- 4.3.18 Where the *IMO Board* decides against the adoption of an *amendment* to the *market rules*, the *IMO* shall publish such decision and shall give notice of the decision to all *market participants* and to any person who made an *amendment submission* or written submission to which the decision relates. Where the *IMO Board* decides in favour of the adoption of the *amendment* to the *market rules*, either as recommended by the *technical panel* or with changes made by the *IMO Board* in its consideration of the *amendment*, the *IMO* shall publish such decision, together with a copy of the *amendment*, in accordance with the provisions of the *Governance and Structure By-law* and the *Electricity Act, 1998*, and shall give notice of the decision to all *market participants* the *Ontario Energy Board* and to any person who made the *amendment submission* or written submission to which the decision relates.
- 4.3.19 Where, in accordance with the *Governance and Structure By-law*, the *IMO Board* refers a recommendation contained in a report of the *technical panel* either back to the *technical panel* for further consideration and vote, or to any other person that the *IMO Board* deems appropriate, the *IMO Board* shall so advise the *technical panel*, with reasons, and shall publish such decision and give notice of the decision to all *market participants* and to any person who filed an *amendment submission* or written submission to which the decision relates. The *technical panel* shall, as soon as reasonably practicable following receipt of the decision of the *IMO Board*, convene to reconsider its recommendation. The *technical panel* may enter into such further consultations with such persons, and conduct such meetings, as it determines appropriate for purposes of its reconsideration.
- 4.3.20 Sections 4.3.14 to 4.3.18 shall apply, with such modifications as may be required by the context, to the reconsideration of a recommendation pursuant to section 4.3.19.

4.4 Rule Amendments Initiated by the Technical Panel

- 4.4.1 The provisions of this section 4.4 do not apply to *minor amendments* proposed by the *technical panel*, which shall be made in accordance with section 4.7.
- 4.4.2 Where the *technical panel* on its own initiative determines at any time that an *amendment* to or a review of a *market rule* may be necessary or desirable, it shall submit a report of its intention to consider such *amendment* or review to the *IMO Board*, together with the reasons for its determination.
- 4.4.3 Sections 4.3.7 to 4.3.20 shall apply, with such modifications as the context may require, to consideration of the matter raised in the *review notice*, it being

understood that the reference in those sections to an *amendment submission* shall be a reference to the *review notice*.

4.5 [Intentionally left blank]

4.5.1 [Intentionally left blank]

4.5.2 [Intentionally left blank]

4.5.3 [Intentionally left blank]

4.6 Urgent Amendments

4.6.1 *Urgent amendments* to the *market rules* shall be made by the *IMO Board* or the *urgent rule amendment committee*, if so authorized by the *IMO Board* pursuant to the *Governance and Structure By-law*, following such consultations with such persons as the *urgent rule amendment committee* or the *IMO Board*, as the case may be, considers appropriate.

4.6.2 Where an *urgent amendment* is made pursuant to section 4.6.1 by the *urgent rule amendment committee*, such *amendment* shall forthwith be reported to the *IMO Board*.

4.6.3 The *IMO Board* shall, in accordance with the provisions of the *Governance and Structure By-law*, convene on one or more occasions as may be necessary to consider the report and vote to either:

4.6.3.1 confirm the *urgent amendment*, in the form made by the *urgent rule amendment committee* or in such form as the *IMO Board* deems appropriate; or

4.6.3.2 reject the *urgent amendment* and stay the implementation thereof.

4.6.4 Where an *urgent amendment* is made by the *IMO Board* or the *urgent rule amendment committee* pursuant to section 4.6.1, the *IMO* shall forthwith *publish* and give notice, including the effective date and time, of such *urgent amendment* and shall give notice thereof to all *market participants*.

4.6.5 Where an *urgent amendment* is confirmed by the *IMO Board* pursuant to section 4.6.3.1 in a form other than that made by the *urgent rule amendment committee*, the *IMO* shall forthwith *publish* and give notice, including the

effective date and time, of such *urgent amendment* and shall give notice thereof to all *market participants*.

- 4.6.6 Where the *IMO Board* rejects and stays the implementation of an *urgent amendment* pursuant to section 4.6.3.2, the *IMO* shall forthwith *publish* and give notice, including the effective date and time, of its decision to all *market participants*.

4.7 Minor Amendments

- 4.7.1 If the *technical panel* considers that it is necessary or desirable to make a *minor amendment* to the *market rules*, either on its own initiative or upon receipt of an *amendment submission*, the *technical panel* shall hold such consultations with such persons, or ask for written submissions only from such *market participants*, if any, as the *technical panel* considers appropriate and shall:

4.7.1.1 where such *minor amendment* relates to or may affect any provision of section 2, consult with the *secretary* of the *dispute resolution panel*; or

4.7.1.2 where such *minor amendment* relates to or may affect any provision of section 3, consult with the Chair of the *market surveillance panel*,

and each of the *secretary* and the Chair shall consult such members of their respective panels as they determine appropriate prior to consulting with the *technical panel*.

- 4.7.2 After holding any consultations or receiving any written submissions pursuant to section 4.7.1, the *technical panel* shall convene on one or more occasions as may be necessary to consider and vote on the matter and shall thereafter submit a written report to the *IMO Board* containing the information set forth in section 4.3.14.

4.7.3 [Intentionally left blank]

4.7.4 [Intentionally left blank]

- 4.7.5 As soon as reasonably practicable following the receipt of the report of the *technical panel* referred to in section 4.7.2 the *IMO Board* shall convene on one or more occasions as may be necessary to consider and vote on the *minor amendment* in accordance with the *Governance and Structure By-law* and shall:

4.7.5.1 approve the *minor amendment* as submitted by the *technical panel* or with any changes that the *IMO Board* determines are appropriate; or

4.7.5.1A reject the *minor amendment*, or

4.7.5.2 refer the matter back to the *technical panel*.

4.7.5A The *IMO* shall *publish* the *IMO Board* decision made pursuant to section 4.7.5, together with a copy of the *amendment*, in accordance with the provisions of the *Governance and Structure By-law* and the *Electricity Act, 1998*, and shall give notice of the decision to all *market participants*, the *Ontario Energy Board* and to any person who made the *amendment submission* or made a written submission to which the decision relates.

4.7.6 Sections 4.3.7 to 4.3.20 shall, unless and to the extent that the *IMO Board* directs otherwise, apply with such modifications as the context may require to the further consideration by the *technical panel* of a matter referred to it under section 4.7.5.2.

4.8 Amendments Subject to Order of the Ontario Energy Board

4.8.1 Upon receipt of an order of the *Ontario Energy Board* made pursuant to subsection 33(6) or 34(6) of the *Electricity Act, 1998* from which no appeal, review or petition to the Lieutenant Governor in Council can or has been taken, the *IMO Board* shall either:

4.8.1.1 refer the matter, including consideration of any consequential *amendments* arising from the matter, to the *technical panel*, and the provisions of sections 4.3.7 to 4.3.20 shall, unless and to the extent that the *IMO Board* directs otherwise, apply with such modifications as the context may require to the reconsideration of the amendment to the market rules which is the subject of the order; or

4.8.1.2 following such consultations as the *IMO Board* considers appropriate, make an *amendment* to the *market rules* including any consequential *amendments* arising from the matter. The *IMO* shall *publish* the *amendment* and shall give notice of the *amendment* to all *market participants* and the *Ontario Energy Board*.

4.8.2 Upon receipt of an order of the *Ontario Energy Board* made pursuant to subsection 35(6) or 38(4) of the *Electricity Act, 1998* from which no appeal, review or petition to the Lieutenant Governor in Council can or has been taken, the *IMO Board* shall make an *amendment* to the *market rules* in the manner and within the time specified by the *Ontario Energy Board* in its order, including any

consequential *amendments* arising from the matter, following such consultations as the *IMO Board* considers appropriate. The *IMO* shall *publish* the *amendment* and shall give notice of the *amendment* to all *market participants* and the *Ontario Energy Board*.

4.9 Experts and Other Assistance

4.9.1 The *technical panel* may, subject to the *Governance and Structure By-law* of the *IMO* and to budgetary approval of the Chief Executive Officer of the *IMO*, hire such consulting assistance and seek such expert external advice as may be necessary or desirable for the purpose of the fulfillment of its responsibilities under this section 4. Where the Chief Executive Officer of the *IMO* does not approve such request, the *technical panel* may appeal such decision to the Chair of the *IMO Board*.

4.9.1A Consultants and expert external advisors hired pursuant to section 4.9.1 shall enter into such confidentiality agreement as may be required by the Chair of the *technical panel*.

4.9.2 In carrying out any of its responsibilities under this section 4, the *technical panel* may, through the Chief Executive Officer of the *IMO*, solicit the assistance of any director, officer or employee of the *IMO* and may use the facilities of the *IMO*.

4.9.3 Where the *technical panel* at any time considers it necessary or desirable to do so, it may establish working groups to assist it in the fulfillment of its responsibilities under this section 4, which working groups shall operate in accordance with such terms and conditions, including as to the scope of their work and as to participation in such working groups, as the *technical panel* may reasonably determine to be appropriate. The *technical panel* shall notify the *IMO Board* of its intention to establish a working group and the *IMO* shall *publish* and give notice to all *market participants*, the person who made the *amendment submission* and any other interested party that made written submissions in respect of the proposed *amendment* to which the working group relates of such intention.

4.9.4 The *IMO Board* may, at any time in fulfilling its responsibilities under this section 4, including but not limited to for the purposes of section 4.8.2, call upon the assistance of the *technical panel*.

4.10 [Intentionally left blank]

4.10.1 [Intentionally left blank]

4.10.2 [Intentionally left blank]

4.10.3 [Intentionally left blank]

4.11 [Intentionally left blank]

4.11.1 [Intentionally left blank]

4.12 Audit

4.12.1 The activities of the *technical panel* shall be audited in accordance with procedures adopted from time to time by the *IMO*.

5. Accessibility and Confidentiality of Information

5.1 Accessibility

5.1.1 Subject to section 5.7.1, all persons shall have an equal opportunity for open and non-discriminatory access to all information, other than *confidential information*, required by the *market rules* to be made available to *market participants*, the *IMO* or other persons.

5.1.2 Subject to section 5.7.1, all information, other than *confidential information*, required by the *market rules* to be made available to *market participants*, the *IMO* or other persons shall be *published* or otherwise made available in the manner and within the time prescribed in the *market rules*. Where no time is specified in respect of the provision of a particular piece of information, such information shall be made available within a reasonable time.

5.1.3 All *market participants* shall have an equal opportunity for access to information, other than *confidential information*, made available pursuant to the *market rules*.

5.1.3A Notwithstanding sections 5.1.1, 5.1.2, 5.1.3 or any other sections of the *market rules*, the *IMO* may withhold information that if disclosed may, in the reasonable opinion of the *IMO*, pose a security threat to the *reliable* operations of the

integrated power system, the IMO-administered markets, or those of neighbouring jurisdictions.

5.1.4 In this section 5:

5.1.4.1 a reference to the *IMO* shall include a reference to a panel established by the *IMO*; and

5.1.4.2 a reference to information shall mean information however recorded, whether in printed form, on film, by electronic means or otherwise.

5.2 Confidentiality

5.2.1 Each *market participant* and the *IMO* shall keep confidential any *confidential information* which comes into the possession or control of that *market participant* or the *IMO* or of which the *market participant* or the *IMO* becomes aware.

5.2.2 No *market participant* or the *IMO*:

5.2.2.1 shall disclose *confidential information* to any person except as permitted by the *market rules*;

5.2.2.2 shall permit access to *confidential information* by any person not authorized to have such access pursuant to the *market rules*; and

5.2.2.3 shall use or reproduce *confidential information* for a purpose other than the purpose for which it was disclosed or another purpose contemplated by the *market rules*.

5.2.3 Each *market participant* and the *IMO* shall:

5.2.3.1 prevent access to *confidential information* which is in its possession or control by any person not authorized to have such access pursuant to the *market rules*, including by appropriate means of destruction or disposal in cases where the *confidential information* is not required or is at the relevant time no longer required to be retained by it pursuant to the *market rules*; and

5.2.3.2 ensure that any person to whom it discloses *confidential information* observes the provisions of this section 5.2 in relation to that *confidential information*.

- 5.2.4 Each *market participant* and the *IMO* shall, promptly upon becoming aware of a breach or a threatened breach of the provisions of this section 5 with respect to an item of *confidential information*:
- 5.2.4.1 so notify any person to whom the *confidential information* relates or by whom it was provided;
- 5.2.4.1A if a *market participant*, so notify the *IMO*; and
- 5.2.4.2 take such reasonable steps as may be required to prevent or assist in the prevention of, as the case may be, the unauthorized disclosure, access to, use or reproduction of *confidential information* that may result from such breach or threatened breach.
- 5.2.5 Each *market participant* shall maintain internal measures relating to the protection of *confidential information* that enable the *market participant* to comply and monitor compliance with its obligations under this section 5.
- 5.2.6 The *IMO* shall maintain internal measures, including measures referred to in section 5.7.2, relating to the protection of *confidential information* that enable the *IMO* to comply and monitor compliance with its obligations under this section 5.

5.3 Exceptions

- 5.3.1 Unless prohibited by *applicable law* or by the provisions of these *market rules* other than this section 5, nothing in sections 5.2, 5.4 or section 5.5.1A of chapter 5 shall prevent:
- 5.3.1.1 the disclosure, use or reproduction of information if the information is, at the time of disclosure, generally and publicly available other than as a result of a breach of confidence by the *market participant* or the *IMO* who wishes to disclose, use or reproduce the information or by any person to whom the *market participant* or the *IMO* has disclosed the information;
- 5.3.1.2 the disclosure of *confidential information* by a *market participant* or the *IMO* to:
- a. a director, officer or employee of the *market participant* or of the *IMO* where such person requires the *confidential information* for the due performance of that person's duties and responsibilities and, in the case of the *IMO* for information that is highly

- confidential pursuant to section 5.4.2.6, where the person has the required security clearance assigned by the *IMO*; or
- b. a legal or other professional advisor, auditor or other consultant of the *market participant* or of the *IMO* where such persons require the information for purposes of the *market rules* or of an agreement entered into pursuant to the *market rules* or for the purpose of advising the *market participant* or the *IMO* in relation thereto;
- 5.3.1.3 the disclosure, use or reproduction of *confidential information*:
- a. by the *market participant* or person that provided the *confidential information* pursuant to the *market rules*;
- b. with the consent of the *market participant* or person that provided the *confidential information* pursuant to the *market rules*; or
- c. in the case of *settlement data*, *metering data* or data contained in the *metering registry*, by or with the consent of the *market participant* to whom such data relates;
- 5.3.1.4 the disclosure, use or reproduction of *confidential information* to the extent required by *applicable law* or by a lawful requirement of:
- a. any government or governmental body, regulatory body, authority or agency having jurisdiction over a *market participant* or the *IMO* or an *affiliate* of a *market participant* or of the *IMO*; or
- b. any stock exchange having jurisdiction over a *market participant*, the *IMO* or an *affiliate* of a *market participant* or the *IMO*;
- 5.3.1.5 except as otherwise provided in section 2, the disclosure, use or reproduction of *confidential information* if required in connection with legal proceedings, mediation, arbitration, expert determination or other dispute resolution mechanism relating to the *market rules* or to an agreement entered into pursuant to the *market rules* or for the purpose of advising a person in relation thereto;
- 5.3.1.5A if required by the *IMO Board* or a committee established by the *IMO Board*, the disclosure, use or reproduction of *confidential information* if required in connection with the issuance of *suspension*, *termination* or *disconnection orders* in respect of one or more *market participants* and any show cause hearings in respect thereof under section 6.3, 6.4 or 6.5, the revocation of the registration in respect of one or more *metering service providers* and any show cause hearings in respect thereof under section 5.3 of chapter 6;

- 5.3.1.6 the disclosure of *confidential information* if required to protect the health or safety of personnel, equipment or the environment or to maintain the *reliability* of the *IMO-controlled grid*;
- 5.3.1.7 the disclosure, use or reproduction of *confidential information* as an unidentifiable component of an aggregate sum;
- 5.3.1.8 the disclosure by the *IMO* of *confidential information* to a *transmitter* for the purposes of:
- a. the safe and reliable management, operation and maintenance of its *transmission system* to the extent that *confidential information* is required pursuant to the terms of the *operating agreement*; or
 - b. the verification or reconciliation of the collection and administration of any applicable *transmission services charges*;
- 5.3.1.9 the disclosure by the *IMO* of *confidential information* to a *market participant*:
- a. during an *emergency* or where the *IMO-controlled grid* is in an *emergency operating state* or a *high-risk operating state*; or
 - b. where an *emergency*, an *emergency operating state* or a *high-risk operating state* is anticipated by the *IMO*;
to the extent that such disclosure would, in the *IMO's* opinion:
 - c. assist the *market participant* in responding to the conditions referred to in sections 5.3.1.9(a) and 5.3.1.9(b); or
 - d. assist the *IMO* in restoring the *IMO-controlled grid* to a *normal operating state*; or
- 5.3.1.10 disclosure by the *IMO* of *confidential information* to a *standards authority*, a *control area operator*, a *security coordinator* or an *interconnected transmitter*.
- 5.3.2 Prior to making any disclosure pursuant to section 5.3.1.2(b), the person wishing to disclose the information shall inform the proposed recipient of the confidential nature of the *confidential information* to be disclosed and shall use all reasonable endeavours, including but not limited to the execution of an appropriate *confidential agreement*, to ensure that the recipient keeps the *confidential information* confidential in accordance with the provisions of section 5.2 and does not use the *confidential information* for any purpose other than that permitted under section 5.3.1.2(b).

- 5.3.3 Prior to making any disclosure pursuant to section 5.3.1.4, 5.3.1.5 or 5.1.3.5A, a person being requested or demanded to disclose the *confidential information* shall advise the person affected by the request or demand as soon as reasonably practicable so as where possible to permit the affected person to challenge such request or demand or seek terms and conditions in respect of any such disclosure.
- 5.3.4 In making any disclosure pursuant to section 5.3.1.6, the disclosing person shall advise the person affected by the disclosure as soon as is reasonably practicable and shall use all reasonable endeavours to protect the confidentiality of the *confidential information* insofar as may be reasonably practicable in the circumstances.
- 5.3.5 Where the *IMO* makes any disclosure pursuant to section 5.3.1.8:
- 5.3.5.1 the *IMO* shall advise the *market participant* affected by the disclosure as soon as is reasonably practicable in the circumstances; and
- 5.3.5.2 the *transmitter* to whom the disclosure is made shall use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.8 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information*.
- 5.3.6 Where the *IMO* makes any disclosure pursuant to section 5.3.1.9:
- 5.3.6.1 the *IMO* shall advise the *market participant* affected by the disclosure as soon as is reasonably practicable in the circumstances; and
- 5.3.6.2 the *market participant* to whom the disclosure is made shall use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.9 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information* as may be reasonably practicable in the circumstances.

5.4 Classification of Information

- 5.4.1 The *IMO* shall establish the following three levels of *confidentiality classification* for information that may be in the possession or control of the *IMO*:
- 5.4.1.1 public;
- 5.4.1.2 [Intentionally left blank]
- 5.4.1.3 [Intentionally left blank]

- 5.4.1.4 [Intentionally left blank]
- 5.4.1.5 confidential; and
- 5.4.1.6 highly confidential.
- 5.4.2 Subject to section 5.4.3, information in the possession or control of the *IMO* that is listed in the *information confidentiality catalogue* and that is identified therein as:
- 5.4.2.1 public is information that is not *confidential information* including, but not limited to, information required by the *market rules* or the *licence* of the *IMO* to be *published*, and may be disclosed to, accessed by, reproduced or used by any person without restriction;
- 5.4.2.2 [Intentionally left blank]
- 5.4.2.3 [Intentionally left blank]
- 5.4.2.4 [Intentionally left blank]
- 5.4.2.5 confidential is *confidential information* that is provided to the *IMO* by a *market participant*, a *standards authority*, a *security coordinator*, a *control area operator*, an *interconnected transmitter*, or that is provided to the *IMO* by a person other than a *market participant* and that relates to a *market participant*; or that originates with or is created by the *IMO* and that relates to a *market participant*, and may only be disclosed by the *IMO* to or accessed by:
- where the *confidential information* was provided to the *IMO* by a person, that person;
 - any person that the *IMO* has reasonable grounds to believe has been authorized by the person referred to in section 5.4.2.5(a) to access or receive such *confidential information*;
 - any authorized person within the *IMO*; and
 - the *market participant* to whom the *confidential information* relates.
- 5.4.2.6 highly confidential is *confidential information* that is provided to the *IMO* by a *market participant*, or by a person other than a *market participant*, or that originated within or is created by the *IMO*, and requires restricted access within the *IMO*, and may only be disclosed by the *IMO* to or accessed by:

- a. where the *confidential information* was provided to the *IMO* by a person, that person;
- b. any person that the *IMO* has reasonable grounds to believe has been authorized by the person referred to in section 5.4.2.6(a) to access or receive such *confidential information*; and
- c. any person within the *IMO* that has the required security clearance assigned by the *IMO* and requires the *confidential information* for the purpose of the due performance of that person's duties and responsibilities.

5.4.3 Where:

5.4.3.1 the *information confidentiality catalogue* provides, in respect of any particular item of *confidential information*, that such *confidential information* is to be automatically re-classified within a different *confidentiality classification* following the expiry of the period of time identified in the *information confidentiality catalogue*, such *confidential information* shall be deemed for all purposes to be re-classified within such other *confidentiality classification* on and after the expiry of such period of time;

5.4.3.2 *confidential information* is re-classified by the *IMO* within a different *confidentiality classification* in accordance with any one of sections 5.5.3 to 5.5.6, such *confidential information* shall be deemed for all purposes to be re-classified within such other *confidentiality classification* on and after the date of such re-classification.

5.4.4 Where the *IMO* amends the *information confidentiality catalogue* to include an additional item of information, the *IMO* shall classify such information within the *confidentiality classification* that is, in the *IMO's* opinion, appropriate having regard to:

- 5.4.4.1 the adverse impact that disclosure of the information may reasonably be expected by the *IMO* to have on:
- a. the person that provides the information;
 - b. the person to whom the information relates or such other person as the *IMO* has reasonable grounds to believe may be adversely affected by disclosure of the information;
 - c. the efficient operation of the *IMO-administered markets*;
 - d. the *reliable* operation of the *IMO-controlled grid*;

- e. the *IMO*; and
 - f. the security of the *integrated power system*, the *IMO-administered markets* or those of neighbouring jurisdictions.
- 5.4.4.2 [Intentionally left blank]
- 5.4.4.3 [Intentionally left blank]
- 5.4.4.4 [Intentionally left blank]
- 5.4.4.5 [Intentionally left blank]
- 5.4.4.6 the proprietary nature and degree of confidentiality of the information, to the extent known by the *IMO*; and
- 5.4.4.7 the *IMO*'s obligations relating to confidentiality of and access to information under the *market rules*, *applicable law* or any agreement to which the *IMO* is a party.
- 5.4.5 Where a *market participant* provides to the *IMO* information that is not listed in the *information confidentiality catalogue*, the *IMO* shall:
- 5.4.5.1 subject to sections 5.4.6, 5.4.7, 5.4.9.2 and 5.4.10, classify that information within the *confidentiality classification* designated by the *market participant* in accordance with section 5.4.11 at the time that it provides such information to the *IMO* or pursuant to section 5.4.9.2(b); and
 - 5.4.5.2 respect any restrictions requested by the person to be imposed in respect of the disclosure, use, reproduction or provision of access to such information that are additional to the restrictions pertaining to that *confidentiality classification* as described in section 5.4.2 unless, in the *IMO*'s opinion, such additional restrictions:
 - a. would interfere with the ability of the *IMO* to maintain the *reliability* of the *IMO-controlled grid* or to operate the *IMO-administered markets* in an efficient manner; or
 - b. are inconsistent with the *IMO*'s obligations relating to confidentiality of and access to information under the *market rules*, *applicable law* or any agreement to which the *IMO* is a party.
- 5.4.6 Where the *IMO* disagrees with the *confidentiality classification* designated by a *market participant* pursuant to section 5.4.5.1, the *IMO* shall so notify the *market participant*, which notice shall specify:

- 5.4.6.1 the grounds upon which the *IMO* disagrees with the *confidentiality classification* designated by the *market participant*;
 - 5.4.6.2 the *confidentiality classification* that the *IMO* considers to be appropriate for the information; and
 - 5.4.6.3 the time within which the *market participant* may make representations to the *IMO* in support of the *confidentiality classification* designated by it.
- 5.4.7 Following the time noted in section 5.4.6.3, and after consideration of any representations made by the *market participant* pursuant to that section, the *IMO* shall:
- 5.4.7.1 where it agrees with the *confidentiality classification* designated by the *market participant*, classify the information within such *confidentiality classification*; or
 - 5.4.7.2 where it continues to disagree with the *confidentiality classification* designated by the *market participant*, classify the information within the *confidentiality classification* referred to in section 5.4.6.2 or, subject to section 5.4.8, such other *confidentiality classification* that the *IMO* considers to be appropriate for the information,
- and shall so notify the *market participant*.
- 5.4.8 For the purposes of section 5.4.7.2, the *IMO* shall not classify the information within a *confidentiality classification* other than the *confidentiality classification* referred to in section 5.4.6.2 unless such other *confidentiality classification* has, pursuant to section 5.4.2, associated with it provisions relating to disclosure and access that are more restrictive than those associated with the *confidentiality classification* referred to in section 5.4.6.2.
- 5.4.9 Where a *market participant* fails to designate a *confidentiality classification* for information submitted to the *IMO* pursuant to section 5.4.5.1 at the time at which it submits such information to the *IMO*, the *IMO* shall:
- 5.4.9.1 as soon as reasonably practicable following receipt of the information, notify the *market participant* that it must, within five *business days* of the date of receipt of the notice, designate a *confidentiality classification* for the information, failing which the *IMO* will classify the information within the confidential *confidentiality classification*; and

- 5.4.9.2 temporarily classify the information within the confidential *confidentiality classification* until:
- a. the expiry of the period referred to in section 5.4.9.1 or within such longer period of time as may be agreed between the *IMO* and the *market participant*; or
 - b. the date on which the *market participant* designates a *confidentiality classification* for the information,
- whichever is the earlier.

5.4.10 Where a *market participant* fails to designate a *confidentiality classification* for information submitted to the *IMO* pursuant to section 5.4.5.1 within the time referred to in section 5.4.9.2(a), the *IMO* shall classify the information within the confidential *confidentiality classification*.

5.4.11 For the purposes of sections 5.4.5.1 and 5.4.9.2(b), a *market participant* shall designate the *confidentiality classification* for information submitted pursuant to those sections having regard to:

- 5.4.11.1 the adverse impact that disclosure of the information may reasonably be expected by the *market participant* to have on itself;
- 5.4.11.2 the adverse impact that disclosure of the information may reasonably be expected by the *market participant* to have on any person to whom the information relates or on such other person as the *market participant* may have reasonable grounds to believe may be adversely affected by disclosure of the information;
- 5.4.11.3 the proprietary nature and degree of confidentiality of the information; and
- 5.4.11.4 the *market participant's* obligations relating to confidentiality of and access to information under the *market rules*, *applicable law* or any agreement to which the *market participant* is a party.

5.5 Reclassification of Information

5.5.1 The *confidentiality classification* of any *confidential information* that is referred to in the *information confidentiality catalogue*, that is in the possession or control of the *IMO* and that has not been automatically re-classified in accordance with section 5.4.3.1 shall be reviewed by the *IMO*:

5.5.1.1 in the case of *confidential information* other than *confidential information* classified as highly confidential, no less than once in every three calendar years; and

5.5.1.2 in the case of *confidential information* classified by the *IMO* as highly confidential, no less than once in every seven calendar years,

with a view to determining, in accordance with section 5.5.2, whether the *confidential information* can be re-classified within a *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than those associated with the existing confidentiality classification.

5.5.2 The *IMO* shall make the determination referred to in section 5.5.1 having regard to the factors noted in section 5.4.4.

5.5.3 Where the *IMO* determines, in accordance with the review conducted pursuant to section 5.5.1 that confidential information can be re-classified within another confidentiality classification that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than the existing confidentiality classification, the *IMO* shall:

5.5.3.1 [Intentionally left blank]

5.5.3.2 [Intentionally left blank]

5.5.3.3 where the *confidential information* was provided by a *market participant* or relates to a particular *market participant*, notify the *market participant* that provided the *confidential information* or to which the *confidential information* relates of its intention to re-classify the *confidential information*, which notice shall specify:

- a. the grounds upon which the *IMO* has determined it appropriate to re-classify the *confidential information*;
- b. the *confidentiality classification* that the *IMO* considers appropriate for purposes of the re-classification of the *confidential information*; and
- c. the time within which the *market participant* may object to the re-classification of the *confidential information*.

5.5.4 Where:

5.5.4.1 a *market participant* fails, within the time referred to in section 5.5.3.3(c), to object to the re-classification of *confidential*

information that relates to it but that was not provided by it to the *IMO*, the *IMO* may re-classify the information within the *confidentiality classification* referred to in section 5.5.3.3(b) or within such other *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are more restrictive than the *confidentiality classification* referred to in section 5.5.3.3(b), and shall notify the *market participant* accordingly;

5.5.4.2 a *market participant* fails, within the time referred to in section 5.5.3.3(c), to object to the re-classification of *confidential information* that was provided by it to the *IMO*, the *IMO* shall not re-classify the *confidential information*; or

5.5.4.3 a *market participant* objects to the re-classification of *confidential information* within the time referred to in section 5.5.3.3(c), the *IMO* shall not re-classify the *confidential information* except as may be agreed between the *IMO* and the *market participant*.

5.5.5 The *IMO* shall, at the request of a *market participant*, re-classify *confidential information* provided by that *market participant* within a *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than the existing *confidentiality classification* provided that the *IMO* is satisfied that such re-classification would not be inconsistent with the factors referred to in section 5.4.4.

5.5.6 Where a *market participant* indicates, at the time at which it designates a *confidentiality classification* for *confidential information* pursuant to section 5.4.5.1, that the *confidential information* may be automatically re-classified within a *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than the existing *confidentiality classification*, the *IMO* shall re-classify such *confidential information* accordingly provided that the *IMO* is satisfied that such re-classification would not be inconsistent with the factors referred to in section 5.4.4.

5.5.7 Amendments to the *information confidentiality catalogue* shall be subject to review by the *technical panel* and approval by the *IMO Board* until the end of 2003.

5.6 Cost of Access and Electronic Data Sharing

- 5.6.1 Nothing in this section 5 shall prevent information which is made available by means of electronic communications from being provided on a read-only basis.
- 5.6.2 Each *market participant* and any other person accessing, retrieving or storing information *published* or otherwise made available by the *IMO* shall be responsible for its own costs of accessing, retrieving or storing such information.

5.7 Conditions of Access

- 5.7.1 Where a request for access to or disclosure of information in the possession or control of the *IMO* is made by a *market participant* pursuant to these *market rules*, the *IMO* shall only provide such access or disclosure if:
- 5.7.1.1 the *IMO* is satisfied that it is not precluded by these *market rules* from providing such access or disclosure to the *market participant*; and
 - 5.7.1.2 the provision of such access or disclosure would not impose a significant burden on the *IMO*, having regard to the *IMO*'s resources.
- 5.7.2 Where the *IMO* makes *confidential information* accessible by means of electronic communications, the *IMO* shall implement access control protocols that differentiate between *market participants* but that need not differentiate between individuals, whether within the same *market participant* or otherwise.

6. Enforcement

6.1 Introduction

- 6.1.1 This section sets forth the rules pursuant to which the *IMO* shall monitor, assess and enforce compliance with the *market rules*, including by means of the imposition of financial penalties, the issuance of non-compliance letters, *suspension orders*, *termination orders* and *disconnection orders* and the taking of such other enforcement actions as provided for in these *market rules*.
- 6.1.2 The *IMO* shall undertake such monitoring as it considers necessary to determine whether *market participants* are complying with the *market rules*.

6.2 Procedures Concerning Alleged Breaches of the Market Rules

6.2.1 This section shall not apply to the issuance by the *IMO* of a *suspension order* or *termination order*, which shall be governed by the provisions of section 6.3 or 6.4, respectively, or to the issuance by the *IMO* of the order referred to in section 6.5.1, which shall be governed by the applicable provisions of section 6.4 and 6.5.

6.2.1A This section 6 shall not apply in respect of:

6.2.1A.1 a breach of any performance standard set forth in the *market rules*; or

6.2.1A.2 a failure to pass a test set forth in the *market rules* or, where applicable, the *Ontario power system restoration plan*,

by an *ancillary service provider* in the provision of *regulation/AGC* or *black start capability* under a *contracted ancillary service* contract, which shall be governed, by the provisions of section 7 and by the provisions of sections 4.10.2.1 and 4.10.2.2 of Chapter 5.

6.2.2 Where the *market rules* provide for consequences or sanctions in respect of a breach by a *market participant* of a particular *market rule* or *market rules*, those consequences or sanctions shall apply in the circumstances and in the manner provided for in the relevant sections of the *market rules* in addition to such sanctions as may be imposed pursuant to this section 6.2.

6.2.3 If the *IMO* considers, on its own initiative or upon receipt of written information from any person, that a *market participant* may have breached or may be breaching the *market rules* and that, in the circumstances and if the breach is established, it would be appropriate that a sanction or sanctions be imposed on that *market participant*, the *IMO* shall notify the *market participant* of:

6.2.3.1 details of the alleged breach and of the time within which the breach must be remedied;

6.2.3.2 details of the evidence on the basis of which the *IMO* considers that the *market participant* may have breached or may be breaching the *market rules*;

6.2.3.3 details of the sanctions which may be imposed if the breach is established;

6.2.3.4 the time within which the *market participant* may make written representations in response to the allegations; and

- 6.2.3.5 the right of the *market participant* to request a meeting with the *IMO* to discuss the matter.
- 6.2.4 Following expiry of the time noted in section 6.2.3.4, and after consideration of any representations made by the *market participant* pursuant to that section, the *IMO* may:
- 6.2.4.1 determine that the *market participant* has not breached the *market rules*;
 - 6.2.4.2 subject to section 6.2.5, determine that the *market participant* is in breach of the *market rules*;
 - 6.2.4.3 request that the *market participant* provide further information in relation to the alleged breach; or
 - 6.2.4.4 conduct such further investigation into the matter as the *IMO* determines appropriate.
- 6.2.5 Where a *market participant* has requested a meeting pursuant to section 6.2.3.5, the *IMO* shall provide the *market participant* with a reasonable opportunity to meet with the *IMO* to discuss the allegations. In such case, the *IMO* shall not make the determination noted in section 6.2.4.2 until such reasonable opportunity has been given.
- 6.2.6 A *market participant* shall comply with any request for information made by the *IMO* pursuant to section 6.2.4.3.
- 6.2.7 Where the *IMO* determines that a *market participant* has breached the *market rules*, the *IMO* may by order do any one or more of the following:
- 6.2.7.1 direct the *market participant* to do, within a specified period, such things as may be necessary to comply with the *market rules*;
 - 6.2.7.2 direct the *market participant* to cease, within a specified period, the act, activity or practice constituting the breach;
 - 6.2.7.3 impose additional or more stringent record-keeping or reporting requirements on the *market participant*;
 - 6.2.7.4 issue a non-compliance letter in accordance with section 6.6.5;
 - 6.2.7.5 impose financial penalties in accordance with section 6.6 indicating the time within which payment of the financial penalty must be made to the *IMO*, provided that no such penalties shall be imposed unless

the *IMO* is satisfied that the breach could have been avoided by the exercise of due diligence by the *market participant* or that the *market participant* acted intentionally;

- 6.2.7.6 take such other action as may be provided for in Appendix 3.1 in respect of the *market rule* that has been breached by the *market participant* or
- 6.2.7.7 in the event that the breach of the *market rules* is the failure of a *registered market participant* to comply with a *dispatch instruction* to reduce its *energy* withdrawals from an *hour-ahead dispatchable load*, as determined by comparing the actual *energy* withdrawal reduction to the *hour-ahead dispatchable load's baseline*, and the *market participant* received a HADLOG payment on the basis of that scheduled reduction, calculate a downward adjustment to the HADLOG payments corresponding to that portion of the reduction amount that was scheduled but not achieved.

6.2.8 An order imposing financial penalties on a *market participant* pursuant to section 6.6 shall, subject to section 2.3.3, be considered to create an obligation under the *market rules* to pay the amount stated in the order and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.

6.2.9 Failure to comply with an order of the *IMO* made pursuant to section 6.2.7 constitutes a breach of the *market rules*.

6.3 Suspension Orders and Disconnection Orders

6.3.1 Each of the following is an *event of default* in relation to a *market participant*:

- 6.3.1.1 the *market participant* does not pay money due for payment by it under the *market rules* by the appointed time on the due date;
- 6.3.1.2 the *IMO* does not receive payment in full of any amount claimed by the *IMO* under any *prudential support* in respect of the *market participant* within one *business day* in the jurisdiction of the *market participant* after the due time for payment of that claim;
- 6.3.1.3 the *market participant* fails to provide *prudential support* required to be supplied under the *market rules* within the time required;

- 6.3.1.4 it becomes unlawful for the *market participant* to comply with any of its obligations under the *market rules* or any other obligation owed to the *IMO* or it is claimed to have become so by the *market participant*;
- 6.3.1.5 it becomes unlawful for any person who has provided *prudential support* in relation to the *market participant* (a “*prudential support provider*”) to comply with any of its obligations under the *market rules* or any other obligation owed to the *IMO* or it is claimed to have become so by the *market participant’s prudential support provider*;
- 6.3.1.6 a licence (including a *licence*), permit or other authorization necessary to enable the *market participant* or the *market participant’s prudential support provider* to carry on their respective principal business or activities is suspended, revoked or otherwise ceases to be in full force and effect, provided that where a *market participant* holds more than one *licence* and only one such *licence* has been suspended, revoked or otherwise ceases to be in full force and effect, the *event of default* and any action taken by the *IMO* with respect thereto shall relate only to such *licence*;
- 6.3.1.7 the *market participant* or the *market participant’s prudential support provider* ceases or threatens to cease to carry on its business or a substantial part of its business;
- 6.3.1.8 the *market participant* or the *market participant’s prudential support provider* enters into or takes any action to enter into an arrangement, composition or compromise with, or an assignment for the benefit of, all or any class of their respective creditors or members or a moratorium involving any of them;
- 6.3.1.9 the *market participant* or the *market participant’s prudential support provider* states that it is unable to pay from its own money its debts when they fall due for payment;
- 6.3.1.10 a receiver or receiver and manager or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of any property of the *market participant* or the *market participant’s prudential support provider* which is used in or relevant to the performance by the *market participant* or the *market participant’s prudential support provider* of its obligations under the *market rules* or its *licence*;
- 6.3.1.11 an administrator, liquidator, trustee in bankruptcy or person having a similar or analogous function under the laws of any relevant

- jurisdiction is appointed in respect of the *market participant* or the *market participant's prudential support provider*, or any action is taken to appoint such person;
- 6.3.1.12 an application is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the *market participant* or the *market participant's prudential support provider*;
- 6.3.1.13 the *market participant* or the *market participant's prudential support provider* is wound up or dissolved, unless the notice of winding up or dissolution is discharged;
- 6.3.1.14 the *market participant* or the *market participant's prudential support provider* is taken to be insolvent or unable to pay its debts under any applicable legislation;
- 6.3.1.15 the *market participant* ceases to satisfy any material requirement imposed upon it as a condition of its authorization to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*.
- 6.3.2 A *market participant* shall notify the *IMO* immediately upon the earlier of becoming aware of any circumstance that may give rise to or of the occurrence of:
- 6.3.2.1 an *event of default* referred to in sections 6.3.1.4 to 6.3.1.15; and
- 6.3.2.2 a receiver or receiver and manager or person having a similar or analogous function under the laws of any relevant jurisdiction being appointed in respect of any property of the *market participant* or the *market participant's prudential support provider*.
- 6.3.3 Where an *event of default* has occurred in relation to a *market participant*, the *IMO*:
- 6.3.3.1 shall, unless a *default notice* has been issued, issue to the *market participant* a notice specifying the *event of default* and of the *IMO's* intent to commence suspension proceedings unless the *market participant* remedies the *event of default* within 5 days or 2 *business days*, whichever is longer;
- 6.3.3.2 may issue to the *market participant* a *default notice* specifying the *event of default* and requiring the *market participant* to remedy the

event of default within such time as may be specified in the *default notice*, which time shall not be more than:

- a. 5 days; or
- b. 2 *business days*

6.3.3.3 may, if it has not already done so, make claim upon any *prudential support* held in respect of the obligations of the *market participant* for such amount as the *IMO* determines represents the amount of any money actually or contingently owing by the *market participant* to the *IMO* under the *market rules*.

6.3.3A Where the *IMO* issues a *default notice* to a *market participant* pursuant to section 6.3.3.2, the *IMO* shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *market participant* is connected:

- 6.3.3A.1 of the issuance of the *default notice*;
- 6.3.3A.2 of the time within which the *market participant* may remedy the *event of default* as specified in the *default notice*; and
- 6.3.3A.3 where applicable, once the *event of default* specified in the *default notice* has been remedied by the *market participant*.

6.3.3B Where the *IMO* issues either a notice of the *IMO's* intent to commence suspension proceedings in accordance with section 6.3.3.1 or a *default notice* in accordance with section 6.3.3.2 to:

- 6.3.3B.1 a *selling market participant*, such notice or *default notice* shall be deemed to constitute a revision to any *physical bilateral contract quantities* that relate to that *selling market participant* for the period from the time the notice or *default notice* is issued until the *event of default* is remedied pursuant to section 6.3.4, such that the *physical bilateral contract quantities* that relate to such period shall be considered by the *IMO* to be zero; or
- 6.3.3B.2 a *market participant* that has been allocated *metering data* pursuant to section 2.4.5 of Chapter 9, such notice or *default notice* shall be deemed to constitute a revision to any *physical allocation data* that relate to the period from the time the notice or *default notice* is issued until the *event of default* is remedied pursuant to section 6.3.4, such that any allocation to that *market participant* that relates to such period shall be considered by the *IMO* to be zero.

- 6.3.4 A *market participant* may remedy an *event of default* by:
- 6.3.4.1 satisfying, or causing to be satisfied, the outstanding financial or other obligations which gave rise to the *event of default*, including paying any applicable *default interest* calculated in accordance with Chapter 9 and any costs and expenses reasonably determined by the *IMO* to have been incurred by the *IMO* by reason of the *event of default*;
 - 6.3.4.2 proving to the reasonable satisfaction of the *IMO* that the facts or circumstances which constituted the *event of default* no longer exist.
- 6.3.5 [Intentionally left blank]
- 6.3.6 Notwithstanding that the *event of default* may have been remedied by the *market participant*, the *IMO* may, where it considers that it is in the interests of preserving the integrity of the *IMO-administered markets*, impose such conditions on the authorization of a *market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* as the *IMO* determines appropriate including, but not limited to, the conditions noted in sections 6.3.8.1 to 6.3.8.3.
- 6.3.7 If an *event of default* is not remedied within the time specified in the notice issued by the *IMO* pursuant to section 6.3.3.1 or the *default notice* issued pursuant to section 6.3.3.2 or within such longer period as may be agreed to in writing by the *IMO*, the *IMO* may issue to the *market participant* a notice indicating the *IMO's* intention to issue:
- 6.3.7.1 a *suspension order* to the *market participant* suspending or restricting all or any of the *market participant's* rights to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*; or
 - 6.3.7.2 the *suspension order* referred to in section 6.3.7.1 and a *disconnection order* to the *transmitter* to whose *facilities* the *market participant* is connected directing the *transmitter* to *disconnect* the relevant *facilities* or equipment of the *suspended market participant*,
- and shall provide a copy of such notice to the *OEB* and to the *transmitter* or *distributor* to whose *facilities* the *market participant* is connected.
- 6.3.7A A notice issued pursuant to section 6.3.7 indicating the *IMO's* intention to issue a *suspension* and/or *disconnection order* under sections 6.3.7.1 or 6.3.7.2 shall specify the right of the *market participant* to request, within 5 days or 2 *business days*, whichever is the longer, a hearing before the *IMO Board* or a committee

established by the *IMO Board* for that purpose, as the case may be, to show cause why the *suspension order*, the *disconnection order*, or both, as the case may be, should not be issued.

6.3.7B Where the *market participant* has:

6.3.7B.1 not requested a hearing pursuant to section 6.3.7A; or

6.3.7B.2 notified the *IMO* that it does not intend to request a hearing pursuant to section 6.3.7A,

the *IMO* may:

6.3.7B.3 issue a *suspension order* to the *market participant* suspending or restricting all or any of the *market participant's* rights to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*;

6.3.7B.4 issue the *suspension order* referred to in section 6.3.7B.3 and issue, with notice to the *market participant*, a *disconnection order* to the *transmitter* to whose *facilities* the *market participant* is connected directing the *transmitter* to *disconnect* the relevant *facilities* or equipment of the *suspended market participant*; or

6.3.7B.5 make such other order as the *IMO* considers appropriate,

and the *IMO* shall, if it has not already done so, issue a *default notice* to the *market participant*, make claim upon any *prudential support* held in respect of the obligations of the *market participant* for such amount as the *IMO* determines represents the amount of any money actually or contingently owing by the *market participant* to the *IMO* under the *market rules* and shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.

6.3.7C Where the *market participant* has requested a hearing pursuant to section 6.3.7A, the *IMO Board* or a committee of the *IMO Board* established for that purpose shall, within 7 days of the date of receipt of such request, commence a hearing providing the *market participant* with a reasonable opportunity to show cause as to why the *suspension order*, the *disconnection order* or both should not be issued against it. In such case, the *IMO* shall not issue either the *suspension order* or the *disconnection order* until such hearing has been held.

6.3.7D Upon conclusion of the hearing referred to in section 6.3.7C, the *IMO Board* or the committee of the *IMO Board* established for that purpose, as the case may be, may:

- 6.3.7D.1 issue a *suspension order* to the *market participant* suspending or restricting all or any of the *market participant's* rights to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*;
- 6.3.7D.2 issue the *suspension order* referred to in section 6.3.7D.1 and issue, with notice to the *market participant*, a *disconnection order* to the *transmitter* to whose *facilities* the *market participant* is connected directing the *transmitter* to *disconnect* the relevant *facilities* or equipment of the *suspended market participant*; or
- 6.3.7D.3 make such other order as the *IMO Board* or the committee of the *IMO Board* considers appropriate and direct the *IMO* if it has not already done so, to issue a *default notice* to the *market participant* and make claim upon any *prudential support* held in respect of the obligations of the *market participant* for such amount as the *IMO* determines represents the amount of any money actually or contingently owing by the *market participant* to the *IMO* under the *market rules*,

and shall direct the *IMO* to notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.

6.3.8 The *IMO* shall lift a suspension order if the event which triggered its issuance is remedied and there are no other *events of default* in existence with respect to the *suspended market participant* and may, as a condition of lifting a *suspension order*, impose such conditions on the authorization of the *market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* as the *IMO* determines appropriate including, but not limited to:

- 6.3.8.1 establishing a lower *trading limit* in respect of the *market participant* than would otherwise be the case under section 5.4 of Chapter 2;
- 6.3.8.2 establishing a more frequent continuing schedule of payments than would otherwise be the case under Chapter 9; or
- 6.3.8.3 imposing more stringent prudential requirements than would otherwise be the case under section 5 of Chapter 2,

and shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.

6.3.9 Following the issuance of a *suspension order*, the *IMO* may do one or more of the following to give effect to the *suspension order*:

6.3.9.1 reject any *bid*, *offer*, *EFM bid*, *EFM offer*, *TR bid* or *TR offer* submitted by the *suspended market participant*;

6.3.9.2 withhold the payment of any amounts otherwise due to the *suspended market participant* under the *market rules*; or

6.3.9.3 [Intentionally left blank]

6.3.9.4 make such further order or issue such directions to the *suspended market participant* as the *IMO* determines appropriate.

6.3.9A Where the *IMO* issues a *suspension order*:

6.3.9A.1 against a *selling market participant*, such *suspension order* shall be deemed to constitute a revision to any *physical bilateral contract quantities* that relate to the period during which the *suspension order* is in effect, including any period during which its operation is stayed pursuant to section 6.3.10, such that the *physical bilateral contract quantities* that relate to such period shall be considered by the *IMO* to be zero; or

6.3.9A.2 against a *market participant* to which *metering data* has been allocated pursuant to section 2.4.5 of Chapter 9, such *suspension order* shall be deemed to constitute a revision to any *physical allocation data* that relates to the period during which the *suspension order* is in effect, including any period during which its operation is stayed pursuant to section 6.3.10, such that any allocation to that *market participant* that relates to such period shall be considered by the *IMO* to be zero.

6.3.9B A *transmitter* that receives a *disconnection order* from the *IMO* pursuant to section 6.3.7B or 6.3.7D shall, subject only to section 3.4.1.5 of Chapter 5, on the date and at the time specified in the *disconnection order*, *disconnect* the *facilities* or equipment of the *suspended market participant* referred to in the *disconnection order*. The *transmitter* shall not reconnect such *facilities* or equipment until such time as it receives the notice referred to in section 6.3.10A, and shall reconnect such *facilities* or equipment on the date and at the time specified in such notice.

- 6.3.10 The *IMO* may at any time and upon notice to the *suspended market participant*, extend, stay the operation of or lift a *suspension order* or modify the conditions of any *suspension order*, and shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.
- 6.3.10A Where the *IMO* lifts or stays the operation of a *suspension order* issued to a *suspended market participant* in respect of whom a *disconnection order* was issued pursuant to section 6.3.7B or 6.3.7D, the *IMO* shall at the same time lift or stay the operation, as the case may be, of the *disconnection order* and shall advise the *suspended market participant*, the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.
- 6.3.10B Where the *IMO* extends a *suspension order* issued to a *suspended market participant* in respect of whom a *disconnection order* was issued pursuant to section 6.3.7B or 6.3.7D, the *IMO* may at the same time extend the *disconnection order* for a corresponding period of time and shall advise the *suspended market participant*, the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.
- 6.3.11 The *IMO* shall, immediately following the issuance of a *suspension order*, issue a public announcement that the rights of the *suspended market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* have been suspended or restricted, including details of the suspension or restriction and whether a *disconnection order* has also been issued in respect of the *suspended market participant*. The *IMO* shall issue a public notice promptly after a *suspension order* and, where applicable, a *disconnection order*, is lifted, extended, modified or stayed.
- 6.3.12 From the time the *IMO* issues a *suspension order* to a *market participant*, the *suspended market participant* is ineligible to trade or enter into any transaction in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* to the extent specified in the *suspension order*, until such time that the *IMO* notifies the *suspended market participant* and all other *market participants* that the *suspension order* has been lifted or stayed.
- 6.3.13 The *suspended market participant* shall comply with the terms of the *suspension order* issued to it. A *suspended market participant* shall also comply with any order relating to it, including any directions or arrangements which may be made for the purpose of giving effect to the *suspension order*, made by the *IMO* pursuant to section 6.3.9.

6.3.14 A *suspended market participant* shall remain liable for all of its obligations as a *market participant* other than as expressly provided in its *suspension order*, including but not limited to the payment of any monies to the *IMO* in respect of any *energy* withdrawn from the *IMO-controlled grid* by the *suspended market participant* while the *suspension order* is in effect. Issuance of a *suspension order* shall not affect any liability or obligation of a *suspended market participant* for the payment of any monies to the *IMO* or any other person including, but not limited to, a liability under section 8 of Chapter 2, which was incurred or arose under the *market rules*:

6.3.14.1 prior to the date on which the *suspension order* was issued; or

6.3.14.2 during any period in which the operation of the *suspension order* has been stayed,

regardless of the date on which any claim relating thereto may be made.

6.3.15 [Intentionally left blank]

6.3.16 [Intentionally left blank]

6.3.17 [Intentionally left blank]

6.3.18 [Intentionally left blank]

6.3.19 [Intentionally left blank]

6.3.20 [Intentionally left blank]

6.4 Termination Orders and Disconnection Orders

6.4.1 The *IMO* may by *termination order* terminate a *market participant's* right to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* where a *suspended market participant* is the subject of a *suspension order* that provides for the suspension of all of the *suspended market participant's* rights to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*:

6.4.1.1 if the *suspended market participant* has not remedied the *event of default* which triggered the issuance of the *suspension order* to the satisfaction of the *IMO* within twenty *business days* of the date of issuance of the *suspension order*; or

- 6.4.1.2 where the *suspended market participant* has notified the *IMO* that it is not likely to remedy such *event of default*.
- 6.4.2 The *IMO* may:
- 6.4.2.1 by *termination order* terminate a *market participant's* right to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*; or
- 6.4.2.2 issue the order referred to in section 6.5.1,
- if a *market participant* has been found to be in breach of the *market rules* on a persistent basis.
- 6.4.3 Where the *IMO* intends to issue a *termination order*, *IMO* shall give the *market participant* notice of its intention to do so. The notice shall specify:
- 6.4.3.1 the grounds upon which the *termination order* is proposed to be issued and details of any evidence on which the *IMO* is relying in support of its intention to issue the *termination notice*;
- 6.4.3.2 the time within which the *market participant* may make written representations as to why the *termination order* should not be issued; and
- 6.4.3.3 the right of the *market participant* to request a hearing before the *IMO Board* or a committee of the *IMO Board* established for such purpose to show cause why the *termination order* should not be issued.
- 6.4.3A Where the *IMO* gives to a *market participant* the notice referred to in section 6.4.3, it shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *market participant* is connected of the giving of the notice.
- 6.4.4 Following expiry of the time noted in section 6.4.3.2, and after consideration of any representations made by the *market participant* pursuant to that section, the *IMO* may:
- 6.4.4.1 subject to section 6.4.5, issue the *termination order*; or
- 6.4.4.2 make such order, including but not limited to the orders referred to in section 6.4.2.2, where applicable, section 6.2.7, or both, as the *IMO* determines appropriate including, but not limited to, restricting all or any of the *market participant's* rights to participate in the *IMO*-

administered markets or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*,

and shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.

- 6.4.4A Where the *IMO* issues a *termination order* pursuant to section 6.4.4.1, it shall at the same time, if it has not already done so, issue a *disconnection order* to the relevant *transmitter* or *distributor* directing the *transmitter* or *distributor* to *disconnect* the relevant *facilities* or equipment of the *terminated market participant*.
- 6.4.4B A *transmitter* or *distributor* that receives a *disconnection order* from the *IMO* pursuant to section 6.4.4A shall, subject only to section 3.4.1.5 or 3.7.1.5 of Chapter 5, as the case may be, on the date and at the time specified in the *disconnection order*, *disconnect* the *facilities* or equipment of the *terminated market participant* referred to in the *disconnection order*. The *transmitter* or *distributor* shall not reconnect such *facilities* or equipment until such time as it receives a direction from the *IMO* permitting it to do so, and shall reconnect such *facilities* or equipment on the date and at the time specified in such direction.
- 6.4.5 Where the *market participant* has requested a hearing pursuant to section 6.4.3.3, the *IMO Board* or the committee of the *IMO Board* established for such purpose shall conduct a hearing providing the *market participant* with a reasonable opportunity to show cause as to why a *termination order* should not be issued against it. In such case, the *IMO* shall not make the determination noted in section 6.4.4.1 until such hearing has been held.
- 6.4.6 Upon a *termination order* being made in respect of a *market participant* all of the rights of the *terminated market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* shall be terminated.
- 6.4.7 The *IMO* shall, immediately following the issuance of a *termination order*, issue a public announcement that the rights of the *terminated market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* have been terminated and that a *disconnection order* has been issued in respect of the *terminated market participant*.
- 6.4.8 A *terminated market participant* shall remain subject to and liable for all of its obligations and liabilities as a *market participant* including, but not limited to, a liability under section 8 of Chapter 2, which were incurred or arose under the

market rules prior to the date on which it ceases to be a *market participant* regardless of the date on which any claim relating thereto may be made.

- 6.4.9 A *terminated market participant* who wishes to be readmitted as a *market participant* shall be required to re-apply for authorization to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* in accordance with the provisions of section 3 of Chapter 2. The *IMO* may impose such terms and conditions on the right of the *market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* as the *IMO* determines appropriate in the circumstances, whether or not such terms and conditions are otherwise applicable to other *market participants*.

6.5 De-Registration and Disconnection Orders

- 6.5.1 Where a *market participant* has been found to be in breach of the *market rules* on a persistent basis, the *IMO* may, pursuant to section 6.4.2.2 or section 6.4.4.2 and in lieu of issuing a *termination order* to the *market participant*, issue an order cancelling the registration of such of the *market participant's registered facilities* as the *IMO* determines appropriate.
- 6.5.2 Where the *IMO* intends to issue the order referred to in section 6.5.1 pursuant to section 6.4.2.2, the *IMO* shall give the *market participant* notice of its intention to do so. The notice shall specify:
- 6.5.2.1 the grounds upon which such order is proposed to be issued and details of any evidence on which the *IMO* is relying in support of its intention to issue the order;
 - 6.5.2.2 the time within which the *market participant* may make written representations as to why such order should not be issued; and
 - 6.5.2.3 the right of the *market participant* to request a hearing before the *IMO Board* or a committee of the *IMO Board* established for such purpose to show cause why such order should not be issued.
- 6.5.3 Where the *IMO* gives to a *market participant* the notice referred to in section 6.5.2, it shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *market participant* is connected of the giving of the notice.

- 6.5.4 Following expiry of the time noted in section 6.5.2.2, and after consideration of any representations made by the *market participant* pursuant to that section, the *IMO* may:
- 6.5.4.1 subject to section 6.5.5, issue an order cancelling the registration of such of the *market participant's registered facilities* as the *IMO* determines appropriate; or
 - 6.5.4.2 make such order, including but not limited to the orders referred to in section 6.2.7, as the *IMO* determines appropriate including, but not limited to, restricting all or any of the *market participant's* rights to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid*,
- and shall notify the *OEB* and the *transmitter* or *distributor* to whose *facilities* the *suspended market participant* is connected accordingly.
- 6.5.5 Where the *market participant* has requested a hearing pursuant to section 6.5.2.2, the *IMO Board* or the committee of the *IMO Board* established for such purpose shall conduct a hearing providing the *market participant* with a reasonable opportunity to show cause as to why the order referred to in section 6.5.1 should not be issued against it. In such case, the *IMO* shall not make the determination noted in section 6.5.4.1 until such hearing has been held.
- 6.5.6 Where the *IMO* issues an order pursuant to section 6.4.4.2 or 6.5.4.1 cancelling the registration of one or more of a *market participant's registered facilities*, it shall at the same time issue a *disconnection order* to the relevant *transmitter* or *distributor* directing the *transmitter* or *distributor* to *disconnect* the relevant *facilities* or equipment of the *market participant*.
- 6.5.7 A *transmitter* or *distributor* that receives a *disconnection order* from the *IMO* pursuant to section 6.5.6 shall, subject only to section 3.4.1.5 or 3.7.1.5 of Chapter 5, as the case may be, on the date and at the time specified in the *disconnection order*, *disconnect* the *facilities* or equipment of the *market participant* referred to in the *disconnection order*. The *transmitter* or *distributor* shall not reconnect such *facilities* or equipment until such time as it receives a direction from the *IMO* permitting it to do so, and shall reconnect such *facilities* or equipment on the date and at the time specified in such direction.
- 6.5.8 Upon an order being issued pursuant to section 6.4.4.2 or 6.5.4.1 cancelling the registration of one or more of a *market participant's registered facilities*, all of the rights of the *market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-*

controlled grid in respect of the *registered facilities* referred to in such order shall be terminated.

- 6.5.9 The *IMO* shall, immediately following the issuance of an order pursuant to section 6.4.4.2 or 6.5.4.1 cancelling the registration of one or more of a *market participant's registered facilities*, issue a public announcement that the rights of the *market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* have been terminated in respect of the *registered facilities* referred to in such order and that a *disconnection order* has been issued in respect of the *market participant*.
- 6.5.10 A *market participant* to whom an order has been issued pursuant to section 6.4.4.2 or 6.5.4.1 cancelling the registration of one or more of its *registered facilities* shall remain subject to and liable for:
- 6.5.10.1 all of its obligations and liabilities as a *market participant* in respect of any of its *registered facilities* that are not the subject of such order;
 - 6.5.10.2 the payment of any monies to the *IMO* in respect of any *energy* withdrawn from the *IMO-controlled grid* by the *registered facilities* that are the subject of such order subsequent to the issuance of the order; and
 - 6.5.10.3 the payment of any monies to the *IMO* or any other person including, but not limited to, a liability under section 8 of Chapter 2, which was incurred or arose under the *market rules*:
 - a. in respect of the *registered facilities* that are the subject of the order; and
 - b. prior to the date of issuance of the order,
regardless of the date on which any claim relating thereto may be made.
- 6.5.11 A *market participant* that wishes to re-register *registered facilities* the registration of which has been cancelled pursuant to an order made under section 6.4.4.2 or 6.5.4.1 shall be required to re-apply for their registration in accordance with the provisions of section 2 of Chapter 7. The *IMO* may impose such terms and conditions on the right of the *market participant* to participate in the *IMO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IMO-controlled grid* in respect of such *registered facilities* as the *IMO* determines appropriate in the circumstances, whether or not such terms and conditions are otherwise applicable to other *registered facilities*.

6.6 Non-compliance Letters and Financial Penalties

- 6.6.1 This section 6.6 sets forth the manner in which the *IMO* will pursuant to section 6.2.7 issue non-compliance letters and fix financial penalties to be imposed on *market participants* for breaches of the *market rules*.
- 6.6.2 Where the *IMO* has determined that it is appropriate to issue a letter of non-compliance under 6.6.5 or impose a financial penalty under section 6.6.6 upon a *market participant*, the *IMO* shall:
- 6.6.2.1 determine the level of non-compliance by the *market participant* in accordance with section 6.6.3;
 - 6.6.2.2 determine the rate of recurrence of non-compliance by the *market participant* in accordance with section 6.6.4;
 - 6.6.2.3 based on the determinations made in accordance with sections 6.6.2.1 and 6.6.2.2, determine whether to issue a non-compliance letter or impose a financial penalty; and
 - 6.6.2.4 where a determination is made to impose a financial penalty, fix the amount of the penalty in accordance with section 6.6.6.
- 6.6.3 The *IMO* shall determine the level of non-compliance referred to in section 6.6.2.1 as follows:
- 6.6.3.1 Level “L1” shall be determined where the *market participant* has complied in part, but not in whole, with all the requirements of a *market rule* and where the *market participant* has, on its own initiative, informed the *IMO* on a timely basis of the non-compliance, the reasons for non-compliance and the manner in and the time within which such non-compliance will be remedied;
 - 6.6.3.2 Level “L2” shall be determined where the *market participant* has failed to comply with all of the requirements of a *market rule* and where the *market participant* has, of its own initiative, informed the *IMO* on a timely basis of the non-compliance, the reasons for non-compliance and the manner in which and the time within which such non-compliance will be remedied;
 - 6.6.3.3 Level “L3” shall be determined where the *market participant* has failed to comply, in whole or in part, with all of the requirements of a *market rule* and has failed to inform the *IMO* of the non-compliance on its own initiative and on a timely basis but, at the *IMO*’s request

and within the time specified in the request, informs the *IMO* of the reasons for non-compliance and the manner in which and the time within which such non-compliance will be remedied; and

6.6.3.4 Level “L4” shall be determined where the *market participant* has failed to comply, in whole or in part, with all of the requirements of a *market rule*, has failed to inform the *IMO* of the non-compliance on its own initiative and on a timely basis and has failed to respond to the *IMO’s* request, within the time specified in the request, for a statement of the reasons for such non-compliance and of the manner in which and the time within which such non-compliance will be remedied.

6.6.4 The *IMO* shall determine the rate of recurrence of non-compliance referred to in section 6.6.2.2 based on the frequency and duration with which the *market participant* has been found by the *IMO* to be in breach of the *market rules*.

6.6.5 Where the *IMO* has determined, based on the determinations made under section 6.6.2 and the provisions of the chart set forth in section 6.6.6, that the applicable sanction is the issuance of a letter of non-compliance, the *IMO* shall issue a letter of non-compliance to the *market participant*.

6.6.6 Where the *IMO* has determined, based on the determinations made under section 6.6.2, that the applicable sanction is the imposition of a financial penalty, the *IMO* shall, subject to section 6.6.13, impose on the *market participant* in accordance with section 6.6.7 a financial penalty within the ranges described in the following table:

Level of Non-Compliance	Range of Sanctions
L1	Non-compliance letter or up to \$2,000.00
L2	Non-compliance letter or up to \$4,000.00
L3	Non-compliance letter or up to \$6,000.00
L4	\$1,000.00 to \$10,000.00

6.6.7 In fixing the amount of the financial penalty within the ranges described in the table set forth in section 6.6.6, the *IMO* shall have regard to:

6.6.7.1 the circumstances in which the breach occurred;

6.6.7.2 the severity of the breach;

- 6.6.7.3 the extent to which the breach was inadvertent, negligent, deliberate or otherwise;
 - 6.6.7.4 the length of time the breach remained unresolved;
 - 6.6.7.5 the actions of the *market participant* on becoming aware of the breach;
 - 6.6.7.6 whether the *market participant* disclosed the matter to the *IMO* on its own or whether it was prompted to do so;
 - 6.6.7.7 any benefit that the *market participant* obtained or expected to obtain as a result of the breach;
 - 6.6.7.8 any previous breach by the *market participant* of the *market rules* or of the conditions of its *licence*;
 - 6.6.7.9 the impact of the breach on other *market participants*;
 - 6.6.7.10 the impact of the breach on the *IMO-administered markets* as a whole;
 - 6.6.7.11 any sanctions that may be imposed on the *IMO* by a *standards authority* as a result of the breach; and
 - 6.6.7.12 such other matters as the *IMO* considers appropriate.
- 6.6.8 Where Appendix 3.1 provides for the imposition of a formula-based penalty in respect of the breach of a *market rule*, the *IMO* may issue a letter of non-compliance pursuant to sections 6.6.2 and 6.6.5 or impose a financial penalty upon the *market participant*, the amount of which shall be determined by the application of the following formula:

$$P = D \times T \times C$$

Where:

P = the amount of the financial penalty, in dollars

D = the deviation from the applicable obligation in the *market rules*, expressed in terms of MW, MVAR, kV, power factor or other determinant, as specified in Appendix 3.1 in respect of the particular *market rule*

T = the duration of the breach, expressed in hours or fractions of hours

C = the amount determined in accordance with section 6.6.9 in respect of the particular *market rule*

- 6.6.9 The amount C referred to in section 6.6.8 shall be determined, in respect of the breach of a particular *market rule*, by multiplying the *market price* prevailing at the time of the breach by an amount determined by the *IMO* having regard to the criteria set forth in section 6.6.7 and to the factors noted in sections 6.6.13.1 to 6.6.13.4, where applicable.
- 6.6.10 Where Appendix 3.1 specifies more than one sanction in respect of the breach of a particular *market rule*, the *IMO* may impose all of the sanctions so specified on the *market participant* provided that no financial penalty may be imposed in respect of a breach for which the *IMO* has issued a letter of non-compliance pursuant to section 6.6.5. Nothing in this section 6.6.10 shall prevent the *IMO* from imposing a financial penalty for failure by a *market participant* to remedy a breach in respect of which a letter of non-compliance has been issued or if there is any repetition or continuation of such breach.
- 6.6.10A Where Appendix 3.1 provides for the imposition of a formula based penalty in respect of a breach of section 7.5.8A of Chapter 7, the *IMO* may issue a letter of non-compliance pursuant to sections 6.6.2 and 6.6.5 or, subject to section 6.6.10B, impose a financial penalty upon the *market participant*, the amount of which shall be determined by the application of the following formula:

$$P = (D \times T \times R) * A$$

Where:

P, D and T are defined by section 6.6.8

R = in the case of a failed *energy interchange schedule*, the greater of the $EMP_h^{m,t}$ or absolute value ($EMP_h^{m,t}$ - *offer/bid price*)

prevailing at the time of the breach where m = a *primary RWM* (in Ontario)

R = in the case of a failed *operating reserve interchange schedule*, the greater of the $PROR_{r,h}^{m,t}$ or absolute value ($PROR_{r,h}^{m,t}$ - *offer/bid price*)

prevailing at the time of the breach where m = a *delivery point* in Ontario and where r = the applicable *class of operating reserve*

A = numeric multiplier determined by the officers of the *IMO* after consideration of guidelines for that purpose published in the applicable *market manual*.

- 6.6.10B The *market participant* may apply to the officers of the *IMO* in accordance with the applicable *market manual* for a review of the penalty amount resulting from the formula (DxTxR), which amount may be confirmed or changed by the officers.
- 6.6.10C The amount A referred to in section 6.6.10A shall, in accordance with the applicable *market manual*, be determined by the officers of the *IMO* upon the recommendation of the Director, Market Assessment and Compliance Division. In determining that multiplier, the officers shall consider written submissions from the *market participant* made in accordance with the applicable *market manual*, and shall consider the guidelines set out in that manual.
- 6.6.11 Nothing in this section 6.6 shall preclude the *IMO* from making an order under one or more of sections 6.2.7.1, 6.2.7.2, 6.2.7.3 or 6.2.7.6 in respect of a breach of *the market rules* with respect to which a sanction has been imposed pursuant to this section 6.6.
- 6.6.12 [Intentionally left blank]
- 6.6.12.1 [Intentionally left blank]
- 6.6.12.2 [Intentionally left blank]
- 6.6.13 The *IMO* may impose on a *market participant* a financial penalty in excess of the amount otherwise provided for in section 6.6.6 where:
- 6.6.13.1 the *market participant* has breached a market rule while a declaration that the *IMO-controlled grid* is in an emergency operating state or a high-risk operating state was in effect;
- 6.6.13.2 the *market participant* breached a *market rule* while a declaration that *market operations* have been suspended was in effect;
- 6.6.13.3 the *IMO Board* determines that the impact of the *market participant's* breach on the *IMO-administered markets* is particularly severe; or
- 6.6.13.4 the rate of recurrence of non-compliance by the *market participant* with the *market rules* is of such frequency or duration as to warrant the imposition of a higher financial penalty.

- 6.6.14 No additional financial penalty may be imposed in respect of a breach of the *market rules* for which a financial penalty has already been imposed pursuant to this section 6.6 provided that nothing in this section 6.6.14 shall prevent the *IMO* from imposing a financial penalty for failure by a *market participant* to remedy a breach in respect of which a financial penalty has been imposed or if there is any repetition or continuation of such breach.

6.7 Officers and Agents

- 6.7.1 If any director, officer, employee partner or agent of a *market participant* does any act or refrains from doing any act which if done or omitted to be done, as the case may be, by a *market participant* would constitute a breach of the *market rules*, such act or omission shall be deemed for the purposes of this section 6 to be the act or omission of the *market participant*.

7. Financial Penalties for Certain Contracted Ancillary Service Providers

7.1 Penalties Specified in Contracts

- 7.1.1 An ancillary service provider providing regulation/AGC or black start capability under a contracted ancillary service contract that:

7.1.1.1 breaches any performance standard set forth in the *market rules*; or

7.1.1.2 fails to pass a test set forth in the *market rules*, the *contracted ancillary service* contract or, where applicable, the *Ontario power system restoration plan*,

in respect of such *contracted ancillary service* shall be subject to such financial penalties and other *sanctions* as may be specified in the applicable *contracted ancillary service* contract and to the provisions of section 4.10.2.1 of Chapter 5.