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Rule modification title	280: Conflict of Interest Management for the Market Surveillance and Compliance Panel
Submitted By : Company: Date: Telephone No.	Energy Market Company 20 July 2008 6779 3000
Rules Version/Chapter/Section	Market Rules/Version 1 <sup>st</sup> April 2008/ Chapter 3 /Sections 2.1, 2.7 and 2.9.
Description of Market Rules	Please refer to the Appendix 2.
Reasons for amendment	<p>The relevant provisions in the market rules are broad and do not provide flexibility for declaration and management of conflict of interest that arises with members of the Market Surveillance and Compliance Panel (MSCP). Under existing rules, any MSCP member can easily cease to hold the office through the undirected actions of a relative.</p> <p>Given that there is only a small pool of suitable and interested candidates who can be appointed to the MSCP, the current provisions add to the difficulty of finding suitable and willing candidates.</p> <p>This proposal introduces provisions where MSCP members are required to individually declare and abstain from dealing in matters where conflicts of interest arise. It also proposes the option of appointing temporary MSCP members to fill in the gaps left by abstaining members.</p> <p>Please refer to the Appendix 1 for a detailed description of the proposed rule modifications.</p>
Impact of proposed amendment on MP, MO, PSO and general public	
EMC's Comments	

## APPENDIX 1: DETAILED DESCRIPTION OF PROPOSAL

### Conflict of Interest Management within the Market Surveillance and Compliance Panel

1. The MSCP is an independent body with the responsibility to
  - a) identify breaches of the market rules, any market manual or system operations manual by market participants, MSSL, PSO and EMC
  - b) identify flaws and inefficiencies of the market rules, any market manual or system operations manual
  - c) identify flaws in the overall structure of the wholesale electricity markets
  
2. Given that it is to be an independent body, section 2.7.2 of Chapter 3 of the market rules provides that no person shall be appointed to the *market surveillance and compliance panel* if that person
  - a) is, or has a spouse or \*relative that is, a director, officer, employee or agent of the *EMC*, *market surveillance and compliance panel* the *PSO*, or the respective *affiliates* of the *EMC* or the *PSO*;
  - b) is, or has a spouse or \*relative that is, a director, officer, employee or agent of a *market participant* or *market support services licensee* or an *affiliate* of a *market participant* or *market support services licensee*; or
  - c) has, or has a \*relative or spouse that has, a direct or indirect legal or beneficial interest in or commercial affiliation with the *EMC*, the *PSO*, a *market participant*, a *market support services licensee* or any of their respective *affiliates*.

(\*Note that under the Market Rules, a relative could be a parent, child or sibling.)

This provision is to ensure there is no conflict of interest between the MSCP members and the persons on which they may be required to pass a judgment or impose a penalty for breaching the market rules.

3. Section 2.1.2 of Chapter 3 of the Market Rules further provides that a MSCP member shall cease to be a MSCP member if he ceases to meet the requirements in section 2.7.2 of Chapter 3 of the Market Rules.
4. Recently a MSCP member ceased to meet the requirements of section 2.7.2 of Chapter 3 of the Market Rules when his sibling was employed by an affiliate of a market participant.
5. With the small pool of suitable and interested candidates to be appointed to the MSCP, the EMC Board is of the view that the conflict of interest provisions in the market rules are too broad and do not provide flexibility for the declaration and management of a conflict of interest that arises. This concern is extended to the potential for other existing MSCP members to inadvertently conflict themselves (by virtue of section 2.7.2) through the undirected action of their relatives. They have thus asked that the Market Rules be reviewed.
6. The following paragraphs 7 to 12 describe the approach to be taken.

7. The Market Rules (Section 2.7.1 of Chapter 3) intend for the combined expertise of the members of the MSCP to cover various areas (i.e. competitive markets, Singapore law/electricity regulations, competition law/policies, power system operations and economics). The proposed approach ensures that in dealing with any issue, the MSCP has sufficient expertise in the various areas at its disposal and is, at the same time, able to discharge its duties without any conflict of interest.
8. The provisions in the existing section 2.7.2 of Chapter 3 are retained to ensure that members first appointed to the MSCP do not have any conflict of interest. A modification is proposed to make it clear that the provisions of section 2.7.2 of Chapter apply at the time of appointment.
9. Section 2.1.1.6 of Chapter 3 of the Market Rules is proposed to be modified such that a MSCP member that no longer meet the requirements in section 2.7.2 of Chapter 3 of the Market Rules shall cease to be a MSCP member, unless the failure to meet the requirements is caused by a relative.
10. The effect of paragraphs 8 and 9 is that a MSCP member who runs into conflict of interest because of his own or spouse's action shall still cease to be a MSCP member. One who runs into conflict of interest because of a relative can remain as a MSCP member. As a requirement prior to his appointment, each MSCP member would have signed a declaration requiring him to make a declaration when he ceases to meet the requirements in section 2.7.2. Notwithstanding this, and as discussed in paragraph 11, to ensure independence of the MSCP in dealing with any matter under investigation by the MSCP, MSCP members should be explicitly required to declare any conflict of interest as and when it arises.
11. To ensure that conflicts of interest can be managed, additional provisions to the Market Rules is proposed to require every MSCP member to declare any conflict of interest that may arise with him with respect to any matter at any MSCP meeting. Conflict of interest with respect to a matter arises when a MSCP member has a relative who:
  - a. is a director, officer, employee or agent of; or
  - b. has a direct or indirect legal or beneficial interest in or commercial affiliation with,

any party which is the subject of investigations by the market surveillance and compliance panel under section 4, or any of such party's affiliates.

The MSCP member with a conflict of interest with respect to any matter shall not be present at or be involved in any MSCP activity relating to that matter.

12. To ensure that the MSCP has sufficient expertise to deal with a matter in which a member has abstained due to a conflict of interest, additional provisions to the Market Rules are proposed to allow the appointment of "temporary" MSCP members who have the required expertise. This is restricted only to situations where the non-conflicted members of the MSCP by majority, is of the view that (taking into account the hire of consulting assistance and the seeking of expert external advice permitted under section 4.7.1) it does not have sufficient expertise to deal with that matter.

The MSCP may request the EMC Board to appoint one or more temporary MSCP member to assist it in dealing with that matter. An appointed temporary MSCP member's role is limited to dealing with the specific matter(s) he is appointed for. Correspondingly, a temporary MSCP member's appointment automatically expires when his work on the matter(s) he is appointed for is completed.

13. On the MSCP's request, the EMC Board should as soon as reasonable appoint one or more "temporary" MSCP member that have the required expertise sought by the MSCP. The appointee should not have a conflict of interest in the matter he is appointed to deal with. Such a conflict is deemed to arise if the appointee:
  - a. is, or has a spouse or relative who is, a director, officer, employee or agent of;  
or
  - b. has, or has a spouse or relative who has, a direct or indirect legal or beneficial interest in or commercial affiliation with,

any party (involved in that matter) which is the subject of investigations by the market surveillance and compliance panel under section 4, or any of such party's affiliates.

**APPENDIX 2: PROPOSED RULE CHANGES**

Existing Market Rules	Proposed Rules Changes (Deletions represented by strikethrough text and additions represented by double underlined text)	Remarks on Rule Changes
<b>CHAPTER 3</b>	<b>Chapter 3</b>	
<p><b>2.1 DISQUALIFICATION, REMOVAL, CEASING TO HOLD OFFICE AND OTHER MATTERS</b></p> <p>2.1.1 Every person who is or is to be appointed as a member of the <i>rules change panel</i> or the <i>market surveillance and compliance panel</i> shall meet the following eligibility requirements:</p> <p>...</p> <p>2.1.1.6 meet the applicable qualification requirements contained in:</p> <ul style="list-style-type: none"> <li>a. section 2.3.2, if a member of the <i>rules change panel</i>; or</li> <li>b. sections 2.7.1 and 2.7.2, if a member of the <i>market surveillance and compliance panel</i>.</li> </ul>	<p><b>2.1 DISQUALIFICATION, REMOVAL, CEASING TO HOLD OFFICE AND OTHER MATTERS</b></p> <p>2.1.1 Every person who is or is to be appointed as a member of the <i>rules change panel</i> or the <i>market surveillance and compliance panel</i> shall meet the following eligibility requirements:</p> <p>...</p> <p>2.1.1.6 meet the applicable qualification requirements contained in:</p> <ul style="list-style-type: none"> <li>a. section 2.3.2, if a member of the <i>rules change panel</i>; or</li> <li>b. sections <u>2.7.1</u>, <del>and</del> <u>2.7.2</u> <u>and</u> <u>2.7.2A</u>, if he is a member of the <i>market surveillance and compliance panel</i>.</li> </ul>	<p>To take into account the new section 2.7.2A inserted in Chapter 3.</p>

Existing Market Rules	Proposed Rules Changes (Deletions represented by strikethrough text and additions represented by double underlined text)	Remarks on Rule Changes
<p><b>2.7 COMPOSITION OF MARKET SURVEILLANCE AND COMPLIANCE PANEL AND QUALIFICATION OF MEMBERS</b></p> <p>2.7.2 No person shall be appointed to the <i>market surveillance and compliance panel</i> if that person:</p> <p>2.7.2.1 is, or has a spouse or relative that is, a director, officer, employee or agent of the <i>EMC, market surveillance and compliance panel the PSO, or the respective affiliates of the EMC or the PSO;</i></p> <p>2.7.2.2 is, or has a spouse or relative that is, a director, officer, employee or agent of a <i>market participant or market support services licensee or an affiliate of a market participant or market support services licensee;</i> or</p> <p>2.7.2.3 has, or has a relative or spouse that has, a direct or indirect legal or beneficial interest in or commercial affiliation with the <i>EMC, the PSO, a market participant, a market support services licensee</i> or any of their respective <i>affiliates.</i></p>	<p><b>2.7 COMPOSITION OF MARKET SURVEILLANCE AND COMPLIANCE PANEL AND QUALIFICATION OF MEMBERS</b></p> <p>2.7.2 No person shall be appointed to the <i>market surveillance and compliance panel</i> if that person, <u>at the time of appointment:</u></p> <p>2.7.2.1 is, or has a spouse or relative that is, a director, officer, employee or agent of the <i>EMC, <del>market surveillance and compliance panel</del> the PSO, or the respective affiliates of the EMC or the PSO;</i></p> <p>2.7.2.2 is, or has a spouse or relative that is, a director, officer, employee or agent of a <i>market participant or market support services licensee or an affiliate of a market participant or market support services licensee;</i> or</p> <p>2.7.2.3 has, or has a <del>relative or spouse</del> <u>or relative</u> that has, a direct or indirect legal or beneficial interest in or commercial affiliation with the <i>EMC, the PSO, a market participant, a market support services licensee</i> or any of their respective <i>affiliates.</i></p>	<p>To make clear that the provisions of section 2.7.2 of Chapter 3 apply at the time of appointment of the MSCP member. (This section does not apply to temporary MSCP members – see the new section 2.7.9.1 below.)</p> <p>For consistency with Appendix 3B.</p> <p>For drafting consistency with sections 2.7.2.1 and 2.7.2.2 only.</p>

Existing Market Rules	Proposed Rules Changes (Deletions represented by strikethrough text and additions represented by double underlined text)	Remarks on Rule Changes
	<p><u>2.7.2A</u> No person, while appointed to the <i>market surveillance and compliance panel</i>, shall:</p> <p><u>2.7.2A.1</u> <del>become, or have a spouse that becomes, a director, officer, employee or agent of the EMC, the PSO, or the respective affiliates of the EMC or the PSO;</del></p> <p><u>2.7.2A.2</u> <del>become, or have a spouse that becomes, a director, officer, employee or agent of a market participant or market support services licensee or an affiliate of a market participant or market support services licensee; or</del></p> <p><u>2.7.2A.3</u> <del>have, or have a spouse that has, a direct or indirect legal or beneficial interest in or commercial affiliation with the EMC, the PSO, a market participant, a market support services licensee or any of their respective affiliates.</del></p>	<p>To make clear that, upon appointment as a member of the MSCP, that member must continue to meet with the same requirements as stated in section 2.7.2 of chapter 3, except in relation to conflicts of interest arising in connection with that member's relatives. Conflicts of interest arising in connection with that member's relatives must now be dealt with in accordance with the new sections 2.7.6 and 2.7.7 below.</p> <p>(This section does not apply to temporary MSCP members – see the new section 2.7.9.1 below.)</p>

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<p>2.7.3 For the purposes of sections 2.3.2, 2.4.3, 2.7.2, 3.4.2 and 3.5.4:</p> <p>2.7.3.1 a person has a commercial affiliation with another person if the person supplies goods or services to or receives goods or services from the other person, other than goods or services received in the ordinary course of being a customer of a <i>transmission licensee</i>, a <i>retail electricity licensee</i>, a person described in section 2.1.1.3 of Chapter 2 or a <i>market support services licensee</i>;</p> <p>2.7.3.2 an interest held as the beneficiary of a trust that does not permit the beneficiary to have any knowledge of the holdings of the trust is not a legal or beneficial interest;</p> <p>2.7.3.3 an interest in a mutual fund is not a legal or beneficial interest;</p> <p>2.7.3.4 an interest in shares is not a legal or beneficial interest if the interest is in one or more voting shares in a corporation which are quoted on a securities exchange in Singapore or elsewhere and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is equal to or less than 0.005% of the aggregate of the nominal amount of all</p>	<p>2.7.3 For the purposes of sections 2.3.2, 2.4.3, 2.7.2, <u>2.7.2A</u>, <u>2.7.7</u>, <u>2.7.9</u>, 3.4.2 and 3.5.4:</p> <p>2.7.3.1 a person has a commercial affiliation with another person if the person supplies goods or services to or receives goods or services from the other person, other than goods or services received in the ordinary course of being a customer of a <i>transmission licensee</i>, a <i>retail electricity licensee</i>, a person described in section 2.1.1.3 of Chapter 2 or a <i>market support services licensee</i>;</p> <p>2.7.3.2 an interest held as the beneficiary of a trust that does not permit the beneficiary to have any knowledge of the holdings of the trust is not a legal or beneficial interest;</p> <p>2.7.3.3 an interest in a mutual fund is not a legal or beneficial interest;</p> <p>2.7.3.4 an interest in shares is not a legal or beneficial interest if the interest is in one or more voting shares in a corporation which are quoted on a securities exchange in Singapore or elsewhere and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is equal to or less than 0.005% of the aggregate of the nominal amount of all</p>	<p>To take into account the new sections 2.7.2.A, 2.7.7 and 2.7.9 inserted in Chapter 3.</p>

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<p>the voting shares in the corporation;</p> <p>2.7.3.5 spouse, in respect of a person, includes another person with whom that person is living in a conjugal relationship outside of marriage; and</p> <p>2.7.3.6 relative, in respect of a person, means a parent, child or sibling of such person.</p>	<p>the voting shares in the corporation;</p> <p>2.7.3.5 spouse, in respect of a person, includes another person with whom that person is living in a conjugal relationship outside of marriage; and</p> <p>2.7.3.6 relative, in respect of a person, means a parent, child or sibling of such person.</p>	
	<p><u>2.7.6</u> Each member of the <i>market surveillance and compliance panel</i>, who has any conflict of interest as described in section 2.7.7 in respect of any matter for the time being before, under consideration by or under investigation by, the <i>market surveillance and compliance panel</i>, shall:</p> <p><u>2.7.6.1</u> promptly notify the conflict of interest to the other members of the <i>market surveillance and compliance panel</i>; and</p> <p><u>2.7.6.2</u> thereafter excuse himself from the relevant part of each meeting of the <i>market surveillance and compliance panel</i> at which that matter is to be discussed or dealt with, and abstain from participating in any discussion, voting on, or further involvement in relation to that matter.</p>	<p>This section requires every MSCP member, who has any conflict of interest as described in section 2.7.7 in respect of a matter, to:</p> <p>(a) notify his conflict of interest to the rest of the MSCP; and (b) thereafter cease to be involved in that matter as described in section 2.7.6.2.</p> <p>This new section 2.7.6 is not intended to apply to temporary members of the MSCP. (This is stated in section 2.7.9.1 below.) This is because temporary members who fail to meet the eligibility</p>

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		requirements in the new section 2.7.9.2 below would vacate office.
	<p><u>2.7.7</u> For the purposes of section 2.7.6, a conflict of interest arises, or shall be deemed to arise, if a member of the <i>market surveillance and compliance panel</i> has a relative who:</p> <p><u>2.7.7.1</u> is a director, officer, employee or agent of;  <u>or</u></p> <p><u>2.7.7.2</u> has a direct or indirect legal or beneficial interest in or commercial affiliation with,  <u>any party which is the subject of investigations by the <i>market surveillance and compliance panel</i> under section 4, or any of such party's <i>affiliates</i>.</u></p>	<p>Inserted to identify certain scenarios where conflict of interest will (or will be deemed to) arise.</p> <p>This new section 2.7.7 is not intended to apply to temporary members of the MSCP. (This is stated in section 2.7.9.1 below.) Temporary members are subject to the new section 2.7.9.2 instead.</p>
	<p><u>2.7.8</u> If:</p> <p><u>2.7.8.1</u> section 2.7.6.2 applies to any member of the <i>market surveillance and compliance panel</i>; and</p> <p><u>2.7.8.2</u> the other members of the <i>market surveillance and compliance panel</i>, by a simple majority, are of the view that, after taking into account the hire of consulting assistance and the seeking of expert external advice permitted under section 4.7.1, the combined expertise of the</p>	<p>To provide the circumstances under which the MSCP may request the EMC Board to appoint temporary members to the MSCP.</p>

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	<p><u>market surveillance and compliance panel (excluding the member referred to in section 2.7.8.1) does not cover any one or more of the areas specified in sections 2.7.1.1 to 2.7.1.5.</u></p> <p>then those other members of the <u>market surveillance and compliance panel</u> may request the <u>EMC Board</u> to appoint one or more temporary members to the <u>market surveillance and compliance panel</u> under section 2.7.9 in respect of the matter referred to in section 2.7.6.</p>	
	<p><u>2.7.9</u> When the <u>EMC Board</u> receives any request under section 2.7.8, the <u>EMC Board</u> shall endeavour to appoint one or more temporary members to the <u>market surveillance and compliance panel</u> so that the combined expertise of the <u>market surveillance and compliance panel (excluding the member referred to in section 2.7.8.1)</u> covers all the areas specified in sections 2.7.1.1 to 2.7.1.5. Such appointment of a temporary member of the <u>market surveillance and compliance panel</u> shall be subject to the following:</p> <p><u>2.7.9.1</u> sections 2.1.1.6.b, 2.1.2.3, 2.7.2, 2.7.2A and 2.7.6 shall not apply to the temporary member. Subject to the foregoing and section 2.7.9.2 below, the remaining provisions of sections 2.1 and 2.7 shall apply to the temporary member;</p>	<p>To provide that the EMC Board must endeavour to appoint temporary MSCP members when requested to do so under section 2.7.8.</p> <p>To make clear that the appointment of temporary members will be subject to the following:</p> <p>(a) the temporary member must meet the requirements of sections 2.1 and 2.7 (subject to the new sections 2.7.9.1</p>

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	<p><u>2.7.9.2</u> <del>no person shall be appointed as a temporary member of the market surveillance and compliance panel if that person:</del></p> <p>a. <del>is, or has a spouse or relative who is, a director, officer, employee or agent of; or</del></p> <p>b. <del>has, or has a spouse or relative who has, a direct or indirect legal or beneficial interest in or commercial affiliation with,</del></p> <p><u>any party which is the subject of investigations by the market surveillance and compliance panel under section 4, or any of such party's affiliates. If any temporary member of the market surveillance and compliance panel ceases to meet the foregoing eligibility requirements in this section 2.7.9.2, he shall promptly notify the other members of the market surveillance and compliance panel of the same, and shall cease to hold office as a temporary member;</u></p> <p><u>2.7.9.3</u> <del>the role of such temporary member shall be restricted only to working on the matter referred to in section 2.7.6 for which he is appointed; and</del></p> <p><u>2.7.9.4</u> <del>notwithstanding section 2.8 to the contrary, the appointment of the temporary member shall automatically</del></p>	<p>and 2.7.9.2);</p> <p>(b) the temporary member must meet the eligibility requirements in section 2.7.9.2 at the point of, and also throughout, his appointment, failing which he will cease to hold office;</p> <p>(c) his role is restricted to the matter referred to in section 2.7.6 of Chapter 3 for which he is appointed;</p> <p>(d) his term of appointment expires when that matter is completed;</p> <p>(e) he is entitled to the immunities under section 13.7 of Chapter 1; and</p> <p>(f) except as aforesaid, he will have the same rights, benefits, privileges, functions, duties and obligations as the</p>

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	<p><u>expire when the <i>market surveillance and compliance panel's</i> work on the matter referred to in section 2.7.6 for which the temporary member is appointed has been completed;</u></p> <p><u>2.7.9.5 for the avoidance of doubt, section 13.7 of Chapter 1 shall apply to the temporary member of the <i>market surveillance and compliance panel</i>; and</u></p> <p><u>2.7.9.6 save as otherwise stated in sections 2.7.9.1, 2.7.9.2 and 2.7.9.4 above, during the term which he is in office, the temporary member shall have the same rights, benefits, privileges, functions, duties and obligations under the <i>market rules</i> and all references to the <i>market surveillance and compliance panel</i> or its members in the <i>market rules</i> shall, unless the context otherwise requires, be deemed to include a reference to the temporary member in respect of the matter referred to in section 2.7.6 for which he is appointed.</u></p>	<p>members of the MSCP in respect of the specific matter for which he is appointed.</p>
<p><b>2.9 QUORUM, VOTING AND PROCEDURES</b></p> <p>2.9.1 The quorum for the transaction of business at a meeting of the <i>market surveillance and compliance panel</i> consists of a simple majority of the members then appointed. Where there is a vacancy in the <i>market surveillance and compliance panel</i>, the remaining members of the <i>market surveillance and compliance panel</i> shall</p>	<p><b>2.9 QUORUM, VOTING AND PROCEDURES</b></p> <p>2.9.1 The quorum for the transaction of business at a meeting of the <i>market surveillance and compliance panel</i> consists of a simple majority of the members <u>(including temporary members appointed under section 2.7.9 in respect of the matter referred to in section 2.7.6 which is the subject of that meeting)</u> then appointed <u>who are</u></p>	<p>To make clear that the temporary members are included in the quorum in respect of the specific matter for which the temporary members are</p>

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<p>perform all of the functions and duties of the <i>market surveillance and compliance panel</i> provided that there shall be at least three members of the <i>market surveillance and compliance panel</i> remaining in office.</p> <p>2.9.2 At all meetings of the <i>market surveillance and compliance panel</i>, every question shall be decided by a simple majority of the votes cast on the question. Each member of the <i>market surveillance and compliance panel</i> shall be entitled to one vote, provided that in the case of an equality of votes, the Chair of the <i>market surveillance and compliance panel</i> shall be entitled to a second or casting vote.</p> <p>2.9.3 The <i>market surveillance and compliance panel</i> shall perform the functions and duties referred to in section 2.6.2 in accordance with any applicable procedures set forth in these <i>market rules</i> and in any applicable <i>market manuals</i>.</p>	<p><u>entitled to attend, participate in discussions at and vote at, such meeting.</u> Where there is a vacancy in the <i>market surveillance and compliance panel</i>, the remaining members of the <i>market surveillance and compliance panel</i> shall perform all of the functions and duties of the <i>market surveillance and compliance panel</i> provided that there shall be at least three members (<u>excluding any temporary member</u>) of the <i>market surveillance and compliance panel</i> remaining in office.</p> <p>2.9.2 At all meetings of the <i>market surveillance and compliance panel</i>, every question shall be decided by a simple majority of the votes cast on the question <u>by its members who are entitled to vote thereon</u>. Each member of the <i>market surveillance and compliance panel</i>, <u>unless otherwise required to abstain from voting</u>, shall be entitled to one vote, provided that in the case of an equality of votes, the Chair of the <i>market surveillance and compliance panel</i> shall be entitled to a second or casting vote.</p> <p>2.9.3 The <i>market surveillance and compliance panel</i> shall perform the functions and duties referred to in section 2.6.2 in accordance with any applicable procedures set forth in these <i>market rules</i> and in any applicable <i>market manuals</i>.</p>	<p>appointed.</p> <p>To make clear that the simple majority required to form a quorum excludes members/temporary members who are required to abstain from attending, participating in discussions and voting.</p> <p>To make clear that temporary members are not to be counted towards the “three members” referred to in the proviso in the second sentence of section 2.9.1</p>