This paper reviews the allowable remedies for each event of default listed in Chapter 3 Section 7.3.6 of the market rules, and EMC’s process in response to each type of default.

According to Chapter 3 Section 7.3.3 of the market rules, EMC shall take one or more of the following actions when an event of default occurs:

(1) Issue a default notice to the market participant (“MP”) and the MP will be given 1 business day (“BD”) to perform the necessary remedy actions specified in Chapter 3 Section 7.3.6 to 7.3.9;

(2) Determine the amount the MP owes and to make claim on any credit support held in obligations of the MP;

(3) Request the Market Surveillance and Compliance Panel (“MSCP”) to issue a suspension order. If the MSCP issues a suspension order, the MP’s rights to participate in the Singapore Wholesale Electricity Market (“SWEM”) will be halted.

This proposal arises as EMC has encountered certain types of default that were impractical for the MP to remedy within 1 BD, and/or inappropriate for EMC to take the actions specified in Chapter 3 Section 7.3.10 of the market rules.

Therefore, for each type of event of default, EMC has reviewed the allowable remedies by MPs and the appropriate actions to be taken by EMC. Modifications to the EMC actions stated in Chapter 3 Section 7.3.3 are proposed to ensure that these remedies and actions are appropriate for each type of default.

At the 117th RCP meeting, the RCP unanimously supported the proposed conceptual modifications, and tasked the EMC to draft the relevant rule modifications.
1. **Introduction**

This paper reviews the allowable remedies for each event of default specified in Chapter 3 Section 7.3.6 of the market rules, and EMC’s actions in response to them.

2. **Background**

Chapter 3 Section 7.3.1 of the market rules provides a list of events of default\(^1\), as shown in Annex 1, that trigger the suspension process if not remedied in time. When an event of default occurs, EMC shall take one or more of the following actions according to Chapter 3 Section 7.3.3:

1. Issue a default notice to the MP and the MP will be given 1 business day ("BD") to perform the necessary remedy actions as specific in Chapter 3 Section 7.3.6 to 7.3.9;
2. Determine the amount the MP owes and to make claim on any credit support held in obligations of the MP;
3. Request the Market Surveillance and Compliance Panel ("MSCP") to issue a suspension order. If the MSCP issued a suspension order, the MP’s rights to participate in the Singapore Wholesale Electricity Market ("SWEM")\(^2\) will be halted.

Sections 7.3.6 to 7.3.9 further specify ways for a MP to remedy an event of default. They include paying all monies due for payment or providing additional credit support. However, EMC has in practice encountered certain types of default that were impractical for the MP to remedy within 1 BD, and/or inappropriate for EMC to take the actions specified in Chapter 3 Section 7.3.10 of the market rules.

In the FY2020/2021 Rule Change Work Plan prioritisation exercise, this issue was ranked high on both importance and urgency by stakeholders.

3. **Analysis**

3.1 **Current Actions When an Event of Default Occurs and Related Issues**

Currently, when an event of default occurs, EMC would issue a default notice to the MP. This notice to the MP would clearly specify the alleged event of default and the timeframe of 1 BD for the MP to rectify the event of default.

For a default relating to payments owing to EMC or insufficient credit support, the MP can remedy it by paying all monies due to EMC or providing additional credit support. If the MP fails to remedy the event of default within 1 BD, EMC will refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order, and make claim upon any of the MP’s credit support held by EMC if necessary.

For all other types of default, the MP has 1 BD to remedy the default, failing which EMC will refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order. The MSCP subsequently conducts a suspension hearing and determines if a suspension order should be issued to the MP.

**Issues Identified**

Upon EMC’s issuance of a notice of default, the MP is required to remedy the event of default within 1 BD as required under section 7.3.3.1, to avoid the suspension process. However, EMC

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\(^1\) Chapter 3 Section 7.3.1.1 to 7.3.1.16 of the market rules

\(^2\) Chapter 3 Section 7.3.10 of the market rules
has observed that for some events of default, such as cessation of business by the MP, it is not practical to ask the MP to remedy the default within 1 BD.

3.2. **Proposed Actions in Response to Different Types of Event of Default**

From the list of default events, we were able to group them into four categories. The four categories are:

1. Failure to Make Payment or Provide Credit Support
2. Where it becomes Unlawful to Fulfil Obligation under the Market Rules
3. Cessation of Business/Liquidation/Insolvency
4. Inability to Meet Material Participation Requirement

We also examined the actions and remedy for each event of default. To rationalize and accord appropriate actions to be taken for each type of default, we propose modifications to the current stipulated EMC actions.

### 3.2.1 Category 1: Failure to Make Payment or Provide Credit Support

The first category relates to default in payments and/or failure to provide adequate credit support in time. We have classified the following types of event of default, provided in Chapter 3 Sections 7.3.1.1 to 7.3.1.3, in this category:

- The MP does not pay money due for payment by the appointed time on the due date (Section 7.3.1.1)
- The EMC does not receive payment in full of any amount claimed by the EMC under any credit support submitted by or on behalf of the MP (Section 7.3.1.2)
- The MP fails to provide credit support required to be supplied within the time required (Section 7.3.1.3)

The MP may remedy the event of default by paying all monies owed to EMC or providing sufficient additional credit support.

Defaults of this nature compromise the defaulting MP’s ability to fulfil its financial obligations to the market. To safeguard the financial integrity of the market, urgency is required so we propose to maintain the current actions required from EMC. A default notice will be issued to the MP and the MP will be given only 1 BD to rectify the event of default. If the MP fails to remedy the default within 1 BD, EMC will refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order.

### 3.2.2 Category 2: Where it becomes Unlawful to Fulfil Obligations under the Market Rules

The second category of the event of default relates to cases where it becomes unlawful for a MP to perform its obligations under the market rules. We have classified the following events of default, provided in Chapter 3 Sections 7.3.1.4 and 7.3.1.5, in this category:

- It becomes unlawful for the MP to comply with any of its obligations under the market rules, a market manual or the system operation manual or any other obligation owed to the EMC or the PSO (Section 7.3.1.4)
- It becomes unlawful for a MP’s credit support provider to comply with any of its obligations under the credit support supplied by it or any other obligation owed to the EMC (Section 7.3.1.5)
We note that Section 7.3.1.4 relates to the MP while Section 7.3.1.5 relates to the MP’s credit support provider. Therefore, different actions should be taken by EMC as appropriate for handling the event of default.

For a default due to unlawfulness of the MP to comply with its obligations, it is possible for the MP to remedy the default by applying successfully for a derogation from EMC. If the MP has not anticipated the event of default, the derogation process may require a significant amount of time, and the MP would likely not be able to remedy the event of default within 1 BD. Hence, we propose EMC to issue a default notice to inform the MP of the alleged event of default and that EMC will be referring the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order. The MSCP suspension hearing and derogation application process can proceed concurrently so as not to delay the suspension process. The MSCP shall decide if the MP should be suspended or have its activities restricted before the derogation process is concluded.

For a default due to unlawfulness of a MP’s credit support provider to comply with its obligations, the MP can remedy the default by replacing its credit support provider or by providing sufficient additional credit support (i.e. topping up cash deposits). EMC is of the view that since such an event of default directly relates to the MP’s credit support provider, and not the MP itself, it is equivalent to the situation where the credit support of the MP ceases to be valid. In such a case, replacement credit support must be provided in accordance with Chapter 2 Section 7.6.7 of the market rules. This section of the market rules provides that if the MP’s credit support provider ceases to be current or valid, the MP will be given 2 BDs\(^3\) to replace its credit support. To align with this market rule, we propose to distinguish all events of default that are related to credit support providers of MPs from Chapter 3 Section 7.3.1 of the market rules. If the MP fails to replace its credit support within 2 BDs, it would be an event of default attributed to the MP instead of its credit support provider, and EMC will refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order.

3.2.3 Category 3: Cessation of Business/Liquidation/Insolvency

The third category of the event of default relates to events which suggest that a MP’s business is no longer a going concern. We have classified the following event of default, as provided in Chapter 3 Sections 7.3.1.7 to 7.3.1.14, in this category:

- The MP or its credit support provider ceases or threaten to cease to carry on its business (Section 7.3.1.7)
- The MP or its credit support provider enter into arrangement with creditors (Section 7.3.1.8)
- The MP or its credit support provider is unable to pay its external debts with its own money (Section 7.3.1.9)
- The MP or its credit support provider is going into receivership, liquidation or bankruptcy (Section 7.3.1.10 and 7.3.1.11)
- The MP or its credit support provider has applied for winding up or dissolution or has wound up or dissolved (Section 7.3.1.12 and 7.3.1.13)
- The MP or its credit support provider becomes insolvent or unable to pay its debts under applicable legislation (Section 7.3.1.14)

\(^3\) Rules modifications in relation to RC362 (Review of Timelines in Relation to Provision of Credit Support) which include added clarity in Chapter 2 Section 7.6.7 of the market rules will take effect from 21 October 2020. Nonetheless, the rules modifications in RC362 do not change the analysis in this paper.
We have taken in the comments received during the consultation phase and have made amendments to the actions following a default caused by the MP.

For Section 7.3.1.7 to 7.3.1.12, and 7.3.1.14,

For an event of default in these sections, if the default is caused by a MP, it is impractical to expect that the MP will be able to remedy the default within any short period of time. Hence, it is prudent for a suspension order to be issued automatically, without a hearing, to limit the MP’s activities so as to safeguard the financial integrity of the market. Subsequent to the suspension order, the MP can make an application to request for the suspension order to be lifted. The MSCP has the power to lift or modify the suspension order under Chapter 3 Section 7.3.19 of the market rules.

For Section 7.3.1.13,

If the MP has been wound up or dissolved, the conduct of a hearing by MSCP will not serve any purpose. We propose EMC to issue a termination order without the need to undergo a hearing.

For all event of default caused by the MP’s credit support provider,

On the other hand, if the default is caused by the MP’s credit support provider, the MP may remedy the event of default by replacing its credit support provider or providing sufficient additional credit support.

EMC is of the view that since such an event of default directly relates to the MP’s credit support provider, not the MP itself, it is equivalent to the situation where the credit support of the MP ceases to be valid. In such a case, replacement credit support must be provided in accordance with Chapter 2 Section 7.6.7 of the market rules. This section of the market rules provides that if the MP’s credit support provider ceases to be current or valid, the MP will be given 2 BDs to replace its credit support. To align with this market rule, we propose to distinguish all events of default that are related to credit support providers of MPs from Chapter 3 Section 7.3.1 of the market rules. If the MP fails to replace its credit support within 2 BDs, it would be an event of default attributed to the MP instead of its credit support provider, and EMC will refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order.

3.2.4 Category 4: Inability to Meet Material Participation Requirement

The fourth category of event of default relates to a MP’s inability to fulfil material participation requirement. We have classified the following event of default, provided in Chapter 3 Sections 7.3.1.6, 7.3.1.15 and 7.3.1.16, in this category:

- A license, a permit or an authorisation that enable the MP or its credit support provider to carry on its business is suspended, revoked or ceases to be in full force or effect (Section 7.3.1.6)
- The MP ceases to satisfy any material requirement imposed upon it as a condition of MP registration (Section 7.3.1.15)
- The MP fails to comply with a MSCP’s direction or order (Section 7.3.1.16)

For Section 7.3.1.6,

If a MP loses a relevant license, any unlicensed activities of that MP should be restricted as soon as possible since the rights of the MP to conduct its business or activities has been revoked or

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4 Rules modifications in relation to RC362 (Review of Timelines in Relation to Provision of Credit Support) which include added clarity in Chapter 2 Section 7.6.7 of the market rules will take effect from 21 October 2020. Nonetheless, the rules modifications in RC362 do not change the analysis in this paper.
suspended. Hence, we propose that EMC be given the rights to take immediate actions to restrict the activities of the MP when such an event of default occurs. If the MP does not hold any other license, permit or authorisation to allow the MP to continue its participation in the SWEM, EMC should also refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order.

If a MP’s credit support provider loses a relevant license (i.e. merchant banking license) in a way that prevents it from conducting its usual business, that MP may remedy the event of default by replacing its credit support provider or providing sufficient additional credit support. EMC is of the view that since such an event of default directly relates to the MP’s credit support provider, and not the MP itself, it is equivalent to the situation where the credit support of the MP ceases to be valid. In such a case, replacement credit support must be provided in accordance with Chapter 2 Section 7.6.7 of the market rules. This section of the market rules provides that if the MP’s credit support provider ceases to be current or valid, the MP will be given 2 BDs to replace its credit support. To align with this market rule, we propose to distinguish all events of default attributed to the MP instead of its credit support provider, and EMC will refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order.

For Section 7.3.1.15.

If a MP ceases to satisfy any material registration requirement imposed upon it, the MP may remedy the default by demonstrating that the requirement in question is no longer required. These registration requirements include the following:

- Possession of the relevant electricity license
- Furnishing of prudential requirement
- Possession of agreements with the PSO and the Market Support Services Licensee
- Readiness of MP’s bank account
- Satisfaction of EMC’s technical requirement

These requirements are imposed on a MP to ensure that (a) the MP fulfils regulatory requirements under various governing documents, and (b) the MP is able to meet operational requirements allowing it to fulfil its obligations (i.e. offer submission, settlement) under the market rules. If the MP can successfully demonstrate that not meeting any of these operational requirements does not affect its ability to fulfil its obligations under the market rules, EMC should be given the discretion to assess if there is a need to refer the case to the MSCP. In addition, because such events of default would typically not have an immediate impact on the financial integrity of SWEM, a longer time period should be allowed for the MP to rectify the default.

As with current rule provisions, a default notice will be issued to the MP with the only difference being that the time period given to remedy the default is decided by EMC. Because the nature of each default may be different, the time required by the MP to rectify each material requirement

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5 Rules modifications in relation to RC362 (Review of Timelines in Relation to Provision of Credit Support) which include added clarity in Chapter 2 Section 7.6.7 of the market rules will take effect from 21 October 2020. Nonetheless, the rules modifications in RC362 do not change the analysis in this paper.

6 Losing the relevant license has been discussed in the preceding paragraph of this paper as an event of default in Chapter 3 Section 7.3.1.6 of the market rules

7 Failing to meet prudential requirement has been discussed in Section 3.2.1 of this paper as an event of default in Chapter 3 Section 7.3.1.3 of the market rules

8 Event of default that may result in immediate impact on the financial integrity of SWEM has been covered in Category 1: Failure to Make Payment or Provide Credit Support
may vary. We propose to cap the time given to no more than 5 BDs, to prevent any prolonged event of default.

In addition, Chapter 3 Section 7.3.10 of the market rules states that if the MP fails to remedy the default within the stipulated timeframe, EMC shall make claim upon all credit support held in respect of the MP and request the MSCP to issue a suspension order to the MP. We propose that EMC should be given the discretion to assess if the default affects the MP’s ability to fulfil its financial obligation to the market and to determine if there is a need to make claim on the MP’s credit support.

*For Section 7.3.1.16.*

Since the MP has failed to comply with an order from the MSCP, the most appropriate action would be for EMC to refer the case to the MSCP immediately for its action. EMC would not be in the position to assess the timeframe and appropriate remedy for non-compliance with an MSCP order or direction.

### 3.2.5 Summary

Table 1 provides the summary of EMC’s proposed actions to be taken for each event of default.

#### TABLE 1: Summary of Types of Event of default and Corresponding Actions by EMC

<table>
<thead>
<tr>
<th>Section of Chapter 3</th>
<th>Event of Default</th>
<th>Actions by EMC</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.3.1.1</td>
<td>The market participant does not pay money due for payment by it under the market rules by the appointed time on the due date</td>
<td>A default notice shall be issued to the MP. The default notice will clearly specify the alleged event of default and the MP will be given 1 BD to rectify the event of default.</td>
</tr>
<tr>
<td>7.3.1.2</td>
<td>The EMC does not received payment in full of any amount claimed by the EMC under any credit support submitted by or on behalf of the market participant within one business day in the jurisdiction of the market participant after the due time for payment of that claim</td>
<td></td>
</tr>
<tr>
<td>7.3.1.3</td>
<td>The market participant fails to provide credit support required to be supplied under the market rules within the time required</td>
<td></td>
</tr>
<tr>
<td>7.3.1.4</td>
<td>It becomes unlawful for the market participant to comply with any of its obligations under the market rules, a market manual or the system operation manual or any other obligation owed to the EMC or the PSO, or it is claimed to have become so by the market participant</td>
<td>EMC to issue default notice to inform the MP that EMC will be referring the case to the MSCP. MSCP shall conduct a hearing and decide if a suspension order should be issued to the MP. Should the MP apply for derogation from EMC, the suspension hearing and derogation process are to proceed concurrently. The MSCP shall decide</td>
</tr>
</tbody>
</table>

For Section 7.3.1.16.

Since the MP has failed to comply with an order from the MSCP, the most appropriate action would be for EMC to refer the case to the MSCP immediately for its action. EMC would not be in the position to assess the timeframe and appropriate remedy for non-compliance with an MSCP order or direction.

### 3.2.5 Summary

Table 1 provides the summary of EMC’s proposed actions to be taken for each event of default.
if the MP should be suspended before the derogation process is concluded.

| 7.3.1.5 | It becomes unlawful for a market participant’s credit support provider to comply with any of its obligations under the credit support supplied by it or any other obligation owed to the EMC, or it is claimed to have become so by the credit support provider | MP to replace its credit support in accordance with Chapter 2 Section 7.6.7 of the market rules. If the MP fails to do so, it would be an event of default attributed to the MP instead of its credit support provider. |

### 3. Cessation of Business/Liquidation/Insolvency

| 7.3.1.7 | The market participant or its credit support provider ceases or threatens to cease to carry on its business or a substantial part of its business or its credit support provider ceases or threatens to cease to carry on its business or a substantial part of its business |  

**Situation 1: Event of Default by MP**
Suspension order to be issued automatically without a hearing.

**Situation 2: Event of Default by Credit Support Provider**
MP to replace its credit support in accordance with Chapter 2 Section 7.6.7 of the market rules. If the MP fails to do so, it would be an event of default attributed to the MP instead of its credit support provider.

| 7.3.1.8 | The market participant or its credit 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 |

| 7.3.1.9 | The market participant or its credit support provider states that it is unable to pay from its own money its debts when they fall due for payment |

| 7.3.1.10 | A receiver, receiver and manager, judicial 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 its credit support provider which is used in or relevant to the performance by the market participant or its credit support provider of its obligations under the market rules, a market manual, the system operation manual, an electricity licence or credit support provided by it, as the case may be, issued to it |

| 7.3.1.11 | 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 its credit support provider, or any action is taken to appoint such person |

| 7.3.1.12 | 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 its credit support provider |
| 7.3.1.14 | The market participant or its credit support provider is taken to be insolvent or unable to pay its debts under any applicable legislation |
| 7.3.1.13 | The market participant or its credit support provider is wound up or dissolved, unless the notice of winding up or dissolution is discharged |
| 4. Unable to Meet Material Participation Requirement |
| 7.3.1.6 | A licence (including an electricity licence), permit or other authorisation necessary to enable the MP or its credit 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 electricity licence and only one such electricity 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 EMC with respect thereto shall relate only to such electricity licence |
| 7.3.1.15 | The market participant ceases to satisfy any material requirement imposed upon it as a condition of its registration as a market participant (subject to 7.3.1.6) |
| 7.3.1.16 | The market participant fails to comply with a direction or order of the market surveillance and compliance panel made pursuant to section 7.2.8. |

The following modifications to the market rules would be required to give effect to the actions and processes described in Table 1.

- To distinguish events of default that are related to credit support providers of MPs from the list of events of default in Chapter 3 Section 7.3.1 of the market rules.
For events of default relating to credit support providers, Chapter 2 Section 7.6.7 of the market rules shall apply where the MP would be required to replace the credit support. If the MP fails to comply with it, it would have incurred an event of default. EMC will refer the case to the MSCP for appropriate action, which includes the possibility of issuing a suspension order on the MP.

For events of default related to events which suggest that a MP’s business is no longer a going concern (Section 7.3.1.7 to 7.3.1.12, and 7.3.1.14), a suspension order to be issued automatically without a hearing.

In the event that a MP is wound up or dissolved, a termination order to be issued automatically without a hearing.

In the event that a MP applies for derogation, the MSCP suspension hearing and the derogation process shall proceed concurrently. The MSCP reserves the right to decide if the MP should be suspended before the derogation process is concluded.

For an event of default arising from changes to a MP’s licenses, permits or authorisations, to allow EMC to take immediate actions to restrict any unlicensed activity before referring the case to the MSCP.

For an event of default arising from failure to meet material registration requirement, to give EMC the discretion to determine the time (up to a maximum of 5 BDs) to be given to the MP to remedy the default and to determined if there is a need to make claim on the MP’s credit support.

4. Consultation

The concept paper was published for consultation on 17 April 2020 and we received comments from the MSCP.

Comments from the MSCP

Chapter 3 Section 7.3.11 of the market rules oblige the MSCP to convene a hearing within 4 BDs of a request for suspension by the EMC. The Companies Act (Cap 50) contains several provisions that impact on the power of the MSCP to hold a hearing before the issuance of a suspension order in relation to a market participant. This is inappropriate in relation to the events of default listed in Table 2 column (i) MSCP Comments below.

EMC’s Response

EMC has considered the comments raised by the MSCP and has sought the views of external counsel. Incorporating the views of external counsel, we have set out our responses in Table 2 column (ii) EMC’s Response below.

<table>
<thead>
<tr>
<th>TABLE 2: Comments received from the MSCP and EMC’s Response</th>
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<tbody>
<tr>
<td>Chapter 3, Market Rules</td>
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<tr>
<td>Section 7.3.1.7</td>
</tr>
</tbody>
</table>
Section 7.3.1.8 Arrangement, composition or compromise. It is standard for companies proposing such arrangements to apply for a stay of proceedings pursuant to sections 210, 211B and/or 211C, Companies Act.

Where such a stay of proceedings has been ordered, the MSCP will not be allowed to hold a hearing. When EMC is notified that a company has proposed an arrangement etc., a suspension should be automatic unless the court has allowed the MSCP to hold a hearing. The company may be allowed to request a hearing to argue for a lifting or modification of the suspension order.

EMC has considered the comments of the MSCP and external counsel and notes the following salient points:

a) Save for a MP which is exempt from licensing under the Electricity Act ("EA"), MPs cannot obtain moratorium relief under sections 211B or 211C of the CA. Only section 210(10) of the CA is relevant.

b) There are differing views on whether hearings of the MSCP would be prohibited by the moratorium relief obtained by the MP:

(i) One view is that hearings of the MSCP are not "proceedings" that are stayed by the statutory moratorium. This is due to the public interest element of an administrative hearing under the Market Rules and a hearing would provide the MP with an opportunity to make representations to the MSCP as to why a suspension order should not be issued; and

(ii) Another view is that hearings of the MSCP may be prohibited and a hearing of the MSCP where a stay of proceedings has been ordered may be prohibited by the moratorium relief obtained by the MP.

c) There is no definition of "proceedings" in the CA and there is no locally reported judgment on whether a hearing before a regulator under a regulatory framework is a "proceeding" under sections 210(10), 211B or 211C of the CA.

In view of the possible uncertainty as to whether or not a hearing conducted by the MSCP will be affected by a stay of proceedings on the MP, EMC proposes that a suspension order should be issued automatically by the MSCP upon it being notified that the MP has entered into or has taken 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.

The onus would be on the MP to make an application to lift the suspension order. Under Chapter 3 Section 7.3.19 of the Market Rules, the MSCP has the power to lift or modify the suspension order.

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9 Though it has not yet been definitively decided that a MSCP hearing would amount to 'proceedings', it would be unwise to proceed on the basis that such a hearing may be convened despite the provisions of the Companies Act.
Section 7.3.1.10 Appointment of a judicial manager.
Upon application for a judicial management order, proceedings against the company may not be commenced except with the leave of court: Companies Act section 227C. This prohibition continues as long as the company remains under judicial management: Companies Act section 227D.

Therefore, the MSCP will not be allowed to hold a hearing within the prescribed four-day timeframe. It would be better for an automatic suspension to be imposed once EMC is informed that an application has been made for appointment of a judicial manager. The judicial manager may request a hearing to argue for lifting the suspension.

However, where the defaulting MP is a retailer the suspension order will trigger the Retailer of Last Resort event, which will result in the MP’s customers being transferred. To avoid this, the defaulting MP should make an immediate application to court to allow a MSCP hearing to be held. If such an application is made, the suspension order will not be automatically imposed.

EMC has considered the comments of the MSCP and external counsel and notes the following salient points:

a) There are differing views on whether hearings of the MSCP would be prohibited by the moratorium relief pursuant to sections 227C and 227D of the CA:

(i) One view is that hearings of the MSCP are not “proceedings” that are stayed under sections 227C or 227D of the CA. This is due to the public interest element of an administrative hearing under the Market Rules and a hearing would provide the MP with an opportunity to make representations to the MSCP as to why a suspension order should not be issued; and

(ii) Another view is that hearings of the MSCP may be prohibited and a hearing of the MSCP may be prohibited by the moratorium relief pursuant to sections 227C and 227D of the CA.

b) There is no definition of “proceedings” in the CA and there is no locally reported judgment on whether a hearing before a regulator under a regulatory framework is a “proceeding” under sections 227C and 227D of the CA.

In view of the possible uncertainty as to whether or not a hearing conducted by the MSCP will be affected by the moratorium relief pursuant to sections 227C and 227D of the CA, EMC proposes that a suspension order should be issued automatically by the MSCP upon it being notified that a receiver, receiver and manager, judicial 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 MP.

The onus would be on the MP to make an application to lift the suspension order. Under Chapter 3 Section 7.3.19 of the Market Rules, the MSCP has the power to lift or modify the suspension order.

Section 7.3.1.12 Application for winding-up. It is common for an application for a stay of proceedings against the company
to be ordered at the same time under Companies Act section 258.

If a stay is granted, the MSCP will not be able to convene a hearing within the stipulated four-day timeframe. An automatic suspension should be imposed once EMC is informed that a stay of proceedings has been ordered unless the order allows the MSCP to hold a hearing. It is incumbent on the defaulting MP to ensure that the order to stay proceedings does not cover a MSCP hearing.

Once a winding-up order is made or a provisional liquidator is appointed, Companies Act section 262(3) provides for a stay of proceedings. Again, it should be for the defaulting MP to make an application to court to allow MSCP to hold a hearing, failing which suspension should be automatic.

a) There is no automatic stay of proceedings upon the filing of an application to wind-up a company (i.e. before the court has determined the application).

b) Under Section 258 of the CA, the MP or a creditor may, at any time after the making of an application to wind-up a company, apply to the court to restrain any further action or proceedings against the MP.

c) Under Section 262(3) of the CA, when a winding-up order is made or a provisional liquidator is appointed, no action or proceeding shall be proceeded with or commenced against the MP without leave of the court.

d) There is no definition of “proceedings” in the CA and there is no locally reported judgment on whether a hearing before a regulator under a regulatory framework is a “proceeding” under sections 258 or 263 of the CA.

e) In certain circumstances, a creditor could have filed the winding-up application on frivolous grounds, or to exert commercial pressure on the MP. If the MP can show that there is a prima facie dispute over liability or quantum, or a genuine cross-claim, the court will stay the winding-up application. In such a case, while the MP’s challenge against a winding-up application will be determined summarily with affidavit evidence, there may still be a period of time before the MP’s application is heard and determined.

In view of:

(1) the possible uncertainty as to whether a hearing conducted by the MSCP will be affected by a stay of proceedings on the MP; and

(2) the possibility that a winding-up application on the MP may have been made on frivolous grounds, or to exert commercial pressure on the MP, which can only be determined by the court on the application of the MP,

EMC proposes that a suspension order should be issued automatically by the MSCP upon it being notified that an application is made for the winding up of the MP.

The onus would be on the MP to make an application to lift the suspension order. Under Chapter 3 Section 7.3.19 of the market rules, the
MSCP has the power to lift or modify the suspension order.

**Section 7.3.1.12**  
**Resolution passed for voluntary winding up.** Liquidation commences when such a resolution is passed: Companies Act section 291(6). Section 299(2) provides that proceedings may not be commenced against the company after commencement of winding-up. The liquidator should make an application to court to allow a MSCP hearing. If no such court order is made, suspension should be automatic.

In the case of a voluntary winding up, the MP has resolved to place itself into voluntary liquidation. As such, we agree that a suspension order can be issued without a hearing because voluntary liquidation indicates that the MP will not be continuing its business.

If the liquidator considers that it is beneficial to carry on the market participant’s business for the time being, the MSCP has the power to lift or modify the suspension order under Chapter 3 Section 7.3.19 of the market rules.

**Section 7.3.1.13**  
**Dissolution of the company.** It is self-evident that a MSCP hearing would be futile in such an event. A termination order under section 7.4.1 of Chapter 3 of the Market Rules should be automatic.

We agree that a termination order can be issued without the need for a hearing when the MP is dissolved.

Section 3.2.3 of this paper has been amended to reflect the changes to the suspension process for events of default under Section 7.3.1.7 to 7.3.1.14 of the market rules.

**5. Conclusion and Recommendations**

This paper reviews the allowable remedies for each event of default listed in Chapter 3 Section 7.3.6 of the market rules, and EMC’s actions in response to each type of default.

From our review of the current actions and remedy for each type of event of default, we assessed that the differing nature of each type of event of default justifies different treatment under the market rules. We thus propose to modify the current stipulated EMC actions with respect to each type of event of default in order for EMC to manage different types of event of default more appropriately and efficiently.

We conclude that the proposed modifications would (a) streamline the process and accord appropriate actions to be taken for each type of default, and (b) improve clarity to both EMC and the MP on actions to take when an event of default occurs.

**6. Decisions at the 117th RCP Meeting**

The concept paper was discussed at the 117th RCP meeting held on 14 July 2020. The panel unanimously supported the proposed conceptual modifications, and tasked the EMC to draft the relevant rule modifications.
### ANNEX 1: List of Event of Default (Chapter 3 Section 7.3.1 of Market Rules)

<table>
<thead>
<tr>
<th>Section</th>
<th>Event of Default</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.3.1.1</td>
<td>The market participant does not pay money due for payment by it under the market rules by the appointed time on the due date.</td>
</tr>
<tr>
<td>7.3.1.2</td>
<td>The EMC does not receive payment in full of any amount claimed by the EMC under any credit support submitted by or on behalf of the market participant within one business day in the jurisdiction of the market participant after the due time for payment of that claim.</td>
</tr>
<tr>
<td>7.3.1.3</td>
<td>The market participant fails to provide credit support required to be supplied under the market rules within the time required.</td>
</tr>
<tr>
<td>7.3.1.4</td>
<td>It becomes unlawful for the market participant to comply with any of its obligations under the market rules, a market manual or the system operation manual or any other obligation owed to the EMC or the PSO, or it is claimed to have become so by the market participant.</td>
</tr>
<tr>
<td>7.3.1.5</td>
<td>It becomes unlawful for a market participant’s credit support provider to comply with any of its obligations under the credit support supplied by it or any other obligation owed to the EMC, or it is claimed to have become so by the credit support provider.</td>
</tr>
<tr>
<td>7.3.1.6</td>
<td>A licence (including an electricity licence), permit or other authorisation necessary to enable the MP or its credit 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 electricity licence and only one such electricity 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 EMC with respect thereto shall relate only to such electricity licence.</td>
</tr>
<tr>
<td>7.3.1.7</td>
<td>The market participant or its credit support provider ceases or threatens to cease to carry on its business or a substantial part of its business or its credit support provider ceases or threatens to cease to carry on its business or a substantial part of its business.</td>
</tr>
<tr>
<td>7.3.1.8</td>
<td>The market participant or its credit 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.</td>
</tr>
<tr>
<td>7.3.1.9</td>
<td>The market participant or its credit support provider states that it is unable to pay from its own money its debts when they fall due for payment.</td>
</tr>
<tr>
<td>7.3.1.10</td>
<td>A receiver, receiver and manager, judicial 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 its credit support provider which is used in or relevant to the performance by the market participant or its credit support provider of its obligations under the market rules, a market manual, the system operation manual, an electricity licence or credit support provided by it, as the case may be, issued to it.</td>
</tr>
<tr>
<td>7.3.1.11</td>
<td>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 its credit support provider, or any action is taken to appoint such person.</td>
</tr>
<tr>
<td>7.3.1.12</td>
<td>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 its credit support provider.</td>
</tr>
</tbody>
</table>
7.3.1.13 The market participant or its credit support provider is wound up or dissolved, unless the notice of winding up or dissolution is discharged.

7.3.1.14 The market participant or its credit support provider is taken to be insolvent or unable to pay its debts under any applicable legislation.

7.3.1.15 The market participant ceases to satisfy any material requirement imposed upon it as a condition of its registration as a market participant.

7.3.1.16 The market participant fails to comply with a direction or order of the market surveillance and compliance panel made pursuant to section 7.2.8.