

# **Singapore Electricity Market Rules**

## **Chapter 3**

### **Administration, Supervision & Enforcement**

**Energy Market Authority**

1 ~~January~~April 2018

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# 1 INTRODUCTION

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## 1.1 SCOPE OF CHAPTER AND INTERPRETATION

1.1.1 This Chapter sets forth:

1.1.1.1 the composition of the *rules change panel* and the *market surveillance and compliance panel* and the manner in which the members of each shall be appointed and may be removed;

1.1.1.2 the dispute resolution mechanism applicable to certain disputes arising under the *market rules*, including the appointment of a *dispute resolution counsellor*;

1.1.1.3 the manner in which the *market assessment unit* and the *market surveillance and compliance panel* will fulfil their respective market monitoring, surveillance, and investigation responsibilities;

1.1.1.4 the procedures pursuant to which the *market rules* may be *modified*;

1.1.1.5 the procedures which govern the protection, use and disclosure of *confidential information* by the *EMC*, the *PSO*, *market participants* and *market support services licensees*;

1.1.1.6 the manner in which the *market assessment unit* will monitor and enforce compliance with the *market rules* and *market manuals*;

1.1.1.7 the manner in which the *PSO* will monitor compliance with the system operation manual; and

1.1.1.8 the circumstances that are considered to be *events of default* and warrant the imposition of a *suspension, termination or revocation order* by the *market surveillance and compliance panel*.

1.1.2 Any reference in this Chapter to a *market support services licensee* shall be deemed to be a reference only to a *market support services licensee* that has been authorised to participate by the *EMC* pursuant to section 3 of Chapter 2.

1.1.3 Any reference in this Chapter to a *registered facility* shall be deemed to include a reference to a *generation settlement facility* that has been registered by the *EMC* pursuant to section 5.4 of Chapter 2 and a *non-exporting embedded intermittent generation facility that has been registered by the EMC pursuant to section 5.4B of Chapter 2*.

## **2 CREATION AND MEMBERSHIP OF PANELS**

### **2.1 DISQUALIFICATION, REMOVAL, CEASING TO HOLD OFFICE AND OTHER MATTERS**

2.1.1 Every person who is or is to be appointed as a member of the *rules change panel* or the *market surveillance and compliance panel* shall meet the following eligibility requirements:

2.1.1.1 be at least twenty-one years of age;

2.1.1.2 not be of unsound mind as determined by a court in Singapore or elsewhere;

2.1.1.3 be a natural person;

2.1.1.4 not have been adjudicated a bankrupt;

2.1.1.5 not be an employee of the Government of Singapore which, for the purposes of section 2.3.1.3, shall not include employees of the *Authority* responsible for fulfilling the functions referred to in section 5.1 of Chapter 1;

2.1.1.6 meet the applicable qualification requirements contained in:

a. section 2.3.2, if a member of the *rules change panel*; or

b. sections 2.7.1 and 2.7.2, if a member of the *market surveillance and compliance panel*.

2.1.2 A member of the *rules change panel* or the *market surveillance and compliance panel* shall cease to hold office when he:

2.1.2.1 dies or resigns;

2.1.2.2 is removed in accordance with section 2.1.3; or

2.1.2.3 ceases to meet any of the eligibility requirements in section 2.1.1.

2.1.3 The *EMC Board* may, by resolution passed by at least two-thirds of the directors then in office, excluding those who abstain voluntarily or are required under the *constituent documents* to abstain, remove any member of the *rules change panel*, or of the *market surveillance and compliance panel* for cause.

- 2.1.4 Except as may otherwise be provided in the *market rules*, in any *market manual* or in the *constituent documents*, the *EMC Board* may from time to time by resolution prescribe:
- 2.1.4.1 with respect to the *dispute resolution counsellor* and each member of the *rules change panel*, the *dispute resolution and compensation panel* and the *market surveillance and compliance panel*:
- a. the remuneration to be paid to each of them;
  - b. conflict of interest guidelines or codes of conduct to be observed by each of them;
  - c. the terms of any confidentiality agreement to be entered into by each of them; and
- 2.1.4.2 with respect to the *dispute resolution counsellor*, the *rules change panel*, the *dispute resolution and compensation panel* and the *market surveillance and compliance panel*:
- a. the terms and conditions upon which each of them may hire external consulting assistance or expert advisory services;
  - b. the time and place of, and the procedures to be followed at, their respective meetings; and
  - c. the manner in which their respective activities may be audited.
- 2.1.5 Subject to section 2.1.3, all decisions required to be made by the *EMC Board* under this section 2 shall be made by majority vote.

## **2.2 ESTABLISHMENT AND FUNCTIONS OF RULES CHANGE PANEL**

- 2.2.1 The *EMC Board* shall establish and maintain a *rules change panel* in accordance with sections 2.3 and 2.4.
- 2.2.2 The *rules change panel* shall have the functions and duties assigned to it in or under the authority of:
- 2.2.2.1 these *market rules* or a *market manual*;
  - 2.2.2.2 the *constituent documents*; and
  - 2.2.2.3 any resolution of the *EMC Board*,

provided that in no event shall any functions or duties referred to in section 2.2.2.2 or 2.2.2.3 conflict or be inconsistent with, or hinder the ability of the *rules change panel* to perform, the functions and duties referred to in section 2.2.2.1.

## **2.3 COMPOSITION OF RULES CHANGE PANEL AND QUALIFICATION OF MEMBERS**

2.3.1 The *rules change panel* shall consist of up to fifteen members as follows, each having met the eligibility requirements in section 2.1.1:

- 2.3.1.1 the Chief Executive of the *EMC*;
- 2.3.1.2 one employee of the *EMC* not being the Chief Executive;
- 2.3.1.3 one representative of the *PSO*;
- 2.3.1.4 three representatives of the *generation licensee* class of *market participants*;
- 2.3.1.5 one representative of the *transmission licensee* class of *market participants*;
- 2.3.1.6 three representatives of the *retail electricity licensee* class of *market participants*;
- 2.3.1.7 one representative of all *market support services licensees* as a class;
- 2.3.1.8 one representative of the class of *market participants* referred to in section 2.1.1.3 of Chapter 2;
- 2.3.1.9 a person who is experienced in financial matters in Singapore; and
- 2.3.1.10 two persons to represent the interests of the *consumers* of electricity in Singapore generally.

2.3.2 Members of the *rules change panel* shall:

- 2.3.2.1 have a level of technical or commercial knowledge and expertise in the operation of power systems and electricity markets that is acceptable to the *EMC Board*;
- 2.3.2.2 in the case of members that are representatives of a class of *market participants*, be a director, officer, employee or agent of a *market participant* in the class of *market participant* which such member represents;



- 2.3.2.3 in the case of members that are representatives of a class of *market participants*, not:
- a. be, or have a spouse or relative that is, a director, officer, employee or agent of; or
  - b. have, or have a spouse or relative that has, a direct or indirect legal or beneficial interest in or commercial affiliation with,  
  
a *market participant* in another class of *market participant* other than the class which such member represents or a *market support services licensee*, or of an *affiliate* of such *market participant* or *market support services licensee*;
- 2.3.2.4 in the case of a member that is the representative of *market support services licensees*, be a director, officer, employee or agent of a *market support services licensee*;
- 2.3.2.5 in the case of a member that is the representative of *market support services licensees*, not:
- a. be, or have a spouse or relative that is, a director, officer, employee or agent of; or
  - b. have, or have a spouse or relative that has, a direct or indirect legal or beneficial interest in or commercial affiliation with  
  
a *market participant* or an affiliate of a *market participant*;
- 2.3.2.6 in the case of a member that is referred to in section 2.3.1.9, be a member of the Institute of Singapore Chartered Accountants; and
- 2.3.2.7 in the case of a member that is the Chief Executive of the *EMC*, the employee of the *EMC* not being the Chief Executive, the representative of the *PSO*, or a person referred to in section 2.3.1.9 or 2.3.1.10, not:
- a. be, or have a spouse or relative that is, a director, officer, employee or agent of; or
  - b. have, or have a spouse or relative that has, a direct or indirect legal or beneficial interest in or commercial affiliation with  
  
a *market participant*, a *market support services licensee* or an *affiliate* of a *market participant* or *market support services licensee*.

Sections 2.3.2.3, 2.3.2.5 and 2.3.2.7 shall be interpreted in accordance with section 2.7.3.

- 2.3.3 [Intentionally Left Blank]
- 2.3.4 No *market participant* except the *transmission licensee* may, alone or in combination with its *affiliates*, have more than one of its directors, officers, employees or agents appointed as a member of the *rules change panel*.
- 2.3.5 The Chair of the *rules change panel* shall be the Chief Executive of the *EMC*.
- 2.3.6 The Chief Executive of the *EMC* may, from time to time and subject to such conditions or restrictions as he or the *EMC Board* may specify, appoint a director or officer of the *EMC* as a delegate to participate in his stead in the work of, and assume the responsibilities of the Chief Executive as a member of, the *rules change panel*.

## **2.4 APPOINTMENT, TERM AND REAPPOINTMENT OF MEMBERS OF RULES CHANGE PANEL**

- 2.4.1 Members of the *rules change panel*, other than the members referred to in sections 2.3.1.1 to 2.3.1.3, shall be selected by the *EMC Board* from among a list of nominees (who are eligible under the *market rules* for appointment to the *rules change panel*) submitted to the *EMC Board* by :
- 2.4.1.1 the *market participants* of the classes referred to in sections 2.3.1.4 to 2.3.1.6 and 2.3.1.8;
- 2.4.1.2 *market support services licensees*, in the case of the member referred to in section 2.3.1.7;
- 2.4.1.3 the Institute of Singapore Chartered Accountants, in the case of the member referred to in section 2.3.1.9; or
- 2.4.1.4 the organisations listed in Appendix 3C, in the case of the members referred to in section 2.3.1.10.
- 2.4.2 At the request of the *EMC Board*, the *market participants* and the *market support services licensees* referred to in section 2.4.1 shall provide the *EMC Board* with one or more list or lists of nominees for appointment to the *rules change panel* (being persons who are eligible under the *market rules* for appointment to the *rules change panel*).

- 2.4.3 Subject to section 2.4.4, a member of the *rules change panel*:
- 2.4.3.1 referred to in section 2.3.1.2 shall be appointed by the *EMC Board* in accordance with the nomination submitted for such purpose by the Chairman of the *EMC Board* at his discretion; and,
  - 2.4.3.2 referred to in section 2.3.1.3 shall be appointed by the *EMC Board* in accordance with the nomination submitted for such purpose by the *PSO* at the *PSO*'s discretion,
- provided in each case that the nominee meets the eligibility requirements under section 2.1.1.
- 2.4.4 No person (other than the Chief Executive of the *EMC*) shall be considered for appointment to the *rules change panel* unless the *EMC Board* has received a signed declaration in the form set forth in Appendix 3A from such person.
- 2.4.5 Subject to sections 2.1.3 and 2.4.7, the term of office of each member of the *rules change panel*, other than the Chief Executive of the *EMC*, shall be no more than three years. A member of the *rules change panel* whose term of office has expired shall be eligible for reappointment by the *EMC Board* for one or more additional terms of no more than three years each, provided that such re-appointment does not result in a violation of sections 2.3.1 and 2.3.4.
- 2.4.6 Subject to sections 2.3.1 and 2.3.4 (where applicable), the *EMC Board* shall promptly fill the vacancies on the *rules change panel* as follows:
- 2.4.6.1 in respect of a vacancy in the office of the Chief Executive of the *EMC*, any successor Chief Executive of the *EMC*;
  - 2.4.6.2 in respect of a vacancy in the member of the *rules change panel* referred to in section 2.3.1.2, a person nominated by the Chief Executive of the *EMC* to fill such vacancy provided that such person meets the requirements of sections 2.1.1 and 2.4.4;
  - 2.4.6.3 in respect of a vacancy in the member of the *rules change panel* referred to in section 2.3.1.3, a person nominated by the *PSO* to fill such vacancy provided that such person meets the requirements of sections 2.1.1 and 2.4.4; and
  - 2.4.6.4 in respect of any other vacancy in the *rules change panel* a nominee referred to in sections 2.4.1 and 2.4.2, provided that such person meets the requirements of sections 2.1.1 and 2.4.4.

- 2.4.7 The term of office of a member appointed to fill a vacancy on the *rules change panel* shall be the unexpired term of office of the member who had vacated office.

## **2.5 QUORUM, VOTING AND PROCEDURES**

- 2.5.1 The quorum for the transaction of business at a meeting of the *rules change panel* shall be a majority of the members then in office. Where there is a vacancy on the *rules change panel*, the remaining members of the *rules change panel* may perform all of the functions and duties of the *rules change panel* at any meeting of the *rules change panel* subject to there being a quorum at that meeting.
- 2.5.2 At all meetings of the *rules change panel*, every question shall be decided by a majority of votes. Each member of the *rules change panel* shall be entitled to one vote, except that the Chair of the *rules change panel* shall not be entitled to a vote.
- 2.5.3 The *rules change panel* shall perform the functions and duties referred to in section 2.2.2 in accordance with all applicable procedures set forth in these *market rules* and in any applicable *market manuals*.

## **2.6 ESTABLISHMENT AND FUNCTIONS OF MARKET SURVEILLANCE AND COMPLIANCE PANEL**

- 2.6.1 The *EMC Board* shall establish and maintain a *market surveillance and compliance panel* in accordance with sections 2.7 and 2.8.
- 2.6.2 The *market surveillance and compliance panel* shall have the functions and duties assigned to it in or under the authority of:
- 2.6.2.1 these *market rules* or a *market manual*;
  - 2.6.2.2 the *constituent documents*; and
  - 2.6.2.3 any resolution of the *EMC Board*,

provided that in the event that any functions or duties referred to in section 2.6.2.2 or 2.6.2.3 shall conflict or be inconsistent with, or hinder the ability of the *market surveillance and compliance panel* to perform, the functions and duties referred to in section 2.6.2.1, the functions and duties as referred to in section 2.6.2.1 shall prevail.

## **2.7 COMPOSITION OF MARKET SURVEILLANCE AND COMPLIANCE PANEL AND QUALIFICATION OF MEMBERS**

2.7.1 The *market surveillance and compliance panel* shall consist of at least three persons, each having sufficient relevant experience in one or more of the following areas:

2.7.1.1 competitive wholesale electricity markets or financial or commodity markets;

2.7.1.2 Singapore laws and/or electricity regulations;

2.7.1.3 competition laws and policies;

2.7.1.4 *power system* operations; and/or

2.7.1.5 economics.

The *EMC Board* shall endeavour, in making appointments to the *market surveillance and compliance panel*, to appoint persons with the expertise necessary to ensure that the combined expertise of the members of the *market surveillance and compliance panel* covers the areas specified in sections 2.7.1.1 to 2.7.1.5.

2.7.2 No person shall be appointed to the *market surveillance and compliance panel* if that person:

2.7.2.1 is, or has a spouse that is, a director, officer, employee or agent of the *EMC*, the *PSO*, or the respective *affiliates* of the *EMC* or the *PSO*;

2.7.2.2 is, or has a spouse 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*;

2.7.2.3 has, or has a spouse that has, a direct or indirect legal or beneficial interest in or substantial and meaningful commercial affiliation with the *EMC*, the *PSO*, a *market participant*, a *market support services licensee* or any of their respective *affiliates*;

2.7.2.4 has a relative, or a relationship with any other person, that has a substantial and meaningful commercial affiliation with the *EMC*, the *PSO*, a *market participant*, a *market support services licensee* or any of their respective *affiliates*; or

2.7.2.5 in the opinion of the *EMC Board*, has any other real or potential conflict of interest, or there exists any other

circumstance which may prevent that person from independently and impartially carrying out his duties as a member of the *market surveillance and compliance panel*.

- 2.7.3 For the purposes of sections 2.3.2, 2.4.3, 2.7.2, 2.7.3A, 2.7.6, 2.7.7, 3.4.2 and 3.5.4:
- 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 *transmission licensee*, a *retail electricity licensee*, a person described in section 2.1.1.3 of Chapter 2 or a *market support services licensee*;
  - 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;
  - 2.7.3.3 an interest in a mutual fund is not a legal or beneficial interest;
  - 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 5% of the aggregate of the nominal amount of all the voting shares in the corporation;
  - 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
  - 2.7.3.6 relative, in respect of a person, means a parent, step-parent, child, step-child, sibling or step-sibling of such person, including where such relationship is pursuant to adoption.
- 2.7.3A A commercial affiliation that a person has with another person under section 2.7.3.1 shall be a substantial and meaningful commercial affiliation:
- a. if the *EMC Board* determines for the purposes of either section 2.7.2.3 or section 2.7.2.4; or
  - b. if the members of the *market surveillance and compliance panel* (other than the notifying member) determine for the purposes of section 2.7.6.2,

that the aggregate value of goods or services supplied or received in connection with that commercial affiliation is substantial and material relative to that first-mentioned person's circumstances.

- 2.7.4 No person shall be considered for appointment as a member of the *market surveillance and compliance panel* unless the *EMC Board* has received a signed declaration in the form set forth in Appendix 3D from such person.
- 2.7.5 The *EMC Board* shall from time to time appoint a Chair of the *market surveillance and compliance panel* from among the members of the *market surveillance and compliance panel*, provided that no person shall be appointed as Chair of the *market surveillance and compliance panel* unless he or she has a degree in law from a recognised university and has held a certificate to practise as an advocate and solicitor of the Supreme Court of Singapore for a period of not less than seven years.
- 2.7.6 The following provisions of this section 2.7.6 shall apply in respect of each matter (referred to in this section 2.7.6 as the "relevant matter") for the time being before, or dealt with by, the *market surveillance and compliance panel*:
- 2.7.6.1 if a member of the *market surveillance and compliance panel* (referred to in this section 2.7.6 as the "notifying member") has any real or potential conflict of interest, or there exists any circumstance that may prevent him from acting independently and impartially, he shall immediately notify the other members of the *market surveillance and compliance panel* of such conflict or circumstance;
- 2.7.6.2 upon notification under section 2.7.6.1:
- a. the notifying member may voluntarily elect to cease all involvement in the relevant matter; and
  - b. failing the election of the notifying member as stated in section 2.7.6.2(a), the other members of the *market surveillance and compliance panel* shall, by a simple majority vote, determine if the conflict or circumstance notified by the notifying member may prevent him from acting independently and impartially in respect of the relevant matter, in which event the notifying member shall cease all involvement in the relevant matter. The notifying member shall be deemed to have a conflict or a circumstance that prevents him from acting independently and impartially in respect of the relevant matter if he has a relative, or a relationship with any other person, that has a substantial and meaningful commercial affiliation with the *EMC*, the *PSO*, a *market participant*, a *market support services licensee* or any of their respective *affiliates*;



2.7.6.3 if the notifying member voluntarily elects, or is required, to cease all involvement in the relevant matter, he shall cease all involvement in the relevant matter by excusing himself from the relevant part of each meeting of the *market surveillance and compliance panel* in which the relevant matter is to be discussed or dealt with, and abstaining from participating in any discussion, voting on, or any further involvement in relation to the relevant matter.

For the avoidance of doubt, this section 2.7.6 shall be subject to, and without prejudice to, section 2.1.2.

2.7.7 Without prejudice to the generality of section 2.7.6, a notification must be made under section 2.7.6 by a member of the *market surveillance and compliance panel* if the member has a relative who:

2.7.7.1 is a director, officer, employee or agent of; or

2.7.7.2 has a direct or indirect legal or beneficial interest in or commercial affiliation with,

any party, against which any monitoring or investigation, or against which any proceeding, procedure, action or step in connection with any enforcement action or the issuance of a *suspension order, termination order or revocation order*, is or is to be conducted or taken by the *market surveillance and compliance panel* under either or both of sections 4 and 7, or any of such party's *affiliates*.

## **2.8 TERM AND REAPPOINTMENT OF MEMBERS OF MARKET SURVEILLANCE AND COMPLIANCE PANEL**

2.8.1 Subject to section 2.1.3, the term of office of each member of the *market surveillance and compliance panel* shall be no more than three years. A member of the *market surveillance and compliance panel* whose term has expired shall be eligible for reappointment by the *EMC Board* for one or more additional terms of no more than three years each.

2.8.2 The term of office of a member of the *market surveillance and compliance panel* appointed to replace a member whose term had not yet expired shall be the unexpired term of the predecessor member.

2.8.3 Where the term of a member of the *market surveillance and compliance panel* is due to expire on a date falling within the period of time when the member is involved in an investigation referred to in section 4.6, the member shall be deemed re-appointed on such expiry date only for such time as may be necessary to enable the member to complete the investigation and any related reports.



## 2.9 QUORUM, VOTING AND PROCEDURES

- 2.9.1 The quorum for the transaction of any business at a meeting of the *market surveillance and compliance panel* shall be a simple majority of the members then appointed, excluding any one or more member who voluntarily elects to cease, or who is required to cease, all involvement in respect of a relevant matter under section 2.7.6 to which such business relates.
- 2.9.1A Where there is any vacancy in the *market surveillance and compliance panel*, the remaining members of the *market surveillance and compliance panel* shall perform all of the functions and duties of the *market surveillance and compliance panel* provided that there shall be at least three members of the *market surveillance and compliance panel* remaining in office.
- 2.9.1B In the event that the Chair of the *market surveillance and compliance panel* is a notifying member and voluntarily elects, or is required, to cease all involvement in respect of a relevant matter pursuant to section 2.7.6, the remaining members of the *market surveillance and compliance panel* who may vote in respect of that relevant matter may, by a simple majority, elect one member from among themselves (who meets the eligibility criteria under section 2.7.5) to act as the chairman only in respect of that part of the meeting of the *market surveillance and compliance panel* at which business in respect of that relevant matter is transacted.
- 2.9.2 At all meetings of the *market surveillance and compliance panel*, every question shall be decided by a simple majority of the votes cast on the question, by members of the *market surveillance and compliance panel*, excluding the vote of a member who voluntarily elects, or is required, to cease all involvement in respect of a relevant matter under section 2.7.6 to which such question relates.
- 2.9.2A Subject to section 2.9.2, each member of the *market surveillance and compliance panel* shall be entitled to one vote, provided that in the case of an equality of votes, the Chair of the *market surveillance and compliance panel*, if entitled to vote as aforesaid, shall be entitled to a second or casting vote. For avoidance of doubt, if a member is a notifying member in respect of a relevant matter under section 2.7.6, he shall not have any vote (and, if he is the Chair, he shall also not have any second or casting vote) in respect of the determination under section 2.7.6.2(b) in respect of that matter.
- 2.9.2B If the Chair of the *market surveillance and compliance panel* is not entitled to vote in respect of a question, the person, if any, who is elected as the chairman of the *market surveillance and compliance panel*, under

section 2.9.1B in respect of a matter to which that question relates, shall, in the case of an equality of votes, be entitled to a second or casting vote.

- 2.9.3 The *market surveillance and compliance panel* shall perform the functions and duties referred to in section 2.6.2 in accordance with any applicable procedures set forth in these *market rules* and in any applicable *market manuals*.

## **3 DISPUTE RESOLUTION AND COMPENSATION**

**Explanatory Note: Section 3 sets out how disputes under the market rules are resolved.**

**Generally the process is:**

- **First, the parties are expected to resolve their dispute by negotiation using their dispute management systems.**
- **Second, if negotiation fails, a party submits the dispute to mediation which is carried out by a mediator.**
- **Third, if mediation fails, a party submits the dispute to arbitration which is carried out by an arbitration tribunal.**

**Section 3 also sets out how a mediator is selected from a mediation panel and an arbitration tribunal is selected from an arbitration panel. The members of both panels are appointed by the dispute resolution counsellor.**

### **3.1 GUIDELINES FOR SECTION 3**

3.1.1 Section 3 should, as far as possible:

- 3.1.1.1 be interpreted to secure outcomes that are fast, just and cost-efficient on the merits of each case;
- 3.1.1.2 preserve and enhance relationships between parties to a dispute;
- 3.1.1.3 be applied in the observance of the principles of natural justice;
- 3.1.1.4 emphasize the avoidance of conflicts; and
- 3.1.1.5 encourage minimal reliance on legal representation and formal legal procedures.

### 3.2 OTHER REQUIREMENTS ARE NOT SUSPENDED

- 3.2.1 Any money to be paid under the *market rules* shall be paid by the time specified even if the dispute resolution process has been initiated under section 3.
- 3.2.2 Every order or direction made by the *EMC*, the *PSO* or the *market surveillance and compliance panel* shall be complied with even if the dispute resolution process has been initiated under section 3.

### 3.3 SCOPE

- 3.3.1 Disputes that shall be resolved by the dispute resolution process in section 3 are shown in the table below:

	<b>Disputes between</b>	<b>Dispute in respect of</b>
3.3.1.1	<ul style="list-style-type: none"> <li>- <i>EMC and a market participant</i></li> <li>- <i>EMC and a market support services licensee</i></li> <li>- <i>PSO and a market participant</i></li> <li>- <i>PSO and a market support services licensee</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>market rules</i></li> <li>- <i>market manual</i></li> <li>- <i>system operation manual</i></li> <li>- agreement referred to in any of the above 3 to which the relevant disputants are parties</li> </ul>
3.3.1.2	<ul style="list-style-type: none"> <li>- <i>EMC and a participation applicant</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>EMC's denial to register the participation applicant as a market participant</i></li> </ul>
3.3.1.3	<ul style="list-style-type: none"> <li>- <i>EMC and a participation applicant</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>EMC's denial to authorise the participation applicant to participate as a market support services licensee</i></li> </ul>
3.3.1.3A	<ul style="list-style-type: none"> <li>- <i>EMC and a participation applicant</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>EMC's denial of a request to transfer the registration of a registered facility to the participation applicant</i></li> </ul>
3.3.1.4	<ul style="list-style-type: none"> <li>- <i>a market participant and a market participant(s)</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>market rules</i></li> <li>- <i>market manual</i></li> </ul>

	<ul style="list-style-type: none"> <li>- a market participant(s) and a market support services licensee(s)</li> </ul>	<ul style="list-style-type: none"> <li>- system operation manual</li> <li>- market participant – market support services licensee agreement</li> <li>- market support services agreement</li> <li>- vesting contract</li> <li>- connection agreement</li> <li>- retailer UoS agreement</li> <li>- any other agreement to which the relevant disputants are parties and where parties agree to apply the dispute resolution process in section 3</li> </ul>
3.3.1.5	<ul style="list-style-type: none"> <li>- EMC and a market participant</li> <li>- EMC and a market support services licensee</li> <li>- PSO and a market participant</li> <li>- PSO and a market support services licensee</li> </ul>	<ul style="list-style-type: none"> <li>- request for compensation made under any of the following:                             <ul style="list-style-type: none"> <li>- section 4.7.3 of Chapter 5</li> <li>- section 5.4.3 of Chapter 5</li> <li>- section 5.6.2 of Chapter 5</li> <li>- section 7.7.3 of Chapter 5</li> <li>- section 8.4.3 of Chapter 5</li> <li>- section 8.6.2 of Chapter 5</li> <li>- section 9.1.7 of Chapter 5</li> <li>- section 9.7.3 of Chapter 5</li> <li>- section 10.4.1 of Chapter 5</li> </ul> </li> </ul>
3.3.1.6	<ul style="list-style-type: none"> <li>- EMC and PSO</li> </ul>	<ul style="list-style-type: none"> <li>- market rules</li> <li>- market manual</li> <li>- system operation manual</li> </ul>

		- agreement to which the disputants are parties and relates to the functions, powers and duties of the <i>EMC</i> or the <i>PSO</i> in any of the 3 above
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3.3.2 Section 3 does not apply to:

3.3.2.1 a dispute where an *electricity licence*, the *market rules*, a *market manual* or the *system operation manual*:

a. specifies a different dispute resolution mechanism for it; or

b. states that section 3 does not apply to it.

3.3.2.2 a dispute over a decision to modify or not modify the *market rules*, made by the *EMC Board* or the *urgent rule modification committee*;

3.3.2.3 a dispute over *EMC*'s fees which were approved by the *Authority* under section 10 or 11 of Chapter 2, but does apply if the dispute is over the calculation of those fees;

3.3.2.4 a dispute over *PSO*'s fees which were finalised by the *Authority* under section 12 of Chapter 2, but does apply if the dispute is over the calculation of those fees; and

3.3.2.5 a dispute over a determination of an *arbitration tribunal*.

3.3.3 Section 3 does not prevent a party to a dispute from seeking interim injunctive relief from a Singapore court.

**3.4 EMC BOARD APPOINTS THE DISPUTE RESOLUTION COUNSELLOR**

3.4.1 The *EMC Board* shall appoint a *dispute resolution counsellor*, on terms that the *EMC Board* considers appropriate.

3.4.2 Every person appointed as the *dispute resolution counsellor* shall meet the following eligibility requirements:

3.4.2.1 be at least 21 years of age;

3.4.2.2 not be of unsound mind as determined by a court in Singapore or elsewhere;

- 3.4.2.3 be a natural person;
  - 3.4.2.4 not have been adjudicated a bankrupt;
  - 3.4.2.5 never have been convicted of an offence involving dishonesty or fraud;
  - 3.4.2.6 never have been found guilty of misconduct in any professional capacity;
  - 3.4.2.7 not be an employee of the Government of Singapore or the *Authority*;
  - 3.4.2.8 not be a director, officer, employee or agent of a *market entity* or any of its *affiliates*;
  - 3.4.2.9 not have a spouse or relative who is a director, officer, employee or agent in a *market entity* or any of its *affiliates*;
  - 3.4.2.10 not have a direct or indirect legal or beneficial interest in or a commercial affiliation with a *market entity* or any of its *affiliates*; or
  - 3.4.2.11 not have a spouse or relative who has a direct or indirect legal or beneficial interest in or a commercial affiliation with a *market entity* or any of its *affiliates*.
- 3.4.3 Any person that the *EMC Board* appoints as the *dispute resolution counsellor* shall:
- 3.4.3.1 have a degree in law;
  - 3.4.3.2 have held a certificate to practise as an advocate and solicitor of the Supreme Court of Singapore for at least seven years;
  - 3.4.3.3 hold a current certificate to practice law in Singapore;
  - 3.4.3.4 have substantial experience in dispute resolution (including mediation and arbitration) rules, practices and procedures applicable in Singapore or elsewhere; and
  - 3.4.3.5 have an understanding of the Singapore electricity industry or the ability to acquire such an understanding within a reasonable time.

- 3.4.4 Before the *EMC Board* considers a person for appointment as the *dispute resolution counsellor*, that person shall sign and deliver to the *EMC Board* a declaration in the form set out in Appendix 3B.
- 3.4.5 Once appointed, the *dispute resolution counsellor* shall sign a confidentiality agreement. The *EMC Board* shall prescribe the form of the agreement which shall include provisions consistent with section 6.4 and 6.5.
- 3.4.6 The *EMC Board*:
- 3.4.6.1 shall appoint the *dispute resolution counsellor* for a term of up to three years;
- 3.4.6.2 may re-appoint the *dispute resolution counsellor* for further terms of up to three years each; and
- 3.4.6.3 may remove the *dispute resolution counsellor* only if it resolves that, in its opinion, the *dispute resolution counsellor* is unsuitable for office. A majority of two-thirds of the *EMC* directors (excluding those who abstain from voting or those who are required to abstain from voting under the constitution documents) voting in favour of such removal shall be required for such a resolution.
- 3.4.7 The *dispute resolution counsellor*'s appointment ends if he:
- 3.4.7.1 dies or resigns;
- 3.4.7.2 is removed under section 3.4.6.3; or
- 3.4.7.3 no longer meets the requirements of section 3.4.2 or 3.4.3.
- 3.4.8 If the *dispute resolution counsellor*'s appointment ends, the new *dispute resolution counsellor* shall have the same powers and duties as him.
- 3.4.9 Besides any other responsibilities assigned by section 3, the *dispute resolution counsellor* is generally responsible for effective operation of the dispute resolution and compensation regime in section 3. His general duties include:
- 3.4.9.1 assisting *market entities* to:
- a. become familiar with the dispute resolution and compensation regime;
- b. develop their *dispute management systems*; and



- 3.4.9.2 monitoring disputes and guiding parties to resolve their disputes through the dispute resolution and compensation regime in section 3.
- 3.4.10 The *dispute resolution counsellor* may vary the period for carrying out an act that is required or authorised by section 3 if a party to the dispute applies and either;
  - 3.4.10.1 the parties consent; or
  - 3.4.10.2 the *dispute resolution counsellor* believes it is in the interest of fairness or justice.

The *dispute resolution counsellor* may apply conditions to a variation or may order a variation even if the application is made out of time.

- 3.4.11 The *dispute resolution counsellor* shall consult all relevant parties directly affected by his decisions under section 3. The *dispute resolution counsellor's* decisions under section 3 shall be final and binding and shall not be subject to appeal.

### **3.5 THE DISPUTE RESOLUTION COUNSELLOR APPOINTS THE DISPUTE RESOLUTION AND COMPENSATION PANEL**

- 3.5.1 The *dispute resolution counsellor* shall appoint:
  - 3.5.1.1 a *mediation panel*; and
  - 3.5.1.2 an *arbitration panel*,collectively called a *dispute resolution and compensation panel*.
- 3.5.2 The *dispute resolution counsellor* shall decide how many persons to appoint to the *dispute resolution and compensation panel*, and the terms of appointment.
- 3.5.3 In order to resolve a particular dispute, the *dispute resolution counsellor* may appoint a person to be on the *mediation panel* or the *arbitration panel*.
- 3.5.4 Every person that the *dispute resolution counsellor* appoints to the *dispute resolution and compensation panel* shall:
  - 3.5.4.1 meet the same eligibility requirements that apply to the *dispute resolution counsellor* under section 3.4.2;
  - 3.5.4.2 have an understanding of dispute resolution practices and procedures in Singapore or elsewhere including mediation

- and arbitration rules, practices and procedures applicable in or outside of Singapore;
- 3.5.4.3 have the ability to determine the most appropriate dispute resolution procedures in particular circumstances; and
- 3.5.4.4 have an understanding of the Singapore electricity industry or the ability to acquire such an understanding within a reasonable time.
- 3.5.5 Each member of the *dispute resolution and compensation panel* shall have at least one of the following:
- 3.5.5.1 knowledge of the operation of *wholesale electricity markets*;
- 3.5.5.2 qualification and experience in economics;
- 3.5.5.3 experience in energy or money market trading or any other commodity market trading;
- 3.5.5.4 experience in *power system* operation; or
- 3.5.5.5 a degree in law and practiced as an advocate and solicitor of the Supreme Court of Singapore for at least five years; or
- 3.5.5.6 a degree in law and has acted as an arbitrator or mediator in the resolution of disputes.
- 3.5.6 Before the *dispute resolution counsellor* considers a person for appointment to the *dispute resolution and compensation panel*, that person shall sign and deliver to the *dispute resolution counsellor* a declaration in the form set out in Appendix 3B.
- 3.5.7 Once appointed, each appointee to the *dispute resolution and compensation panel* shall sign a confidentiality agreement. The *EMC Board* shall prescribe the form of the agreement which shall include provisions consistent with section 6.4 and 6.5.
- 3.5.8 The *dispute resolution counsellor*:
- 3.5.8.1 shall appoint each member of the *dispute resolution and compensation panel* for a term of up to two years;
- 3.5.8.2 may re-appoint each member of the *dispute resolution and compensation panel* for further terms of up to two years each; and
- 3.5.8.3 may remove a member of the *dispute resolution and compensation panel* only if he determines, in his opinion, that the member is unsuitable for office.

- 3.5.9 If the appointment of a member of the *dispute resolution and compensation panel* ends while he is involved in the resolution of an ongoing dispute, he shall be automatically re-appointed. The *dispute resolution counsellor* shall decide how long the appointment will last based on the time needed to complete the proceedings.
- 3.5.10 The appointment of a *dispute resolution and compensation panel* member ends if the member:
- 3.5.10.1 dies or resigns;
  - 3.5.10.2 is removed under section 3.5.8.3; or
  - 3.5.10.3 no longer meets the requirements of section 3.5.4 or 3.5.5.
- 3.5.11 If a member of the *dispute resolution and compensation panel's* appointment ends, the new member of the *dispute resolution and compensation panel* shall have the same powers and duties as him.
- 3.5.12 The *EMC* shall publish the address for service of the *dispute resolution counsellor, mediators and arbitration tribunals*.
- 3.5.13 Where a document has to be served or filed, only one copy is required unless:
- 3.5.13.1 section 3 provides otherwise; or
  - 3.5.13.2 directed differently by the *dispute resolution counsellor, a mediator or an arbitration tribunal*.

### **3.6 DISPUTE MANAGEMENT SYSTEMS**

- 3.6.1 Each *market entity* shall implement a *dispute management system*. The *dispute management system* shall:
- 3.6.1.1 nominate a *DMS contact* to be the first point of contact for the notification of disputes;
  - 3.6.1.2 set out that party's procedures for responding to requests for information from another of these parties in relation to a dispute; and
  - 3.6.1.3 be consistent with guidance notes of the *dispute resolution counsellor* on the *dispute management system*.

- 3.6.2 Each *market entity* shall supply a copy of its *dispute management system* to any other *market entity* or the *dispute resolution counsellor* if they ask for a copy.

### 3.7 NEGOTIATION

- 3.7.1 Parties to a dispute shall complete the following steps before taking any other action (except for seeking interim injunctive relief from a Singapore court):

3.7.1.1 serve a *notice of dispute* on the other parties and give a copy to the *dispute resolution counsellor*, and

3.7.1.2 attempt to resolve the dispute in good faith using their *dispute management systems*.

- 3.7.2 The steps in section 3.7.1 do not apply to:

3.7.2.1 a dispute over a request for compensation referred to in section 3.3.1.5. Section 3.11 shall apply to that dispute instead;

3.7.2.2 a dispute over a *final settlement statement* referred to in section 5.6.6 of Chapter 7. Section 5.6.6 of Chapter 7 shall apply to that dispute instead;

3.7.2.3 a dispute over a final financial penalty statement referred to in section D.4.12 of Appendix 5D. Section D.4.12 of Appendix 5D shall apply to that dispute instead;

3.7.2.4 a dispute over a final minimum stable load compensation statement or as to whether such a statement should have been issued to a *market participant* referred to in section K.4.13 of Appendix 6K. Section K.4.13 of Appendix 6K shall apply to that dispute instead; or

3.7.2.5 a dispute over a final financial penalty statement referred to in section E.4.13 of Appendix 5E. Section E.4.13 of Appendix 5E shall apply to that dispute instead.

- 3.7.3 A party shall serve a *notice of dispute* within 120 *business days* from the date when it knew or should have reasonably known of the events giving rise to the cause of action. However:

3.7.3.1 for a dispute in respect of a *connection agreement*, a party shall serve the *notice of dispute* within 750 *business days* from the date it knew or should have reasonably known of the events giving rise to the cause of action; and

- 3.7.3.2 for a dispute in respect of a retailer UoS agreement, a party shall serve the *notice of dispute* within 370 *business days* from the date when the events giving rise to the cause of action occurred.
- 3.7.4 Section 3.7.3 does not apply where the *market rules* say differently.
- 3.7.5 If a party fails to comply with the time limit set out in section 3.7.3 or section 3.11 of this Chapter, in section D.4.13 or section D.4.14 of Appendix 5D, in section E.4.14 or section E.4.15 of Appendix 5E, in section K.4.14 of Appendix 6K or in section 5.6.7 of Chapter 7 (as the case may be), that party is deemed to waive its right:
- 3.7.5.1 to use the dispute resolution process in the *market rules* to resolve the dispute; or
- 3.7.5.2 to start any other proceeding about the subject-matter of the dispute.

### **3.8 MEDIATION**

- 3.8.1 Once a *notice of dispute* has been served under section 3.7.1, the parties have 40 *business days* to resolve the dispute by themselves. After that, either of them (the “*mediation complainant*”) may submit the matter to the *dispute resolution counsellor* for mediation. They do this by serving a *notice of mediation*. The parties may agree in writing to extend this 40-*business day* period.
- 3.8.2 The *notice of mediation* shall contain a brief history and description of the dispute which includes:
- 3.8.2.1 the names of the parties to the dispute;
- 3.8.2.2 the grounds of the dispute;
- 3.8.2.3 the remedy sought; and
- 3.8.2.4 the contested amount if there is one.
- 3.8.3 Any other party to the dispute may respond to a *notice of mediation* by providing its own written account of the dispute to the *dispute resolution counsellor*.
- 3.8.4 The *dispute resolution counsellor* shall send:
- 3.8.4.1 the *notice of mediation* to the other parties to the dispute; and

- 3.8.4.2 any response from the other parties to the dispute to the *mediation complainant*.
- 3.8.5 Before taking any action, the *dispute resolution counsellor* shall decide if all the following conditions are met:
- 3.8.5.1 section 3 applies to the dispute;
- 3.8.5.2 the *notice of dispute* was served within the time limit in section 3.7.3;
- 3.8.5.3 where the *notice of dispute*:
- a. relates to a dispute to which section 13.1.4.3, 13.2.4.3 or 13.3.4.3 of Chapter 1 applies (whether because of any of those sections or section 13.5 of Chapter 1 or by agreement); and
- b. includes a claim for damages,  
  
the aggregate of that claim for damages (exclusive of claims for costs) in respect of a given event and a given person, exceeds \$5,000; and
- 3.8.5.4 mediation is an appropriate means of resolving the dispute.
- 3.8.6 If the *dispute resolution counsellor* decides that any of the conditions in section 3.8.5 are not met, he shall notify the parties in writing and shall not take any further action under section 3.
- 3.8.7 If the *dispute resolution counsellor* decides that all the conditions in section 3.8.5 are met, he shall notify the parties to the dispute in writing.
- 3.8.8 The *dispute resolution counsellor* shall select a person from the *mediation panel* to mediate the dispute (the “*mediator*”) and notify the parties to the dispute of his selection in writing. The *dispute resolution counsellor* shall make the selection within 20 *business days* of the notice referred to in section 3.8.7. The *mediator*’s appointment takes effect from the date of the written notice informing the parties to the dispute of the selection.
- 3.8.9 The *dispute resolution counsellor* shall:
- 3.8.9.1 be satisfied that the *mediator* has no conflict of interest; and
- 3.8.9.2 select the *mediator* on a fair and objective basis.
- A person who has served as a *mediator* in a dispute is eligible for appointment as a *mediator* in another dispute.

- 3.8.10 A *mediator* shall be independent and act impartially. A *mediator* who has any real or potential conflict of interest or a circumstance that may prevent him from acting independently and impartially shall immediately notify the *dispute resolution counsellor* and the parties to the dispute of this conflict or circumstance.
- 3.8.11 If the *mediator* gives notice of a conflict under section 3.8.10, the *dispute resolution counsellor* shall replace the *mediator* with another person from the *mediation panel*. The replacement *mediator* shall also meet the requirements in section 3.8.9. The *dispute resolution counsellor* need not replace the *mediator* if the parties agree that a replacement is not necessary.
- 3.8.12 The *mediator* shall conduct a mediation session within 20 *business days* of being appointed or within a longer period if the parties and the *mediator* agree.
- 3.8.13 If as a result of mediation, the parties to a dispute enter into a settlement agreement in writing where the parties agree that monies are due and payable by one party to another under the *market rules*, such agreement shall be considered to create an obligation under the *market rules* to pay the amount agreed and such amount may, without prejudice to any other recovery available at law, be recovered accordingly.
- 3.8.14 Failure to comply with a settlement agreement is a breach of the *market rules*.
- 3.8.15 Unless the parties to a dispute agree differently;
- 3.8.15.1 each party shall pay its own costs and legal expenses for the mediation; and
- 3.8.15.2 the parties shall share equally any costs charged by the *mediator*.
- 3.8.16 Section 3.8 does not apply to:
- 3.8.16.1 a dispute over a request for compensation in section 3.3.1.5. Section 3.11 shall apply to the dispute instead;
- 3.8.16.2 a dispute over a *final settlement statement* in section 5.6.6 of Chapter 7. Section 5.6.6 of Chapter 7 shall apply to the dispute instead;
- 3.8.16.3 a dispute over a final financial penalty statement in section D.4.12 of Appendix 5D. Section D.4.12 of Appendix 5D shall apply to that dispute instead;

- 3.8.16.4 a dispute over a final minimum stable load compensation statement or as to whether such a statement should have been issued to a *market participant* referred to in section K.4.13 of Appendix 6K. Section K.4.13 of Appendix 6K shall apply to that dispute instead; or
- 3.8.16.5 a dispute over a final financial penalty statement in section E.4.13 of Appendix 5E. Section E.4.13 of Appendix 5E shall apply to that dispute instead.

### 3.9 ARBITRATION

- 3.9.1 Either party (the “*arbitration complainant*”) may submit the matter to the *dispute resolution counsellor* for arbitration if:
  - 3.9.1.1 the *dispute resolution counsellor* informs the parties in writing that mediation is not an appropriate means of resolving their dispute;
  - 3.9.1.2 the parties fail to resolve their dispute after attending a mediation session;
  - 3.9.1.3 the dispute is not resolved within 20 *business days* after the *mediator* is appointed (or longer if the parties agree in writing);
  - 3.9.1.4 the dispute is over a request for compensation in section 3.3.1.5 that is not resolved under section 3.11;
  - 3.9.1.5 the dispute is over a *final settlement statement* in section 5.6.6 that is not resolved under section 5.6.6 of Chapter 7;
  - 3.9.1.6 the dispute is over a final financial penalty statement referred to in section D.4.12 of Appendix 5D;
  - 3.9.1.7 the dispute is over a final minimum stable load compensation statement or as to whether such a statement should have been issued to a *market participant* referred to in section K.4.13 of Appendix 6K; or
  - 3.9.1.8 the dispute is over a final financial penalty statement referred to in section E.4.13 of Appendix 5E.
- 3.9.2 An *arbitration complainant* submits a dispute to the *dispute resolution counsellor* for arbitration by filing a *notice of arbitration*.



- 3.9.3 The *notice of arbitration* shall contain a brief history and description of the dispute which includes:
- 3.9.3.1 the names of the parties;
  - 3.9.3.2 the grounds of dispute;
  - 3.9.3.3 the remedy sought; and
  - 3.9.3.4 the contested amount, if there is one,
- unless this information has already been provided in a *notice of mediation* under section 3.8.2.
- 3.9.4 Any other party to the dispute may respond to a *notice of arbitration* by providing its own written account to the *dispute resolution counsellor*.
- 3.9.5 The *dispute resolution counsellor* shall send:
- 3.9.5.1 the *notice of arbitration* to the other parties to the dispute; and
  - 3.9.5.2 any responses from these other parties to the *arbitration complainant*.
- 3.9.6 Before taking any further action, the *dispute resolution counsellor* shall decide if all the following conditions (where applicable) are met:
- 3.9.6.1 section 3 applies to the dispute;
  - 3.9.6.2 the *notice of dispute* was served within the time limit in section 3.7.3 of this Chapter ;
  - 3.9.6.3 where the *notice of dispute*:
    - a. relates to a dispute to which section 13.1.4.3, 13.2.4.3 or 13.3.4.3 of Chapter 1 applies (whether because of any of those sections or section 13.5 of Chapter 1 or by agreement); and
    - b. includes a claim for damages,  
  
the aggregate of that claim for damages (exclusive of claims for costs) in respect of a given event and a given person, exceeds \$5,000;
  - 3.9.6.4 where the *notice of arbitration* relates to a dispute over a request for compensation to which section 3.11 applies, the request was made within the time limit in section 3.11.2 and

- such *notice of arbitration* was submitted to the *dispute resolution counsellor* within the time limit in section 3.11.5;
- 3.9.6.5 where the *notice of arbitration* relates to a dispute on a *final settlement statement*, such *notice of arbitration* was submitted within the time limit in section 5.6.7 of Chapter 7;
- 3.9.6.6 where the *notice of arbitration* relates to a dispute on a final financial penalty statement pursuant to section D.4.12 of Appendix 5D:
- a. such *notice of arbitration* was submitted within the time limit in sections D.4.13, D.4.14.1 or D.4.14.2 of Appendix 5D, as applicable;
  - b. where such *notice of arbitration* was submitted pursuant to section D.4.14.1 of Appendix 5D, a copy of the notification referred to in section D.4.14.1 of Appendix 5D is submitted together with such *notice of arbitration*;
  - c. where such *notice of arbitration* was submitted pursuant to section D.4.14.2 of Appendix 5D, a copy of the court order or judgement which is final and conclusive as between the parties referred to in section D.4.14.2 of Appendix 5D is submitted together with such *notice of arbitration*; and
  - d. such *notice of arbitration* is not required to be dismissed under section D.4.15 of Appendix 5D;
- 3.9.6.7 where the *notice of arbitration* relates to a dispute over a final minimum stable load compensation statement or as to whether such a statement should have been issued to a *market participant* pursuant to section K.4.13 of Appendix 6K:
- a. such *notice of arbitration* was submitted within the time limit in section K.4.14 of Appendix 6K; and
  - b. such *notice of arbitration* is not required to be dismissed under section K.4.15 of Appendix 6K; and
- 3.9.6.8 where the *notice of arbitration* relates to a dispute on a final financial penalty statement pursuant to section E.4.13 of Appendix 5E:
- a. such *notice of arbitration* was submitted within the time limit in section E.4.14, E.4.15.1 or E.4.15.2 of Appendix 5E;

- b. where such *notice of arbitration* was submitted pursuant to section E.4.15.1 of Appendix 5E, a copy of the notification referred to in section E.4.15.1 of Appendix 5E is submitted together with such *notice of arbitration*;
  - c. where such *notice of arbitration* was submitted pursuant to section E.4.15.2 of Appendix 5E, a copy of the court order or judgment which is final and conclusive as between the parties referred to in section E.4.15.2 of Appendix 5E is submitted together with the *notice of arbitration*; and
  - d. such *notice of arbitration* is not required to be dismissed under section E.4.16 of Appendix 5E.
- 3.9.7 If the *dispute resolution counsellor* decides that any condition in section 3.9.6 is not met, he shall notify the parties in writing and shall not take any further action under Chapter 3.
- 3.9.8 If the *dispute resolution counsellor* decides that all conditions in section 3.9.6 are met, he shall notify the parties in writing.
- 3.9.9 Once the *dispute resolution counsellor* has notified the parties, he shall file a summary of the dispute with the *EMC* for *publication*. However, if after consulting the parties, he decides that:
- 3.9.9.1 the dispute falls within section 3.3.1.4 (excluding disputes under *market rules*, *market manuals* or the *system operation manual*); and
  - 3.9.9.2 the resolution of the dispute is unlikely to directly affect any *market entity* who is not a party to the dispute,
- he shall not file the summary unless all the parties to the dispute consent.
- 3.9.10 The *EMC* shall *publish* the summary filed with the *EMC* under section 3.9.9.
- 3.9.11 The parties to the dispute shall select one or three persons from the *arbitration panel* to act as the *arbitration tribunal*. The parties to the dispute shall try in good faith to agree on this selection within 20 *business days* of the notification in section 3.9.8.
- 3.9.12 Once the parties agree on the selection of the *arbitration tribunal* members, they shall notify the *dispute resolution counsellor* in writing. The *dispute resolution counsellor* shall then advise the selected members

of the *arbitration tribunal* of their appointment. The appointments take effect from the date of that advice.

3.9.13 If the parties fail to select an *arbitration tribunal* within the time limit in section 3.9.11 the *dispute resolution counsellor* shall:

3.9.13.1 select a person from the *arbitration panel* to be the *arbitration tribunal*. If any party requests, the *dispute resolution counsellor* shall select three persons to be the *arbitration tribunal*;

3.9.13.2 notify the parties in writing of his selection; and

3.9.13.3 advise the members of the *arbitration tribunal* of their appointment. These appointments take effect from the date of that advice.

3.9.14 The *dispute resolution counsellor* shall:

3.9.14.1 be satisfied that the members of the *arbitration tribunal* have no conflict of interest; and

3.9.14.2 select the members of the *arbitration tribunal* on a fair and objective basis.

A person who has served on an *arbitration tribunal* in a dispute is eligible for appointment to another *arbitration tribunal* in another dispute.

3.9.15 If an *arbitration tribunal* is made up of three persons, the *dispute resolution counsellor* shall nominate one of them as chairperson.

3.9.16 All members of an *arbitration tribunal* shall be independent and act impartially. A member of an *arbitration tribunal* who has any real or potential conflict of interest shall immediately notify the *dispute resolution counsellor* and the parties to the dispute.

3.9.17 If a member of the *arbitration tribunal* gives notice of a conflict under section 3.9.16, the *dispute resolution counsellor* shall replace that member with another person from the *arbitration panel*. The replacement shall also meet the requirements in section 3.9.14. The *dispute resolution counsellor* need not replace the member who gave the notice if the parties agree that a replacement is not necessary.

3.9.18 Once an *arbitration tribunal* has been appointed, the *dispute resolution counsellor* shall file the notice of the appointment with the EMC. However, if the consent of the parties was required before filing the summary of the dispute under section 3.9.9, the *dispute resolution*

*counsellor* shall get the consent of the parties before filing the notice of appointment.

3.9.19 The *EMC* shall:

3.9.19.1 *publish* the notice of appointment in section 3.9.18;

3.9.19.2 invite persons who might be directly affected by the resolution of the dispute to apply to the *arbitration tribunal*, to intervene in the arbitration;

3.9.19.3 allow affected persons 10 *business days* of the date the notice is *published* to apply; and

3.9.19.4 request affected persons to notify the parties of any application to intervene.

3.9.20 The *arbitration tribunal* may allow a person to intervene on terms it thinks appropriate, if that person demonstrates that:

3.9.20.1 they have an interest in the subject-matter of the dispute; and

3.9.20.2 they may be directly affected by the determination of the *arbitration tribunal*.

3.9.21 Once the application period to intervene in section 3.9.19.3 has expired, the *arbitration tribunal* shall consider the applications received. Then, taking into account the urgency of the matter, it shall decide:

3.9.21.1 where and when it will hold the arbitration; and

3.9.21.2 what procedures it will follow.

- 3.9.22 The *arbitration tribunal* may require the parties to exchange submissions, documents and information.
- 3.9.23 All parties to a dispute will be given an opportunity to present their case to the *arbitration tribunal*. The *arbitration tribunal* may appoint assessors who will assist with technical issues, if all parties to the dispute consent.
- 3.9.24 The *arbitration tribunal* may consolidate two or more disputes for resolution in the same arbitration, if appropriate and if all parties consent.
- 3.9.25 The *arbitration tribunal* shall complete arbitration as soon as reasonably practicable.
- 3.9.26 The *arbitration tribunal* has the power to:
- 3.9.26.1 direct a party to do anything or not do anything, and to specify a time limit;
  - 3.9.26.2 assess damages against a party. In doing so, the *arbitration tribunal* shall take into account any limits on liability in the *market rules* or any relevant contract; and
  - 3.9.26.3 determine if a *market participant* or *market support services licensee* is to receive any compensation under the provisions listed in section 3.3.1.5.
- 3.9.27 If the *arbitration tribunal* is made up of three persons, it makes determinations by majority. The dissenting person may deliver written reasons for his dissent.
- 3.9.28 The *arbitration tribunal* shall refer a matter to the *market surveillance and compliance panel* if it considers or if the parties agree, that there has been a breach of the *market rules*, a *market manual* or the *system operation manual* by a *market entity*.
- 3.9.29 Where an *arbitration tribunal* determines or the parties agree during the course of the resolution of a dispute following the appointment of an *arbitration tribunal* that monies are due and payable by one party to another under the *market rules* other than by way of damages, such determination or agreement shall be considered to create an obligation under the *market rules* to pay the amount agreed or determined by the *disputes resolution and compensation panel* and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.

- 3.9.30 Until the *arbitration tribunal* makes a determination, the parties shall share equally the costs charged by the *arbitration tribunal* and any assessors appointed by the *arbitration tribunal*.
- 3.9.31 An *arbitration tribunal* determination may, on a just and reasonable basis, allocate amongst the parties and/or the interveners under section 3.9.20:
- 3.9.31.1 each party's costs and legal expenses associated with participating in the arbitration;
  - 3.9.31.2 the costs charged, by the *arbitration tribunal*; and
  - 3.9.31.3 the costs of any assessors.
- 3.9.32 An agreement by the parties or a determination of the *arbitration tribunal* is binding and is not subject to appeal except under the Arbitration Act (Cap 10).
- 3.9.33 A determination of an *arbitration tribunal* may with the leave of a Singapore court be enforced as if it were a judgment or order of a Singapore court.
- 3.9.34 Failure to comply with a determination of the *arbitration tribunal* is a breach of the *market rules*.
- 3.9.35 The *arbitration tribunal* shall record the details of how a dispute is resolved under section 3.9. The record shall include a summary of the determination or the settlement between the parties. The *arbitration tribunal* shall send a copy of the record to the *dispute resolution counsellor*.
- 3.9.36 The *dispute resolution counsellor* shall send the record in section 3.9.35 to the *EMC*. The *EMC* shall *publish* the summary after removing all *confidential information*.
- 3.9.37 The *EMC* shall obtain the consent of the parties before it *publishes* the summary in section 3.9.36, where consent was required under section 3.9.9.
- 3.9.38 Each *market entity* agrees that section 3 is an arbitration agreement for the purposes of the Arbitration Act (Cap.10) when a dispute is referred to the *dispute resolution counsellor* for arbitration under the *market rules*.

### 3.10 CONFIDENTIALITY

- 3.10.1 All matters relating to an arbitration are confidential. Disclosure to third parties requires the written consent of the parties to the dispute. Consent is not required:
- 3.10.1.1 if section 3 says differently;
  - 3.10.1.2 for the conduct of the arbitration;
  - 3.10.1.3 when applying to any court in Singapore or elsewhere;
  - 3.10.1.4 if a court in Singapore or elsewhere orders disclosure;
  - 3.10.1.5 in order to comply with the laws of Singapore or other laws that apply to the party making the disclosure; or
  - 3.10.1.6 in order to comply with the request or requirement of any regulatory authority.

### 3.11 APPLICATION FOR COMPENSATION

**Explanatory Note: Section 3.11 deals with the process where a market participant or market support services licensee seeks compensation from the PSO or the EMC based on section 3.3.1.5. Section 3.11 does not apply if a party seeks compensation for damage based on other sections.**

- 3.11.1 If a *market participant* or a *market support services licensee* (the "*claimant*") seeks compensation under section 3.3.1.5, the *claimant* shall submit its request to the *EMC* or the *PSO*. The request shall:
- 3.11.1.1 meet the requirements of the relevant *market manual* or the *system operation manual*;
  - 3.11.1.2 refer to the section of the *market rules* that the request is based on; and
  - 3.11.1.3 specify the amount of compensation sought.
- 3.11.2 A *claimant* shall make its request for compensation within 10 *business days* of the date that:
- 3.11.2.1 the events giving rise to the potential entitlement to compensation occurred; or
  - 3.11.2.2 the *claimant* knew or should have reasonably known of the events giving rise to the potential entitlement to compensation.
- whichever is later.



- 3.11.3 If the *EMC* or the *PSO* requires any further information or clarification to support a request for compensation from a *claimant* on the basis that the information already provided is incomplete or unclear, it shall advise the *claimant* within 5 *business days* of the date the *claimant* makes its request for compensation, or longer if the *EMC* or *PSO* and the *claimant* agree.
- 3.11.4 Within 20 *business days* of receiving (i) a compensation request referred to in section 3.11.1, or (ii) any further information or clarification requested under section 3.11.3, whichever is later, the *EMC* or the *PSO* shall notify the *claimant* of their view on whether the *claimant* is eligible for compensation sought and the amount of compensation, if any.
- 3.11.5 Within 20 *business days* of the notification referred to in section 3.11.4,
- 3.11.5.1 if the *claimant* agrees with the amount of compensation decided by the *EMC* or the *PSO* under section 3.11.4, it shall notify the *EMC* or the *PSO* of its agreement and the *EMC* shall pay the agreed compensation amount according to section 3.12; or
- 3.11.5.2 if the *claimant* disagrees with the determination of the *EMC* or the *PSO* under section 3.11.4, it shall submit the matter to the *dispute resolution counsellor* under section 3.9.1.4.

### **3.12 COMPENSATION PAYABLE BY THE EMC**

- 3.12.1 The *EMC* shall pay all compensation amounts due under section 10.5 of Chapter 6 and all compensation claims due under the *market rules* as soon as practicable after it has recovered the same through the monthly energy uplift charge under section 4.1 of Chapter 7.
- 3.12.2 Notwithstanding section 3.12.1, the *EMC* shall pay all compensation amounts due under section 10.5 of Chapter 6 and all compensation claims, in such manner as the *EMC* deems appropriate, as soon as practicable but no later than 90 days after:
- 3.12.2.1 the date the *claimant* notifies its agreement to the amount of compensation determined by the *EMC* or *PSO*;
- 3.12.2.2 the date the *arbitration tribunal* makes the determination against the *EMC*;
- 3.12.2.3 the date the parties resolve their dispute; or
- 3.12.2.4 the issuance of the final minimum stable load compensation invoice referred to in Appendix 6K.

### **3.13 COMPENSATION PAYABLE BY THE PSO**

- 3.13.1 The *PSO* shall pay all compensation claims as soon as practicable after receiving the corresponding sums from the *EMC* but no later than 90 days after:
- 3.13.1.1 the date the *arbitration tribunal* makes the determination against the *PSO*; or
- 3.13.1.2 the date the parties resolve their dispute.

### **3.14 PUBLICATION**

- 3.14.1 Where the *PSO* is obliged to pay compensation or damages under section 3, it shall notify the *Authority* and the *EMC*. Where the *EMC* is obliged to pay compensation or damages under section 3, it shall notify the *Authority*. The *EMC* shall *publish* such notices.
- 3.14.2 The notice referred to in section 3.14.1 shall contain a summary of the subject-matter of the dispute, the amount of money to be paid, but not the name of any other party to the dispute.
- 3.14.3 The *EMC* shall *publish* a summary of all payments referred to in section 3.14.2 for each year by 31 March of the next year.

### **3.15 EMC REVIEW OF DISPUTE RESOLUTION PROCEDURES**

- 3.15.1 The *EMC Board* shall conduct a review of the dispute resolution procedures in section 3 by 31 December ~~2017~~2020.
- 3.15.2 The review shall consider:
- 3.15.2.1 whether the procedures in section 3 are fair and effective;
- 3.15.2.2 whether any additional procedures are necessary; and
- 3.15.2.3 any other matter that the *EMC* considers appropriate.
- 3.15.3 The *EMC Board* initiates the review by *publishing* a notice. The notice shall:
- 3.15.3.1 contain the terms of reference for the review, including the matters in sections 3.15.2.1 and 3.15.2.2; and
- 3.15.3.2 invite *market participants*, *market support services licensees* and other interested persons to file written submissions in respect of the review within a specified time.

- 3.15.4 The *rules change panel* shall conduct the review, in consultation with the *dispute resolution counsellor* and other persons that the *EMC Board* or the *rules change panel* decides are appropriate.
- 3.15.5 Once the *rules change panel* has completed its review, it shall consult with the *dispute resolution counsellor* to prepare and submit a report to the *EMC Board*. The report shall contain:
- 3.15.5.1 a summary of any material submissions received;
  - 3.15.5.2 any changes that the *rules change panel* recommends in respect of the submissions received;
  - 3.15.5.3 a summary of issues that the *dispute resolution counsellor* has raised in respect of the *rules change panel's* recommendations;
  - 3.15.5.4 the *rules change panel's* replies to the issues raised by the *dispute resolution counsellor* in respect of their recommendations; and
  - 3.15.5.5 the *rules change panel's* final recommendations on the changes to be made to the dispute resolution process in section 3.
- 3.15.6 The *EMC* shall *publish* the report in section 3.15.5. The *EMC Board* shall decide which of the final recommendation(s) in the report should be adopted and implemented, if any.

## 4 MARKET SURVEILLANCE

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### 4.1 INTRODUCTION

- 4.1.1 This section 4 sets forth the rules pursuant to which activities in the *wholesale electricity markets* and the conduct of *market participants*, *market support services licensees*, the *PSO* and the *EMC* will be monitored and/or investigated to:
- 4.1.1.1 identify breaches of the *market rules*, any *market manual* or *system operation manual*;
  - 4.1.1.2 assess whether the underlying structure of the *wholesale electricity markets* is consistent with the efficient and fair operation of a competitive market; and
  - 4.1.1.3 recommend remedial actions to mitigate the conduct and inefficiencies referred to above.
- 4.1.2 The monitoring and investigation activities described in this section 4 shall be carried out by the *market assessment unit* of the *EMC* established in accordance with section 4.2.1 and by the *market surveillance and compliance panel*.
- 4.1.3 The *EMC* shall ensure that the *market assessment unit* and the *market surveillance and compliance panel* have, subject to any condition of the *EMC's electricity licence* imposed pursuant to subsection 9(7)(b) of the *Electricity Act*, adequate resources, and have full access to records, information or data in the ownership, possession or control of the *EMC* and the full cooperation of its directors, officers, employees or agents, of members of the *rules change panel* and of the *dispute resolution counsellor* for purposes of the fulfilment of their respective functions and duties under this section 4.
- 4.1.4 The *PSO* shall ensure that the *market assessment unit* and the *market surveillance and compliance panel* have full access to records, information or data pertaining to the operation of the *PSO* controlled system in the ownership, possession or control of the *PSO* and the full cooperation of its officers, employees or agents for the purposes of the fulfilment of their respective functions and duties under this section 4.

## 4.2 ESTABLISHMENT AND STAFFING OF MARKET ASSESSMENT UNIT

- 4.2.1 A *market assessment unit* shall be established by the *EMC* and composed of an adequate number of full-time *EMC* staff with the experience and qualifications necessary to fulfil the functions and duties assigned to the *market assessment unit* in this section 4. Such qualifications may include professional training pertinent to and experience in the operation of markets analogous to *wholesale electricity markets*, in the electric power industry, and in the field of competition law, economics and public policy.
- 4.2.2 The *market assessment unit* shall report to and be under the management and administration of the *EMC*. The *market assessment unit* shall also report to and take direction from the Chair of the *market surveillance and compliance panel* on all matters pertaining to the responsibilities of the *market assessment unit* pursuant to this section 4.

## 4.3 MARKET MONITORING FUNCTIONS AND CATALOGUES

- 4.3.1 The *market surveillance and compliance panel* shall, with the assistance of the *market assessment unit*, monitor and investigate the conduct of *market participants*, *market support services licensees*, *EMC* and the *PSO* and the structure and performance of, and activities in, the *wholesale electricity markets*, including conduct or activities that provide indications of the following phenomena:
- 4.3.1.1 breaches of the market rules, a market manual or system operation manual;
  - 4.3.1.2 actual or potential design or other flaws and inefficiencies in the *market rules*, *market manuals*, the *system operation manual* and other rules and procedures of the *EMC* or the *PSO*; and
  - 4.3.1.3 actual or potential design or other flaws in the overall structure of the *wholesale electricity markets*.
- 4.3.2 The *market assessment unit* shall, under the supervision and direction of the *market surveillance and compliance panel*, develop an information requirements system and criteria for evaluation that will enable it and the *market surveillance and compliance panel* to effectively carry out the monitoring functions referred to in section 4.3.1. To this end, the *market assessment unit* shall, under the supervision and direction of the *market surveillance and compliance panel*, develop:
- 4.3.2.1 a detailed catalogue of all of the data or categories of data it will have the need or means of acquiring; and

- 4.3.2.2 a catalogue of the monitoring indices that it will use to evaluate the data so acquired.
- 4.3.3 The catalogue referred to in section 4.3.2.1 shall be *published* by the *EMC* for public comment prior to its adoption. The catalogue referred to in section 4.3.2.2 shall be *published* by the *EMC* for public comment prior to its adoption unless the *EMC Board*, by majority vote and on the recommendation of the *market surveillance and compliance panel*, determines that publication of such catalogue is likely to compromise the work of the *market assessment unit* or the *market surveillance and compliance panel*. Where the *EMC Board* determines not to *publish* the catalogue referred to in section 4.3.2.2, it shall report such determination to the *Authority*.
- 4.3.4 The *market surveillance and compliance panel* retains the sole discretion to adopt the catalogues referred to in section 4.3.2 notwithstanding any comments received in opposition thereto. Where the *market surveillance and compliance panel* adopts a catalogue notwithstanding comments received in opposition thereto, it shall so notify the *EMC*.
- 4.3.5 Once the catalogue referred to in:
- 4.3.5.1 section 4.3.2.1 has been adopted by the *market surveillance and compliance panel*, it shall be *published* by the *EMC*; and
- 4.3.5.2 once the catalogue referred to in section 4.3.2.2 has been adopted by the *market surveillance and compliance panel*, it shall be *published* by the *EMC* unless the *EMC Board*, by majority vote and on the recommendation of the *market surveillance and compliance panel*, determines that *publication* of such catalogue is likely to compromise the work of the *market assessment unit* or the *market surveillance and compliance panel*. Where the *EMC Board* determines not to *publish* such catalogue, it shall report such determination to the *Authority*.
- 4.3.6 Each such catalogue shall be the subject of such re-evaluation and *modification* by the *market assessment unit*, under the supervision and direction of the *market surveillance and compliance panel*, as the *market surveillance and compliance panel* deems appropriate. The procedures set forth in sections 4.3.3, 4.3.4 and 4.3.5 and in this section 4.3.6 apply equally to all *modifications* to such catalogues.
- 4.3.7 *Market participants, market support services licensees, the EMC and the PSO*, as specified in the catalogue, shall provide the *market assessment unit* with the data referred to in the catalogue described in section 4.3.2.1 within or at the time or times specified in such catalogue once *publication* of such catalogue has been effected pursuant to section 4.3.5.

- 4.3.8 A *market participant* or *market support services licensee*, or the *PSO* may request that the *market assessment unit* or the *market surveillance and compliance panel* provide data to it, other than *confidential information*, collected or created in the course of the monitoring activities described in section 4.3.1 and which is not data otherwise required to be *published* by the *EMC* pursuant to the *market rules*, a *market manual* or the *system operation manual*. Such data may, with the approval of the *market surveillance and compliance panel* and the *EMC*, and subject to such constraints as may exist on the resources of the *market assessment unit* or the *market surveillance and compliance panel*, be provided. Where the provision of data imposes a significant burden or expense on *EMC*, the data may be provided on payment of a reasonable fee to be determined by the *EMC*.
- 4.3.9 Nothing in this section 4.3 shall preclude the *market surveillance and compliance panel* from conducting such monitoring, evaluation or analyses as it deems appropriate at any given time
- 4.3.10 The *market assessment unit* shall, under the supervision and direction of the *market surveillance and compliance panel*, consult with the *Authority* on and develop a set of information requirements to assist the *Authority* to fulfil its obligations with respect to competition and abuse of a dominant position under sections 50 and 51 of the *Electricity Act* respectively. In connection with the foregoing:
- 4.3.10.1 the *market assessment unit* shall make reasonable endeavours to have developed and made available for *publication* an initial set of information requirements to assist the *Authority* within 3 calendar months of *market commencement date*;
- 4.3.10.2 the *market assessment unit* shall, from time to time and as necessary, and in accordance with the procedures set out in sections 4.3.10.2A to 4.3.10.2D, modify the set of information requirements established pursuant to section 4.3.10;
- 4.3.10.2A before the *market assessment unit* modifies the set of information requirements pursuant to section 4.3.10.2, the *EMC* shall *publish* the details of the proposed modifications to the set of information requirements, and invite all interested persons to make written submissions on the proposed modifications to the set of information requirements to the *market assessment unit* within a reasonable time specified in the invitation;
- 4.3.10.2B all written submissions referred to in section 4.3.10.2A must be made within the time specified in the relevant invitation *published* by the *EMC*;



- 4.3.10.2C all written submissions referred to in section 4.3.10.2A that are received by the *market assessment unit*, within the time specified for making such written submissions in the relevant invitation published by the *EMC*, shall be considered by the *market assessment unit*;
- 4.3.10.2D the *market assessment unit* shall, under the supervision and direction of the *market surveillance and compliance panel*, consult with the *Authority* on the proposed modifications to the set of information requirements referred to in section 4.3.10.2A, taking into consideration the written submissions referred to in section 4.3.10.2C;
- 4.3.10.3 the set of information requirements established in accordance with section 4.3.10, and any modifications made pursuant to section 4.3.10.2, shall be *published* by the *EMC* as soon as practicable after receipt;
- 4.3.10.4 *market participants, market support services licensees* and the *EMC*, as specified in the information requirements, shall provide the *market assessment unit* with the data referred to in the information requirements established in accordance with section 4.3.10 and modified by any modifications thereto pursuant to section 4.3.10.2, within or at the time or times specified in such information requirements, once *publication* of such information requirements has been effected pursuant to section 4.3.10.3. In addition to the foregoing, upon request by the *Authority* for any data referred to in such information requirements, a *market participant, market support services licensee* or the *EMC* to whom such request is made shall also provide directly to the *Authority* the requested data;
- 4.3.10.5 the *market assessment unit* shall, under the supervision and direction of the *market surveillance and compliance panel*, and on a frequency to be determined by the *market surveillance and compliance panel* in consultation with the *Authority*, collect such market information as referred to in the information requirements established in accordance with section 4.3.10 and modified by any modifications thereto pursuant to section 4.3.10.2;
- 4.3.10.6 subject to section 4.3.10.7, the *market assessment unit* shall, under the supervision and direction of the *market surveillance and compliance panel*, and on a frequency to be determined by the *market surveillance and compliance panel* in consultation with the *Authority*, provide to the *Authority* the market information collected by the *market assessment unit* pursuant to section 4.3.10.5; and



- 4.3.10.7 upon receipt by the *market assessment unit* of a copy of the request of the *Authority* referred to in section 4.3.10.4, the *market assessment unit* shall be released from its obligations under section 4.3.10.6 to provide to the *Authority* the same data that the *Authority* had requested under section 4.3.10.4.

#### **4.4 ANALYSIS AND REPORTING ON MONITORING FUNCTIONS**

- 4.4.1 The *market assessment unit* shall monitor daily market behaviour in the *wholesale electricity markets* and shall, under the supervision and direction of the *market surveillance and compliance panel*, evaluate and analyse information that it collects in such manner as the *market surveillance and compliance panel* deems necessary for the fulfilment of the monitoring activities described in section 4.3.1 or for the purpose of assisting the *Authority* pursuant to section 4.3.10.

- 4.4.2 The *market assessment unit* shall report to the *market surveillance and compliance panel* any evidence of the phenomena referred to in section 4.3.1 which may be revealed by the monitoring, evaluations and analyses conducted by the *market assessment unit*. Where the *market assessment unit's* evaluation and analyses reveal that:

- 4.4.2.1 a *modification* to the *market rules* may be required;
- 4.4.2.2 a *market participant* or *market support services licensee* or the *EMC* or the *PSO* is or may be breaching a provision of the *market rules*, a *market manual* or the *system operation manual*; or
- 4.4.2.3 a *market participant* or *market support services licensee* or the *EMC* or the *PSO* is or may be acting contrary to or in non-compliance with statutory authority falling within the jurisdiction of a person, board, agency, authority or tribunal, including the *Authority* but excluding the *PSO*, or in non-compliance with an order, direction, *electricity licence* or *code of practice* issued by such person, board, agency, authority or tribunal,

the *market assessment unit* shall prepare and submit a report to that effect to the *market surveillance and compliance panel*. The *market surveillance and compliance panel* may, as it considers necessary or desirable for the efficient operation of the *wholesale electricity markets*, forward such reports to the *EMC*.

- 4.4.3 Where the *market surveillance and compliance panel* or the *market assessment unit*, in their investigative and monitoring activities conducted pursuant to section 4.4.1 and/or section 4.3.10, receive any complaint or uncover any information that may indicate the possibility of

anti-competitive agreements or the abuse of a dominant position contrary to sections 50 or 51 of the *Electricity Act*, the *market surveillance and compliance panel* or the *market assessment unit* shall inform the *Authority* and provide the *Authority* with a copy of the complaint received, and/or any relevant information.

4.4.4 For the avoidance of doubt, where the *market surveillance and compliance panel* or the *market assessment unit* in any investigative and monitoring activities conducted outside of the scope of the information requirements referred to in section 4.3.10, receive any complaint or uncover any information that may indicate the possibility of anti-competitive agreements or the abuse of a dominant position contrary to sections 50 or 51 of the *Electricity Act*, the *market surveillance and compliance panel* or the *market assessment unit* shall inform the *Authority* and provide the *Authority* with a copy of the complaint received, and/or any relevant information.

4.4.5 The *market assessment unit* shall, no less than quarterly and more frequently if so requested by the *market surveillance and compliance panel* prepare and submit to the *market surveillance and compliance panel* routine reports describing its day-to-day monitoring, cataloguing and evaluation activities and analyses. Such reports shall contain such information and be in such form as may be specified by the *market surveillance and compliance panel*.

4.4.6 The *market surveillance and compliance panel* shall, no less than annually and more frequently if so requested by the *EMC*, prepare and submit to the *EMC* routine reports on the conduct of its monitoring and investigation activities, including a summary of the reports of the *market assessment unit* referred to in sections 4.4.3 and 4.4.5, a summary of all complaints or referrals filed and investigations commenced under section 4.6 and a summary of any investigations conducted by the *market surveillance and compliance panel* in respect of *offer variations* reported to it by the *EMC* pursuant to section 10.4 of Chapter 6. Once annually, such reports shall contain the *market surveillance and compliance panel's* general assessment as to the state of competition and compliance within, and the efficiency of, the *wholesale electricity markets* in relation to the matters referred to in section 4.1.1.

4.4.7 The *EMC* shall provide the reports referred to in section 4.4.6 to the *Authority* as and when the *EMC* receives them.

## 4.5 CONFIDENTIALITY

4.5.1 The *market assessment unit* shall, under the supervision and direction of the *market surveillance and compliance panel*, establish procedures it and the *market surveillance and compliance panel* shall use to handle the

records, information and 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 6 and shall be included in the internal measures referred to in section 6.4.6.

- 4.5.2 Nothing in this section 4 shall preclude the disclosure or reproduction of *confidential information* as an unidentifiable component of an aggregate sum.

## 4.6 INVESTIGATIONS

- 4.6.1 The *market surveillance and compliance panel* may in accordance with section 4.8 initiate an investigation into any activities in the *wholesale electricity* markets or the conduct of a *market participant*, *market support services licensee*, the *EMC* or the *PSO*:

4.6.1.1 that is brought to the attention of the *market surveillance and compliance panel* by way of referral or complaint from any source, including a report of the *market assessment unit* made under this section 4; or

4.6.1.2 that the *market surveillance and compliance panel* determines as warranting an investigation.

- 4.6.2 An investigation initiated by the *market surveillance and compliance panel* shall be carried out by the *market assessment unit* at the direction of the *market surveillance and compliance panel*. If the investigation involves the *EMC* as the party who may be in breach of the rules, the *market surveillance and compliance panel* may instruct an alternative group of persons who are independent, qualified and possess appropriate expertise and skills, to conduct the investigation.

- 4.6.3 Subject to section 7.1.6, for the purpose of conducting an investigation concerning a section of the *market rules* that relates to a function, power or duty of the *PSO*, the *system operation manual* or any *market manual* that is referred to in or relates to a section of the market rules concerning a function, power or duty of the *PSO*, the *market surveillance and compliance panel* may instruct the *PSO* to carry out such investigation, or may instruct an independent investigator where the *PSO* is the subject of the investigation.

- 4.6.4 Any person that wishes the *market surveillance and compliance panel* to initiate an investigation into any matter referred to in section 4.6.1, or any board, agency, authority or tribunal, including the *Authority* and the *PSO*, wishing to refer any such matter to the *market surveillance and*

*compliance panel* for investigation, shall make a complaint or referral in writing setting out:

- 4.6.4.1 the name and address of the person submitting the complaint or referring the matter;
- 4.6.4.2 the particulars of the complaint or referral;
- 4.6.4.3 any information or facts supporting the complaint or referral; and
- 4.6.4.4 the signature of the person submitting the complaint or making the referral or, where that person is not an individual, the signature of an officer or duly authorised representative of the person.

4.6.5 The *market surveillance and compliance panel* may refuse to commence or may terminate an investigation where the *market surveillance and compliance panel* is of the view that a complaint, referral or investigation is:

- 4.6.5.1 frivolous, vexatious, immaterial or unjustifiable, or not directly related to the operation of the *wholesale electricity markets*; or
- 4.6.5.2 within the jurisdiction of another person, board, agency, authority or tribunal, including the *Authority* but excluding the *PSO*.

- 4.6.6 The *market surveillance and compliance panel* may, prior to making a determination pursuant to section 4.6.5, request that a person filing a complaint or making a referral associated with the investigation provide additional information relating thereto.
- 4.6.7 Where section 4.6.5 is invoked, the *market surveillance and compliance panel* shall so advise the person that filed the complaint or made the referral associated with the investigation and give its reasons for its determination.
- 4.6.8 The *market surveillance and compliance panel* shall, upon initiating an investigation in respect of the conduct of a *market participant*, *market support services licensee*, the *EMC* or the *PSO*, inform or cause the person under investigation to be informed of the investigation and of its progress. On the written request of a person that filed a complaint or made a referral associated with such investigation, the *market surveillance and compliance panel* shall inform or cause that person to be informed as to the progress of the investigation
- 4.6.9 For the purposes of carrying out an investigation, the *market surveillance and compliance panel* may request any *market participant*, *market support services licensee*, the *EMC* or the *PSO*, or any other person to provide records or information relevant to the investigation. Any such request shall:
- 4.6.9.1 be in writing;
  - 4.6.9.2 specify the particulars of the complaint or referral if the investigation was initiated in response to a complaint or referral;
  - 4.6.9.3 specify the records or information required; and
  - 4.6.9.4 specify a reasonable time within which the records or information is to be provided to the *market surveillance and compliance panel*.
- 4.6.10 Records or information sought pursuant to section 4.6.9 and provided to the *market surveillance and compliance panel* by an officer or representative of the *market participant*, *market support services licensee*, the *EMC* or the *PSO* or other person as the case may be, shall be assumed to be true, correct and complete to the best of that person's knowledge, information and belief at the time it is provided. Failure, without good cause, by any *market participant*, *market support services licensee*, the *EMC* or the *PSO* to provide the information specified by the due date specified shall constitute a breach of the *market rules* and may be subject to enforcement under the *market rules*. For the purpose of

this section, good cause is to be determined by the *market surveillance and compliance panel*.

- 4.6.11 Where a *market participant, market support services licensee, the EMC* or the *PSO* fails to respond to a request for records or information, the *market surveillance and compliance panel* may request that the *Authority* designate the Chair or one or more other members of the *market surveillance and compliance panel* as an authorised officer for the purposes of section 4 of the *Electricity Act*. Where the Chair or one or more other members of the *market surveillance and compliance panel* has been so designated, he or she may:
- 4.6.11.1 submit a further request to the *market participant, market support services licensee, the EMC* or the *PSO*, requesting that person to provide the records or information in accordance with subsection 4(1) of the *Electricity Act*; and
  - 4.6.11.2 where the *market participant, market support services licensee, the EMC* or the *PSO* fails to comply with such further request, take any action in accordance with the *Electricity Act*.
- 4.6.12 For the purpose of assisting the *market surveillance and compliance panel* to carry out an investigation under these *market rules*, any *market participant, or market support services licensee, the EMC* or the *PSO*, upon a request given in writing, shall make any specified personnel available for interview, and shall make any premises used in the conduct of business related to the *wholesale electricity markets* available for inspection, and shall make any relevant records, documents or information available for inspection, copying or removal, provided that any such request for inspection of premises (i) must state the subject matter and purpose of the investigation (including the alleged breach), and the nature of the records, documents or information or the name of the interviewee that are directly relevant to the investigation and which are to be made available to the *market surveillance and compliance panel*; and (ii) must have the prior written approval of the Chairperson of the *market surveillance and compliance panel*, as long as the Chairperson is satisfied that there are reasonable grounds for suspecting that there are on any premises, documents the production of which has not been made under section 4.6.10 and that if such documents were required to be produced, they would be concealed, tampered with or destroyed; and (iii) is valid for only one month after the date of approval of the Chairperson.
- 4.6.13 The *market assessment unit* or independent investigator if applicable, may request the subject of any investigation, including any *market participant, market support services licensee, the EMC* or the *PSO* as the case may be, to advise whether it agrees with the investigator's



conclusion as to whether any breach or breaches of the *market rules*, *market manuals* or *system operation manual* has or have occurred. The subject of the investigation shall respond to such investigator's request within such reasonable time as may be specified by the investigator.

- 4.6.14 Where any party disputes any such allegation, or fails within a reasonable time as specified by the investigator to respond to the allegation, the matter shall be reported to the *market surveillance and compliance panel* and section 7.2.3 shall apply.

#### **4.7 EXPERT AND OTHER ASSISTANCE**

- 4.7.1 The *market surveillance and compliance panel* may, subject to the budgetary approval of the *EMC*, 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 4.

- 4.7.2 Consultants and expert external advisors hired pursuant to section 4.7.1 shall enter into such confidentiality agreement in such form as may be prescribed by the *EMC*. Such confidentiality agreement shall contain provisions relating to the protection of *confidential information* that are consistent with the provisions of sections 6.4 and 6.5.

#### **4.8 REFERRAL TO AND RELATIONSHIP WITH OTHER ENTITIES**

- 4.8.1 Where it appears to the *market surveillance and compliance panel* that:
- 4.8.1.1 a *modification* to the actual or potential design or overall structure of the *wholesale electricity market*, *market rules*, *market manuals*, the *system operation manual* and/or other rules and procedures of the *EMC* or the *PSO* may be required;
  - 4.8.1.2 a *market participant*, a *market support services licensee*, the *EMC* or the *PSO* is or may be breaching a provision of the *market rules*, a *market manual* or the *system operation manual*; or
  - 4.8.1.3 a *market participant*, *market support services licensee*, the *EMC* or the *PSO* is or may be acting contrary to or in non-compliance with statutory authority falling within the jurisdiction of a person, board, agency, authority or tribunal, including the *Authority* but excluding the *PSO*,

the *market surveillance and compliance panel* shall initiate an investigation into the relevant defects or activities, and may report any findings to the *EMC*, the *PSO* or the *Authority*.

- 4.8.2 In carrying out its responsibilities under this section 4, the *market surveillance and compliance panel* may consult or cooperate with governmental or regulatory bodies, authorities or agencies, including the *Authority* but excluding the *PSO*, having jurisdiction over the conduct of a *market participant*, *market support services licensee*, *the EMC* or *the PSO*.

#### **4.9 PROCEDURE AND ENFORCEMENT**

- 4.9.1 Neither the *market assessment unit* nor the *market surveillance and compliance panel* shall use the dispute resolution procedures set forth in section 3 in carrying out their respective functions and duties under this section 4.
- 4.9.2 Nothing in this section 4 shall prevent any person from asserting any rights they may have under any *applicable law* or under the *market rules*, save that any order of the *market surveillance and compliance panel* shall be final and binding on the person(s) subjected to such order and shall not be subject to any appeal except an appeal to a court of competent jurisdiction in Singapore only on issues of law, jurisdiction or natural justice. For the avoidance of doubt, all findings of fact by the *market surveillance and compliance panel* shall not be the subject matter of any appeal to any court of competent jurisdiction in Singapore unless such findings were made in breach of law, jurisdiction or natural justice.
- 4.9.3 Failure by a person, who is subject to any order of the *market surveillance and compliance panel*, to comply with such order shall constitute a breach of the *market rules* and shall entitle the *market surveillance and compliance panel* to enforce such order by invoking or applying any applicable manner of enforcement available at law or equity or under the *market rules*.



## **5 MODIFICATION OF THE RULES**

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### **5.1 INTRODUCTION**

- 5.1.1 This section 5 contains the procedure for *modifying* the *market rules*, as provided for in subsection 46(3) of the *Electricity Act*.
- 5.1.2 The *market rules* may be *modified* by the *EMC Board* under section 5.1.3 or by the *urgent rule modification committee* under section 5.10.
- 5.1.3 The *EMC Board* may *modify* the *market rules* by a resolution passed by at least two-thirds of the *EMC* directors in office at the time, excluding any who abstain voluntarily or who are required by the *constituent document* to abstain.

### **5.2 REQUESTS TO REVIEW OR MODIFY MARKET RULES**

- 5.2.1 The *EMC Board*, the *EMC*, the *Authority*, the *PSO*, a *market participant*, a *market support services licensee* or any other interested person (each of whom is referred to in the *market rules* as a *proposer*), who considers that a *modification* or review of the *market rules* may be necessary or desirable, may submit a *modification proposal*.
- 5.2.2 A *modification proposal* by a *proposer* shall be made in writing, stating the reasons for the *modification proposal* and be sent to the *rules change panel* at the address that is *published* by the *EMC* for that purpose. The *rules change panel* may ask a *proposer* to give further particulars concerning its *modification proposal*.
- 5.2.3 Where the *rules change panel* determines on its own initiative that a *modification* or review of the *market rules* may be necessary or desirable, it shall notify the *EMC Board* of its intention to consider such *modification* or review, giving reasons for its determination.
- 5.2.4 Where the *EMC Board* determines on its own initiative, or at the request of any person, that a *modification* (other than an *urgent modification*) or review of the *market rules* may be necessary or desirable, it shall submit a *modification proposal* in accordance with sections 5.2.1 and 5.2.2.

### **5.3 DUTIES OF RULES CHANGE PANEL WHEN CONSIDERING A MODIFICATION PROPOSAL**

- 5.3.1 Before the *rules change panel* considers any *modification proposal*, the *EMC* shall *publish* the details of the *modification proposal*, with any comments from the *rules change panel* and invite all interested persons to make written submissions on the *modification proposal* to the *rules change panel* within a reasonable period specified in the invitation.
- 5.3.2 All submissions referred to in section 5.3.1 must be made within the period specified in the relevant invitation *published* by the *EMC*. Anyone who makes such a submission may at the same time indicate that a meeting in connection with the *modification proposal* is necessary or desirable, giving his reasons therefor.
- 5.3.3 The *rules change panel* may invite interested persons to make additional submissions in respect of a *modification proposal*. All such invitations and submissions shall be in writing. All such submissions shall be made within the reasonable period specified by the *rules change panel*.
- 5.3.4 All submissions that are received by the *rules change panel* within the time specified for making submissions shall be considered by the *panel*. The *rules change panel* may decide to hold one or more public meetings if it thinks that it is necessary or desirable to do so.
- 5.3.5 The *rules change panel* shall advise the *EMC Board* of the date, time and place scheduled for any public meeting. The *EMC* shall *publish* this information at least seven days before the date of the meeting. Any interested person may attend and, at the discretion of the *rules change panel*, take part in the meeting.
- 5.3.6 If any *modification proposal* relates to:
- 5.3.6.1 a provision of section 3, the *rules change panel* shall consult with the *dispute resolution counsellor* about the *modification proposal*; or
  - 5.3.6.2 a provision of sections 2.6 to 2.9 or section 4, the *rules change panel* shall consult with the Chair of the *market surveillance and compliance panel* about the *modification proposal*.

The *rules change panel* shall carry out this consultation before it holds any public meeting on the *modification proposal* or, if no meeting is held, then before it votes on the *modification proposal*.

## 5.4 RULES CHANGE PANEL TO CONSIDER A MODIFICATION PROPOSAL AND TO REPORT TO EMC BOARD

- 5.4.1 As soon as reasonably practicable after all meetings and consultations have been completed under section 5.3, and after any further meetings or consultations that the *rules change panel* considers appropriate, the *rules change panel* shall consider and vote on the *modification proposal*.
- 5.4.2 Once it has voted on any *modification proposal*, the *rules change panel* shall send a written report to the *EMC Board*. The report shall contain the following:
- 5.4.2.1 the recommendations of the *rules change panel* together with reasons for the recommendations. The *rules change panel* may recommend:
- a. that the *modification proposal* does not warrant consideration;
  - b. that the *modification proposal* only requires clarification or interpretation of a section of the *market rules*. In that case the *modification proposal* will be dealt with under section 15 of Chapter 1;
  - c. that the *market rules* not be *modified*; or
  - d. that the *market rules* be *modified*.
- 5.4.2.2 the text of any *modification* proposed by the *rules change panel*, and a summary of any objections the *panel* received on it or brought to its attention;
- 5.4.2.3 whether the proposed *modification* has the support of:
- a. the *dispute resolution counsellor* (for a *modification* to section 3); or
  - b. the Chair of the *market surveillance and compliance panel* (for a *modification* to section 2.6 to 2.9 or section 4);
- 5.4.2.4 a record of how each member of the *rules change panel* voted; and
- 5.4.2.5 a summary of any *panel* member's objections to the *panel's* recommendation.

## **5.5 EMC TO PUBLISH RULES CHANGE PANEL'S REPORT**

- 5.5.1 The *EMC* shall *publish* each report referred to in section 5.4.2 unless the *rules change panel* has decided that publication is inappropriate in a particular case.
- 5.5.2 If the *rules change panel's* report recommends that the *market rules* should be *modified*, and that its report should not be *published*, the *EMC* shall still *publish* the text of the proposed *modification*.
- 5.5.3 If the *rules change panel's* text of the proposed *modification* differs materially from the text that was originally proposed, the *proposer* of the original text may object to the *panel's* proposed text. Every objection shall be made in writing, stating the reasons for the objection, to the *EMC Board* within five *business days* of the date that the *EMC publishes* the text of the proposed *modification*.

## **5.6 EMC BOARD TO CONSIDER RULES CHANGE PANEL'S REPORT**

- 5.6.1 As soon as reasonably practicable after the *EMC Board* has received a report referred to in section 5.4.2 or the expiry of any period allowed for making objections under section 5.5.3, the *EMC Board* shall consider the report and any objections under section 5.5.3, and shall vote on the matter.
- 5.6.2 The *rules change panel* shall provide the *EMC Board* with copies of all submissions received on any recommendation in its report that the *EMC Board* asks for.
- 5.6.3 Where the *rules change panel* has made a recommendation that the *modification proposal* does not warrant consideration or that the *modification proposal* only requires clarification or interpretation, the *EMC Board* may require the *rules change panel* to reconsider the *modification proposal*.
- 5.6.4 Where the *rules change panel* recommends that the *market rules* should be *modified*, the *EMC Board* may:
- 5.6.4.1 decline to adopt the recommendation if the test in section 5.7.1 is met;
  - 5.6.4.2 adopt the recommendation, either in the form proposed by the *rules change panel* or as amended by the *EMC Board* as it considers appropriate; or

5.6.4.3 refer the matter back to the *rules change panel* for reconsideration.

## 5.7 EMC BOARD MAY DECLINE TO ADOPT A MODIFICATION

5.7.1 The *EMC Board* may only decline to adopt a recommendation of the *rules change panel* to *modify* the *market rules* if the *EMC Board* determines that the *modification* would:

5.7.1.1 materially threaten the ability of the *PSO* to direct the operation or maintain the *reliability* of the *PSO controlled system*, and the *PSO* consents to this determination;

5.7.1.2 materially affect the ability of the *EMC* to operate the *wholesale electricity markets* in an efficient manner;

5.7.1.3 give a *market participant*, a class of *market participants* or one or more *market support services licensees* an undue preference in the *wholesale electricity markets*;

5.7.1.4 materially increase the opportunity for *market participants*, any class of *market participant* or *market support services licensees* to engage in inappropriate or anomalous market conduct, including the misuse or possible misuse of market power, gaming or collusion;

5.7.1.5 impose, without due justification, significant extra costs on *market participants*, any class of *market participants* or *market support services licensees*; or

5.7.1.6 impose, without due justification, significant extra costs on the *EMC* or the *PSO*.

5.7.2 If the *EMC Board* declines to adopt a *modification* to the *market rules*, the *EMC* shall:

5.7.2.1 *publish* its decision with reasons;

5.7.2.2 give a copy of its decision, and the associated report of the *rules change panel*, to the *Authority*; and

5.7.2.3 if the decision relates to a provision of Chapter 5 or 6, provide a copy of the decision to the *PSO*.

## 5.8 EMC BOARD MAY DECIDE TO ADOPT A MODIFICATION

5.8.1 If the *rules change panel* recommends that the *market rules* should not be *modified*, the *EMC Board* shall not *modify* the *market rules* without first referring the *modification proposal* back to the *rules change panel* for reconsideration.

5.8.2 If the *rules change panel* has reconsidered a *modification proposal*, and still recommends that the *market rules* should not be *modified*, the *EMC Board* shall not *modify* the *market rules* unless the *EMC Board* determines that the *modification* would:

5.8.2.1 materially enhance the ability of the *PSO* to direct the operation or maintain the *reliability* of the *PSO controlled system*, and the *PSO* consents to the determination;

5.8.2.2 materially enhance the ability of the *EMC* to operate the *wholesale electricity markets* in an efficient manner;

5.8.2.3 eliminate or materially reduce an undue preference that a *market participant*, a class of *market participants* or one or more *market support services licensees* may have in the *wholesale electricity markets*;

5.8.2.4 eliminate or materially reduce the opportunity for *market participants*, any class of *market participant* or *market support services licensees* to engage in inappropriate or anomalous market conduct, including the misuse or possible misuse of market power, gaming and collusion;

5.8.2.5 eliminate or materially reduce the costs of *market participants*, any class of *market participants* or *market support services licensees*; or

5.8.2.6 eliminate or materially reduce the costs of the *EMC* or the *PSO*,

and that the benefit outweighs the objections of the *rules change panel* to the *modification*.

5.8.3 Where the *EMC Board* adopts a *modification* to the *market rules*, the *EMC* shall:

5.8.3.1 *publish* its decision, together with the copy of the *modification*;

5.8.3.2 give a copy of each of the decision and the *modification* to the *PSO*; and

- 5.8.3.3 file a copy of each of the decision, the *modification* and the associated report of the *rules change panel*, and a summary of any objections to the *modification* received by the *EMC Board* or brought to its attention, with the *Authority* for approval under subsection 46(4) of the *Electricity Act*.

## **5.9 EMC BOARD MAY REFER A MODIFICATION PROPOSAL BACK TO RULES CHANGE PANEL**

- 5.9.1 The *EMC Board* shall give reasons for referring any *modification proposal* back to the *rules change panel*. The *EMC* shall *publish* such decision of the *EMC Board*.
- 5.9.2 If the *EMC Board* has referred any *modification proposal* back to the *rules change panel* for reconsideration, the *panel* shall reconsider it as soon as reasonably practicable. The *panel* may consult any person, and conduct any meeting, that it thinks is appropriate in the circumstances.
- 5.9.3 Sections 5.4.2 to 5.9 (but excluding section 5.8.1) apply, with appropriate modifications as the context may require, to the *rules change panel's* reconsideration of any *modification proposal*.

## **5.10 URGENT MODIFICATIONS**

- 5.10.1 The *EMC Board* may establish an *urgent rule modification committee* and delegate to this committee the authority to make an *urgent modification*. The committee will be made up of the Chair of the *rules change panel*, a representative of the *PSO* and one director of the *EMC*.
- 5.10.2 *Urgent modifications* will apply for no longer than a period of one year. As soon as reasonably practicable during the one-year period, the *EMC* shall submit the *urgent modification* to the *rules change panel* for its consideration as a *modification proposal* under section 5.3.
- 5.10.3 The *EMC Board* or the *urgent rule modification committee* can make *urgent modifications* to the *market rules* after consulting any person they consider appropriate.
- 5.10.4 Where the *urgent rule modification committee* makes an *urgent modification*, it shall:
- 5.10.4.1 report its decision with reasons to the *EMC Board* and include a copy of the text of the *urgent modification*; and



- 5.10.4.2 file its decision with reasons with the *Authority* together with a copy of the text of the *urgent modification* for the *Authority* to approve under subsection 46(4) of the *Electricity Act*.
- 5.10.5 If the *EMC Board* receives a report from the *urgent rule modification committee*, the *EMC Board* shall meet, within five days of its receipt, to consider the report and vote either:
- 5.10.5.1 to confirm the *urgent modification*, in the form proposed by the *urgent rule modification committee* or some other form that the *EMC Board* determines is appropriate; or
- 5.10.5.2 to reject the *urgent modification* and stay its implementation, and in either case shall notify the *Authority* accordingly.
- 5.10.6 Where the *EMC Board* confirms an *urgent modification*, the *EMC* shall forthwith *publish* a notice of the *urgent modification*.

## **5.11 MODIFICATION PROCESS GENERALLY**

- 5.11.1 In formulating any *modification* to the *market rules*, the *EMC Board*, the *urgent rule modification committee* and the *rules change panel* shall consider the functions and duties of the *Authority* in subsection 3(3) of the *Electricity Act*, where those functions and duties relate to the operation of the *wholesale electricity markets* and the *reliable* operation of the *power system*.
- 5.11.2 Nothing in this section 5 shall prohibit the *EMC Board* from reviewing the work and proceedings of the *rules change panel*, or giving procedural directions to the *rules change panel* that the *EMC Board* considers appropriate. The *rules change panel* shall comply with those directions.

## **5.12 ASSISTANCE AND WORKING GROUPS**

- 5.12.1 The *EMC Board* may at any time call on the *rules change panel* to help the *Board* fulfil its responsibilities under this section 5.
- 5.12.2 The *rules change panel* may, through the Chief Executive of the *EMC*, seek the help of any director, officer or employee of the *EMC* and may use the facilities of the *EMC* to fulfil its responsibilities under this section 5.
- 5.12.3 The *rules change panel* may also establish working groups to help it fulfil its responsibilities under this section 5. The working groups shall operate according to the terms and conditions set by the *rules change*



*panel*, including the scope of their work and participation. If the *rules change panel* intends to establish any working group, it shall notify the *EMC Board* and the *EMC* shall *publish* a notice of the *panel's* intention.

### **5.13 AUTHORITY APPROVAL AND WHEN MODIFIED RULES COME INTO FORCE**

5.13.1 If a *modification* to the *market rules* is filed with the *Authority* for approval, the *Authority* shall give that approval under subsection 46(4) of the *Electricity Act*, unless the *Authority* is satisfied that the *modification*:

5.13.1.1 unjustly discriminates in favour of or against a *market participant* or a class of *market participants*; or

5.13.1.2 is inconsistent with the functions and duties of the *Authority* under subsection 3(3) of the *Electricity Act*.

5.13.2 The *Authority* shall notify the *EMC* and the *PSO* of its decision concerning a *modification* to the *market rules*:

5.13.2.1 within 5 *business days* of receiving any *urgent modification*; or

5.13.2.2 within 15 *business days* of receiving any other *modification*, unless that period has been extended under section 5.13.3,

and the *EMC* shall promptly *publish* a notice of that decision, with a copy of any approved *modification*.

5.13.3 The *Authority* may, after taking into account its resources or the complexity of any *modification* extend the period of time referred to in section 5.13.2.2 by up to 10 *business days*. The *Authority* shall notify the *EMC* if it extends such period of time.

5.13.4 *Modifications* approved by the *Authority* under section 5.13.1 come into force on:

5.13.4.1 the first *business day* after the *EMC publishes* the notice of the *Authority's* decision; or

5.13.4.2 any later date that the *EMC* specifies when it *publishes* the notice of the *Authority's* decision.

5.13.5 The *EMC* shall not delay the coming into force of any *modification* to the *market rules* more than is reasonable.

## 6 RECORD RETENTION, INFORMATION DISCLOSURE, ACCESS AND CONFIDENTIALITY

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### 6.1 RECORD RETENTION

6.1.1 The *EMC*, the *PSO*, each *market participant*, each *market support services licensee* and each *derogation applicant* shall retain records or classes of records prepared for or in connection with the *market rules*, any *market manual* or the *system operation manual* for such period of time as may be specified in the *market rules*, the applicable *market manual* or the *system operation manual* in respect of each such record or class of records.

6.1.2 Subject to section 6.1.3, where no period of time is specified in the *market rules*, the applicable *market manual* or the *system operation manual* in respect of a given record or class of records, the record or class of records shall be retained for a period of six years:

6.1.2.1 in the case of the person that created the record, calculated from the date on which the record was created; and

6.1.2.2 in the case of the person that received the record, calculated from the date on which the record was received.

6.1.3 Where a record referred to in section 6.1.1 or 6.1.2 is:

6.1.3.1 prepared in one or more draft forms;

6.1.3.2 not circulated in any such draft form by the person preparing it; and

6.1.3.3 subsequently prepared in final form,

only the final form of the record is required to be retained in accordance with section 6.1.1 or 6.1.2.

### 6.2 INFORMATION DISCLOSURE

6.2.1 Where a person is required by the *market rules*, a *market manual* or the *system operation manual* to disclose or provide a record or information to another person, such record or information shall be disclosed or provided within the time specified in, and in the form and manner required by, the applicable provisions of the *market rules*, the applicable *market manual* or the *system operation manual*. Where no time is specified in relation to the disclosure or provision of a specific record or

specific information, the information shall be disclosed or provided within a reasonable time.

- 6.2.2 A record or information disclosed or provided in accordance with section 6.2.1 shall be, to the best of the disclosing or providing person's knowledge, true, correct and complete at the time at which such disclosure or provision is made. No person shall knowingly or recklessly disclose or provide a record or information in accordance with section 6.2.1 that, at the time and in light of the circumstances in which such disclosure or provision is made, is misleading or deceptive or does not state a fact that is required to be stated or that is necessary to make the statement not misleading or deceptive.
- 6.2.3 Where a person discovers that a record or any information previously disclosed or provided by it to any other person in accordance with section 6.2.1 was, at the time at which it was disclosed or provided, or becomes untrue, incorrect, incomplete, misleading or deceptive, the disclosing or providing person shall immediately rectify the situation and disclose or provide the true, correct, complete, not misleading or not deceptive record or information to the person to whom the original or currently untrue, incorrect, incomplete, misleading or deceptive record or information had been disclosed or provided.
- 6.2.4 Subject to section 6.4, the *EMC*, the *PSO*, the *rules change panel* and the *market surveillance and compliance panel* are entitled to use any information obtained pursuant to the *market rules*, a *market manual* or the *system operation manual* in furtherance of the performance of their respective functions or duties under the *market rules*, applicable *market manuals*, the *system operation manual*, applicable law or, in the case of the *EMC*, its *electricity licence*.

### **6.3 ACCESSIBILITY**

- 6.3.1 Subject to sections 6.3.3 and 6.3.4, all persons shall have an equal opportunity for non-discriminatory access to all records and information, other than *confidential information*, required by the *market rules*, a *market manual* or the *system operation manual* to be made available by the *EMC* or the *PSO* to *market participants*, *market support services licensees* or other persons.
- 6.3.2 Any person accessing, retrieving or storing a record or information *published* or otherwise made available by the *EMC* or the *PSO* shall be responsible for its own costs of accessing, retrieving or storing such record or information.

- 6.3.3 Where a request for access to or disclosure of a record or information in the possession or control of the *EMC* or the *PSO* is made by a person pursuant to these *market rules*, a *market manual* or the *system operation manual*, the *EMC* or the *PSO*, as the case may be, shall only provide such access or disclosure if:
- 6.3.3.1 it is satisfied that it is not precluded by *applicable law*, these *market rules*, a *market manual* or the *system operation manual* from providing such access or disclosure to the person; and
  - 6.3.3.2 the provision of such access or disclosure would not impose a significant burden on it having regard to its resources.
- 6.3.4 Nothing in this section 6.3 shall prevent a record or information that is made available by means of electronic communications from being provided on a read-only basis.

## **6.4 CONFIDENTIALITY**

- 6.4.1 Each *market participant*, *market support services licensee*, the *EMC* and the *PSO* shall use all reasonable endeavours to keep confidential any *confidential information* that comes into its possession or control or of which it becomes aware.
- 6.4.2 Neither a *market participant* nor a *market support services licensee*, nor either of the *EMC* or the *PSO* shall:
- 6.4.2.1 disclose *confidential information* to any person except as permitted by the *market rules*, a *market manual* or the *system operation manual*;
  - 6.4.2.2 permit access to *confidential information* by any person not authorised to have such access pursuant to the *market rules*, a *market manual* or the *system operation manual*; or
  - 6.4.2.3 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*, a *market manual* or the *system operation manual*.
- 6.4.3 Each *market participant*, *market support services licensee*, the *EMC* and the *PSO* shall use all reasonable endeavours to:
- 6.4.3.1 prevent access to *confidential information* which is in its possession or control by any person not authorised to have such access pursuant to the *market rules*, a *market manual* or the *system operation manual*, 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*, a *market manual* or the *system operation manual*; and

- 6.4.3.2 ensure that any person to whom it discloses *confidential information* observes the provisions of this section 6.4 in relation to that *confidential information*.
- 6.4.4 Each *market participant*, *market support services licensee*, the *EMC* and the *PSO* shall, promptly upon becoming aware of a breach or a threatened breach of the provisions of this section 6.4 with respect to an item of *confidential information*:
- 6.4.4.1 so notify any person to whom the *confidential information* relates or by whom it was provided or disclosed;
- 6.4.4.2 if a *market participant* or *market support services licensee*, so notify the *EMC*; and
- 6.4.4.3 take such reasonable steps as may be required to prevent or assist in the prevention of, as the case may be, the unauthorised disclosure, access to, use or reproduction of *confidential information* that may result from such breach or threatened breach.
- 6.4.5 Each *market participant* and *market support services licensee* shall maintain internal measures relating to the protection of *confidential information* that enable the *market participant* or *market support services licensee* to comply and monitor compliance with its obligations under this section 6.4 and section 6.5.
- 6.4.6 Each of the *EMC* and the *PSO* shall maintain internal measures relating to the protection of *confidential information* that enable it to comply and monitor compliance with its obligations under this section 6.4 and section 6.5. Such measures shall include:
- 6.4.6.1 the protocols referred to in section 6.4.7; and
- 6.4.6.2 a security clearance policy pursuant to which a person within its organisation shall only be given access to *confidential information* to the extent:
- a. required to permit that person to duly perform his or her functions and duties; and
  - b. permitted by the security clearance assigned to him or her.

- 6.4.7 Where the *EMC* or the *PSO* makes *confidential information* accessible by means of electronic communications, it shall implement access control protocols that differentiate between *market participants* or *market support services licensees* but that need not differentiate between individuals, whether within the same *market participant* or *market support services licensee* or otherwise.
- 6.4.8 Sections 13.1.1, 13.2.1 and 13.3.1 of Chapter 1 shall not apply to limit the liability of any person that acts in a manner contrary to or that fails to comply with any one or more of sections 6.4.1 to 6.4.4 or 6.5.2 to 6.5.7.
- 6.4.9 Sections 13.1.4, 13.2.4 and 13.3.4 of Chapter 1 shall not apply to limit the liability of any person that acts in a manner contrary to or that fails to comply with any one or more of sections 6.4.1 to 6.4.4 or 6.5.2 to 6.5.7.

## **6.5** **EXCEPTIONS**

- 6.5.1 Nothing in section 6.4 shall prevent:
- 6.5.1.1 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*, the *market support services licensee*, the *EMC* or the *PSO*, as the case may be, who wishes to disclose, use or reproduce the information or by any person to whom the *market participant*, the *market support services licensee*, the *EMC* or the *PSO* has disclosed the information;
- 6.5.1.2 the disclosure of *confidential information* by a *market participant*, a *market support services licensee*, the *EMC* or the *PSO* to:
- a. one of its directors, officers or employees where such person requires the *confidential information* for the due performance of that person's functions and duties and, in the case of the *EMC* or the *PSO*, where the person has the required security clearance assigned by the *EMC* or the *PSO*, as the case may be; or
  - b. its legal or other professional advisor, auditor or other consultant where such person requires the information for purposes of the *market rules*, a *market manual*, a *system operation manual* or an agreement entered into pursuant to the *market rules*, a *market manual*, or the *system operation manual*, or for the purpose of advising it in relation thereto;

- 6.5.1.3 the disclosure, use or reproduction of *confidential information*:
- a. by the *market participant* or *market support services licensee* that provided the confidential information pursuant to the *market rules*, a *market manual* or a *system operation manual*;
  - b. with the consent of the *market participant* or *market support services licensee* that provided the confidential information pursuant to the *market rules*, a *market manual* or the *system operation manual*; or
  - c. in the case of *settlement data* or *metering data*, by or with the consent of the *market participant* or *market support services licensee* to whom such data relates;
- 6.5.1.4 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*, a *market support services licensee*, the *EMC* or the *PSO* or an *affiliate* of a *market participant*, a *market support services licensee*, the *EMC* or the *PSO*; or
  - b. any stock exchange having jurisdiction over a *market participant*, a *market support services licensee*, the *EMC*, the *PSO* or an *affiliate* of a *market participant*, a *market support services licensee*, the *EMC* or the *PSO*;
- 6.5.1.5 except as otherwise provided in section 3, the disclosure, use or reproduction of *confidential information* if required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism relating to the *market rules*, a *market manual*, or the *system operation manual* or an agreement entered into pursuant to the *market rules*, a *market manual* or the *system operation manual* or for the purpose of advising a person in relation thereto;
- 6.5.1.6 the disclosure, use or reproduction of confidential information by or on behalf of a *market participant* or *market support services licensee* to the extent reasonably required in connection with the *market participant's* or *market support services licensee's* financing arrangements, investment in that *market participant* or *market support services licensee* or a transfer, sale, lease or other disposal of the *market participant's* or *market support services licensee's* assets;



- 6.5.1.7 the disclosure of *confidential information* if required to protect the health or safety of personnel, equipment or the environment;
- 6.5.1.8 the disclosure by the *PSO* of *confidential information* to the *transmission licensee*, to the extent that *confidential information* is required pursuant to the terms of the *operating agreement* between the *PSO* and the *transmission licensee* to be disclosed to the *transmission licensee* for the purposes of the safe and *reliable* management, operation and maintenance of the *PSO controlled grid*;
- 6.5.1.9 the disclosure by the *EMC* or the *PSO* of confidential information to a market participant or *market support services licensee*:
- a. during an emergency or where the *PSO controlled system* is in a *high-risk operating state* or an *emergency operating state*; or
  - b. where an emergency, a *high-risk operating state* or an *emergency operating state* is anticipated by the *EMC* or the *PSO*;
- to the extent that such disclosure would, in the *EMC's* or the *PSO's* opinion:
- c. assist the *market participant* or *market support services licensee* in responding to the conditions referred to in section 6.5.1.9(a) or 6.5.1.9(b); or
  - d. assist the *EMC* or the *PSO* in restoring the *PSO controlled system* to a *normal operating state*;
- 6.5.1.10 the disclosure by the *EMC* or the *PSO* of *confidential information* to a *standards authority* or an *interconnected system operator*.
- 6.5.1.11 the disclosure by the *PSO* of *confidential information* to the *market assessment unit* or the *market surveillance and compliance panel* pursuant to section 4.1.4;
- 6.5.1.12 the disclosure of *confidential information* contained in a report of the *market surveillance and compliance panel* or the *market assessment unit* disseminated in accordance with section 7.2.19; or
- 6.5.1.13 the disclosure, use or reproduction of *confidential information* as an unidentifiable component of an aggregate sum.



- 6.5.2 Prior to making any disclosure pursuant to section 6.5.1.2 or 6.5.1.6, 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 the execution of an appropriate confidentiality agreement, to ensure that the recipient keeps the *confidential information* confidential in accordance with the provisions of section 6.4 and does not use the *confidential information* for any purpose other than that permitted under section 6.5.1.2 or 6.5.1.6, as the case may be.
- 6.5.3 Prior to making any disclosure pursuant to section 6.5.1.4 or 6.5.1.5, 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.
- 6.5.4 In making any disclosure pursuant to section 6.5.1.7, 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.
- 6.5.5 Where the *PSO* makes any disclosure pursuant to section 6.5.1.8:
- 6.5.5.1 it shall advise the *market participant* or *market support services licensee* affected by the disclosure as soon as is reasonably practicable in the circumstances; and
- 6.5.5.2 the *transmission licensee* shall use the *confidential information* so disclosed solely for the purposes referred to in section 6.5.1.8 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information*.
- 6.5.6 Where the *EMC* or the *PSO* makes any disclosure pursuant to section 6.5.1.9:
- 6.5.6.1 it shall advise the *market participant* or *market support services licensee* affected by the disclosure as soon as is reasonably practicable in the circumstances; and
- 6.5.6.2 the *market participant* or *market support services licensee* to whom the disclosure is made shall use the *confidential information* so disclosed solely for the purposes referred to in section 6.5.1.9 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information* as may be reasonably practicable in the circumstances.

- 6.5.7 Where the *EMC* or the *PSO* makes any disclosure pursuant to section 6.5.1.10, it shall:
- 6.5.7.1 advise the *market participant* or *market support services licensee* affected by the disclosure as soon as is reasonably practicable in the circumstances; and
  - 6.5.7.2 subject to the terms of any agreement which it may have with the applicable *standards authority*, or *interconnected system operator*, use such reasonable endeavours as may be reasonably practicable in the circumstances to ensure that the recipient protects the confidentiality of the *confidential information*.

## **6.6 APPLICATION TO PANELS**

- 6.6.1 Sections 6.1 to 6.5 shall apply:
- 6.6.1.1 to the *rules change panel*;
  - 6.6.1.2 subject to section 3, to the *dispute resolution counsellor* and the *dispute resolution and compensation panel*; and
  - 6.6.1.3 subject to section 4, to the *market surveillance and compliance panel*.
- 6.6.2 For the purposes of section 6.6.1:
- 6.6.2.1 all references to the *EMC* in sections 6.1 to 6.5 shall be deemed to include references to the *rules change panel*, the *market surveillance and compliance panel*, the *dispute resolution counsellor* and the *dispute resolution and compensation panel*; and
  - 6.6.2.2 all references to an employee in sections 6.1 to 6.5 shall be deemed to include references to a member of the *rules change panel*, the *market surveillance and compliance panel* or the *dispute resolution and compensation panel*.

## 7 ENFORCEMENT

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### 7.1 INTRODUCTION

- 7.1.1 This section sets forth the rules pursuant to which the:
- 7.1.1.1 *market surveillance and compliance panel* shall monitor and enforce, compliance with the *market rules*, *market manuals* and the *system operation manual*.
  - 7.1.1.2 the *PSO* shall monitor compliance with the *system operation manual*; and
  - 7.1.1.3 the *market assessment unit* shall monitor compliance with the *market rules* and *market manuals*.
- 7.1.2 The *market surveillance and compliance panel* shall enforce compliance with the *market rules*, *market manuals* and the *system operation manual* by means of the imposition of financial penalties, the issuance of non-compliance letters, *suspension orders*, *termination orders*, and *revocation orders* and any other enforcement actions as provided for in the *market rules*.
- 7.1.3 All enforcement actions under these market rules shall be administered by the *EMC* at the direction of the *market surveillance and compliance panel*.
- 7.1.4 The *market surveillance and compliance panel* shall ensure that appropriate and adequate monitoring necessary to determine whether *market participants*, the *EMC* and the *PSO* are complying with the *market rules* and *market manuals*, other than the provisions of the *market rules* and the *market manuals* referred to in section 7.1.6, is being undertaken at all material times.
- 7.1.5 The *market assessment unit* shall undertake such monitoring as it considers necessary and as directed by the *market surveillance and compliance panel* to determine whether *market participants*, the *PSO* and the *EMC* are complying with the *market rules* and *market manuals*. For the avoidance of doubt, should any monitoring activity conducted by the *market assessment unit* reveal any activity of the *EMC* warranting any investigation under the *market rules*, section 4.6.2 shall immediately apply.

- 7.1.6 The *PSO* shall undertake such monitoring as it considers necessary to determine whether *market participants*, the *EMC* and the *PSO* are complying with:
- 7.1.6.1 a section of the *market rules* that relates to a function, power or duty of the *PSO*;
  - 7.1.6.2 the *system operation manual*; or
  - 7.1.6.3 any *market manual* that is referred to in or relates to a section of the *market rules* referred to in section 7.1.6.1.
- 7.1.7 Where the *PSO* believes or becomes aware, either through its own monitoring activities or following an investigation directed by the *market surveillance and compliance panel*, that a *market participant* or the *EMC* or the *PSO* has breached, is breaching or may be breaching the relevant section of the *market rules*, a *market manual* or the *system operation manual* as referred to in section 7.1.6, the *PSO* shall:
- 7.1.7.1 so notify the *market surveillance and compliance panel* in writing, which notice shall set forth details of such belief or alleged past, present or potential breach, including evidence in respect thereof; and
  - 7.1.7.2 provide to the *market surveillance and compliance panel* all information in its ownership, possession or control relating to such belief or alleged past, present or potential breach.
- 7.1.8 Where the *EMC* believes or becomes aware that a *market participant* or the *EMC* or *PSO* has breached, is breaching or may be breaching the *market rules* or a *market manual*, or where the group of persons referred to in section 4.6.2 believes or becomes aware that the *EMC* has breached, is breaching or may be breaching the *market rules* or a *market manual*, the *EMC* or the said group, as the case may be, shall:
- 7.1.8.1 so notify the *market surveillance and compliance panel* in writing, which notice shall set forth details of such belief or the alleged past, present or potential breach, including evidence in respect thereof; and
  - 7.1.8.2 provide to the *market surveillance and compliance panel* all information in their respective ownership, possession or control relating to such belief or alleged past, present or potential breach.

- 7.1.9 Where a *market participant* believes or becomes aware that it, a *market support services licensee*, another *market participant*, the *EMC* or the *PSO* has breached, is breaching or may be breaching the *market rules*, a *market manual* or the *system operation manual*, the *market participant* shall:
- 7.1.9.1 so notify the *market surveillance and compliance panel* in writing, which notice shall set forth details of such belief or the alleged past, present or potential breach, including evidence in respect thereof; and
- 7.1.9.2 provide to the *market surveillance and compliance panel* all information in its ownership, possession or control relating to such belief or alleged past, present or potential breach.
- 7.1.10 The *market assessment unit*, the *EMC*, the *PSO* and a *market participant* shall provide any relevant information to the *market surveillance and compliance panel* as may be requested by the *market surveillance and compliance panel* in order for the *market surveillance and compliance panel* to perform its functions and duties under these *market rules*.
- 7.1.11 Nothing in sections 7.1.5, 7.1.7, 7.1.8 or 7.1.9 shall be construed as limiting any right which a *market participant*, the *PSO* or the *EMC* may have to initiate the dispute resolution process described in section 3 in respect of a breach in relation to the *market rules*, a *market manual* or the *system operation manual*.
- 7.1.12 References in this section 7 to:
- 7.1.12.1 a *market participant* shall be deemed to include references to a *market support services licensee*; and
- 7.1.12.2 registration shall be deemed to include references to authorisation.

## **7.2 PROCEDURES CONCERNING ALLEGED BREACHES OF THE MARKET RULES**

- 7.2.1 This section 7.2 shall not apply to:
- 7.2.1.1 the issuance by the *market surveillance and compliance panel* of a *suspension order* or *termination order*, which shall be governed by the provisions of sections 7.3 and 7.4, respectively; or
- 7.2.1.2 the issuance by the *market surveillance and compliance panel* of a *revocation order* revoking the registration of a *registered facility*, which shall be governed by the applicable provisions

of section 7.4 and 7.5, unless specifically referenced in sections 7.4 to 7.5 inclusive and only to the extent of the context so referenced.

- 7.2.2 Where the *market rules*, a *market manual* or the *system operation manual* provide for consequences, sanctions or enforcement actions in respect of a breach by a *market participant*, the *EMC* or the *PSO*, of the *market rules*, a *market manual* or the *system operation manual*, those consequences, sanctions or enforcement actions shall apply in the circumstances and in the manner provided for in the relevant section of the *market rules*, *market manual* or *system operation manual* in addition to such enforcement actions as may be taken pursuant to this section 7. In the event of any inconsistency between those consequences, sanctions or enforcement actions and the enforcement actions as may be taken under this section 7, the latter provisions shall prevail.
- 7.2.3 If the *market surveillance and compliance panel* considers, on its own initiative or upon receipt of written information from any person, or upon information received from the *market assessment unit* or the *PSO*, that a *market participant*, the *EMC* or the *PSO* may have breached, is breaching or may be breaching the *market rules*, a *market manual* or the *system operation manual* and that, in the circumstances, it may be appropriate for an enforcement action to be taken against that *market participant*, the *EMC* or the *PSO*, the *market surveillance and compliance panel* shall notify the *market participant*, the *EMC* or the *PSO*, as the case may be, of:
- 7.2.3.1 details of the alleged past, present or potential breach and of the time within which such breach must be remedied or prevented, as the case may be;
  - 7.2.3.2 details of the evidence on the basis of which the *market surveillance and compliance panel* considers that the *market participant*, the *EMC* or the *PSO* may have breached, is breaching or may be breaching the *market rules*, a *market manual* or the *system operation manual*;
  - 7.2.3.3 details of the enforcement actions that may be taken if the breach is established, and/or persists or is not prevented from happening;
  - 7.2.3.4 the time within which the *market participant*, the *EMC* or the *PSO* shall make written representations in response to any allegation; and
  - 7.2.3.5 the right of the *market participant*, the *EMC* or the *PSO* to request a hearing before the *market surveillance and compliance panel* to determine the matter, provided that there

are written representations made within the requisite time in pursuance of section 7.2.3.4.

- 7.2.4 Following expiry of the time noted in section 7.2.3.4, and after consideration of any representations made by the *market participant*, the *EMC* or the *PSO* pursuant to that section, whether or not at any hearing held in pursuance of section 7.2.3.5, the *market surveillance and compliance panel* may do one or more of the following where appropriate:
- 7.2.4.1 determine that the *market participant*, the *EMC* or the *PSO* has not breached the *market rules*, a *market manual* or the *system operation manual*;
  - 7.2.4.2 subject to section 7.2.6, determine that the *market participant*, the *EMC* or the *PSO* is in breach of the *market rules*, a *market manual* or the *system operation manual*;
  - 7.2.4.3 request that the *market participant*, the *EMC* or the *PSO* provide further relevant information in relation to the alleged breach; or
  - 7.2.4.4 conduct or direct the *market assessment unit* or the *PSO*, as the case may be, to conduct such further investigation into the matter as the *market surveillance and compliance panel* determines appropriate.
- 7.2.5 Where the *market surveillance and compliance panel* initiates a further investigation pursuant to section 7.2.4.4 in respect of the alleged breach of a section of the *market rules* referred to in section 7.1.6.1, the *system operation manual* or a *market manual* referred to in section 7.1.6.3, the *PSO* shall provide the *market surveillance and compliance panel* with such assistance as the *market surveillance and compliance panel* may reasonably require in respect of the conduct of such investigation.
- 7.2.6 Where a *market participant*, the *EMC* or the *PSO* has requested the hearing referred to in section 7.2.3.5:
- 7.2.6.1 the *market surveillance and compliance panel* shall provide the *market participant*, the *EMC* or the *PSO*, as the case may be, with a reasonable opportunity to appear before the *market surveillance and compliance panel* to determine the allegations, subject to the following:



where the allegations relate to the alleged breach of a section of the *market rules* referred to in section 7.1.6.1, the *system operation manual* referred to in section 7.1.6.2 or a *market manual* referred to in section 7.1.6.3, by a *market participant* or the *EMC*, one or more representatives of the *PSO* may attend at any meeting convened pursuant to this section 7.2.6.

The *market surveillance and compliance panel* shall not make the determination noted in section 7.2.4.2 until and unless the provisions of this section 7.2.6 are fully satisfied where applicable.

7.2.7 A *market participant*, the *EMC* or the *PSO* shall comply with any request for information made by the *market surveillance and compliance panel* pursuant to section 7.2.4.3.

7.2.8 Where the *market surveillance and compliance panel* determines that a *market participant*, the *EMC* or the *PSO* has breached the *market rules*, a *market manual* or the *system operation manual*, the *market surveillance and compliance panel* may, subject to section 7.2.9, take any one or more of the following enforcement actions:

7.2.8.1 direct the *market participant*, the *EMC* or the *PSO*, as the case may be, to do within a specified period of time, such things as may be necessary to comply with the *market rules*, the *market manual* or the *system operation manual*;

7.2.8.2 direct the *market participant*, the *EMC* or the *PSO*, as the case may be, to cease within a specified period of time, the act, activity or practice constituting the breach;

7.2.8.3 direct that the *market participant*, the *EMC* or the *PSO* comply with additional or more stringent record-keeping or reporting requirements;

7.2.8.4 issue a non-compliance letter to the *market participant*, the *EMC* or the *PSO*;

7.2.8.5 direct that the *market participant* or the *EMC* pay a financial penalty determined in accordance with section 7.2.11 within such time as may be specified in the direction, provided that the *market surveillance and compliance panel* shall not issue such a direction unless the *market surveillance and compliance panel* is satisfied that the breach could have been avoided by the exercise of due diligence by the *market participant* or the *EMC* or that the *market participant* or the *EMC* acted intentionally; and/or

7.2.8.6 make an award for costs arising from the breach.



- 7.2.9 Where the *market surveillance and compliance panel* determines that a *market participant* or the *EMC* has breached a section of the *market rules* referred to in section 7.1.6.1, the *system operation manual* referred to in section 7.1.6.2 or a *market manual* referred to in section 7.1.6.3, the *market surveillance and compliance panel* may consult with the *PSO* as to the appropriate enforcement action, if any, to be taken in the circumstances, including as to the amount of any financial penalty to be imposed.
- 7.2.10 The *market surveillance and compliance panel* may, in the determination of any matter brought before it under these *market rules*, allocate the costs associated with the investigation or consideration of the matter for payment by one or more parties to the matter as the *market surveillance and compliance panel* deems just and reasonable.
- 7.2.11 Where the *market surveillance and compliance panel* determines, in consultation with the *PSO* pursuant to section 7.2.9 where applicable, that the appropriate enforcement action in respect of a breach of the *market rules*, a *market manual* or the *system operation manual* by a *market participant* or the *EMC* is the imposition of a financial penalty, the *market surveillance and compliance panel* shall determine the amount of the financial penalty having regard to:
- 7.2.11.1 the circumstances in which the breach occurred;
  - 7.2.11.2 the severity of the breach;
  - 7.2.11.3 the extent to which the breach was negligent, deliberate or otherwise;
  - 7.2.11.4 the length of time the breach remained unresolved;
  - 7.2.11.5 the actions of the *market participant* or the *EMC* on becoming aware of the breach;
  - 7.2.11.6 whether the *market participant* or the *EMC* as the case may be, disclosed the matter to the *market surveillance and compliance panel*, the *market assessment unit* or the *PSO* on its own accord or only when prompted to do so;
  - 7.2.11.7 any benefit that the *market participant* or the *EMC* obtained or expected to obtain as a result of the breach;
  - 7.2.11.8 any previous breach by the *market participant* or the *EMC* of the *market rules*, a *market manual*, the *system operation manual* or the conditions of its *electricity licence* where applicable;
  - 7.2.11.9 the rate of recurrence of non-compliance by the *market participant* or the *EMC* with the *market rules*, *market*

- manuals* and the *system operation manual* in terms of frequency or duration;
- 7.2.11.10 the impact of the breach on other *market participants*, *market support services licensees*, the *EMC* and the *PSO*;
- 7.2.11.11 the impact of the breach on the *wholesale electricity markets* as a whole;
- 7.2.11.12 whether the breach occurred while a declaration that the *PSO controlled system* is in a *high-risk operating state* or an *emergency operating state* was in effect;
- 7.2.11.13 whether the breach occurred while a declaration that the *real time markets* and the *procurement markets* have been suspended was in effect;
- 7.2.11.14 whether the behaviour constituting the breach is or can be the subject of investigation under *applicable law* by a person other than the *market surveillance and compliance panel*, the *market assessment unit* or the *PSO*;
- 7.2.11.15 whether the behaviour constituting the breach is or can be the subject of a financial penalty imposed under *applicable law* by the *market surveillance and compliance panel*; and
- 7.2.11.16 any submissions made by the party in breach and such other factors as the *market surveillance and compliance panel* considers appropriate.
- 7.2.12 A direction imposing financial penalties on a *market participant*, the *EMC* made pursuant to section 7.2.8.5 shall be considered to create an obligation under the *market rules* to pay the amount stated in the direction and such amount may, without prejudice to any other manner of recovery available under *applicable law*, be recovered accordingly.
- 7.2.13 Nothing in this section 7.2 shall prevent the *market surveillance and compliance panel* from imposing a financial penalty for failure by a *market participant*, the *EMC* to remedy a breach in respect of which a financial penalty has already been imposed or if there is any repetition or continuation of such breach.
- 7.2.14 Failure to comply with a direction of the *market surveillance and compliance panel* made pursuant to section 7.2.8 constitutes a breach of the *market rules* and may be sanctioned as such by enforcement action in accordance with these *market rules*.
- 7.2.15 The *EMC* shall administer any such order(s) and/or recommendation(s) of the *market surveillance and compliance panel*.

- 7.2.16 Where the *market surveillance and compliance panel* determines that the *PSO* has breached or is breaching the *market rules*, a *market manual* or the *system operation manual*, it shall provide to the *PSO* and the *Authority* a report recording the facts and circumstances of the breach.
- 7.2.17 Following the provision of any such report referred to in section 7.2.16, the *PSO* shall, within the time specified by the *market surveillance and compliance panel*, provide a report to the *market surveillance and compliance panel* setting out its explanation for the breach, and a plan detailing how it intends to reduce the likelihood of, or prevent, such breaches in the future.
- 7.2.18 Following the provision of any such report referred to in section 7.2.17, where the *market surveillance and compliance panel* remains dissatisfied with the response provided or the plan proposed by the *PSO*, the *market surveillance and compliance panel* may forward the reports to the Minister responsible for the *Electricity Act* for review.
- 7.2.19 Where the *market surveillance and compliance panel* determines that a *market participant*, the *EMC* or the *PSO* has breached or is breaching the *market rules*, a *market manual* or the *system operation manual*, it shall provide to the *EMC* a report recording the facts and circumstances of the breach and details of any sanctions imposed, and *EMC* shall so notify the *Authority* and *publish* the report subject to sections 6.4 and 6.5.

### **7.3 SUSPENSION ORDERS**

- 7.3.1 Each of the following is an *event of default* in relation to a *market participant*:
- 7.3.1.1 the *market participant* does not pay money due for payment by it under the *market rules* by the appointed time on the due date;
  - 7.3.1.2 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;
  - 7.3.1.3 the *market participant* fails to provide *credit support* required to be supplied under the *market rules* within the time required;
  - 7.3.1.4 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*;
- 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*;
- 7.3.1.6 a licence (including an *electricity licence*), permit or other authorisation necessary to enable the *market participant* 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*;
- 7.3.1.7 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;
- 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*;
- 7.3.1.13 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*; or
- 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 issuance of a special administration order in respect of a *market participant* pursuant to section 29 of the *Electricity Act* shall not constitute an *event of default* in respect of that *market participant*.

- 7.3.2 A *market participant* shall immediately notify the *EMC*, the *market surveillance and compliance panel*, and the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee* immediately upon the earlier of becoming aware of any circumstance that may give rise to or of the occurrence of:
  - 7.3.2.1 an *event of default* referred to in sections 7.3.1.4 to 7.3.1.15; or
  - 7.3.2.2 a receiver, receiver and manager, judicial 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 its *credit support provider*.
- 7.3.3 Where an *event of default* has occurred in relation to a *market participant*, the *EMC* shall take one or more of the following actions:
  - 7.3.3.1 issue to the *market participant* a *default notice* specifying the alleged *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 1 *business day*; or

- 7.3.3.2 make claim upon any *credit support* held in respect of the obligations of the *market participant* for such amount as the *EMC* determines represents the amount of any money actually or contingently owing by the *market participant* to the *EMC* under the *market rules*; or
- 7.3.3.3 request the *market surveillance and compliance panel* to issue a *suspension order* to the *market participant* suspending or restricting all or any of the *market participant's* rights to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system*, and shall provide a copy of such request to the *market participant*, the *PSO*, the *transmission licensee*, the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee*.
- 7.3.4 Where the *EMC* issues a *default notice* to a *market participant* pursuant to section 7.3.3.1 in respect of an *event of default*, the *EMC* shall notify the *market surveillance and compliance panel* and the *PSO*, the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee*:
- 7.3.4.1 of the issuance of the *default notice*;
- 7.3.4.2 of the time within which the *market participant* may remedy the *event of default* as specified in the *default notice*; and
- 7.3.4.3 where the *event of default* specified in the *default notice* has been remedied by the *market participant*, of the fact and outcome of such remedy.
- 7.3.5 ~~Where the *EMC* issues a *default notice* to a *selling market participant*, issuance of such *default notice* shall be deemed to constitute a revision to any *bilateral contract quantities* that relate to that *selling market participant* for the period from the time the *default notice* is issued until the *event of default* is remedied pursuant to section 7.3.6, 7.3.7, 7.3.8 or 7.3.9, as the case may be, such that the *bilateral contract quantities* that relate to such period shall be considered by the *EMC* to be zero. [Deleted and Intentionally Left Blank]~~
- 7.3.6 A *market participant* may remedy an *event of default* referred to in sections 7.3.1.1 to 7.3.1.3, 7.3.1.5 and 7.3.1.7 to 7.3.1.14 by:
- 7.3.6.1 paying all monies due for payment by it under the *market rules*, together with any *default interest* calculated in accordance with Chapter 7 and any costs and expenses



determined by the *EMC* to have been incurred by it by reason of the *event of default*; and

- 7.3.6.2 providing additional *credit support* which complies with the requirements of section 7 of Chapter 2.
- 7.3.7 A *market participant* may remedy an *event of default* referred to in section 7.3.1.4 by obtaining from the *EMC*, in accordance with section 14 of Chapter 1, a derogation in respect of the obligation in the *market rules*, the applicable *market manual* or the *system operation manual* with respect to which compliance by the *market participant* has become unlawful.
- 7.3.8 A *market participant* may remedy an *event of default* referred to in section 7.3.1.6 by demonstrating to the satisfaction of the *EMC* that:
- 7.3.8.1 the applicable licence, permit or authorisation referred to in that section has been reinstated or re-issued to the *market participant* or *credit support provider*; or
- 7.3.8.2 the *market participant* or *credit support provider* has obtained from the issuing authority an exemption from the requirement to hold such licence, permit or authorisation.
- 7.3.9 A *market participant* may remedy an *event of default* referred to in section 7.3.1.15 by demonstrating to the satisfaction of the *EMC* that the material requirement referred to in that section is no longer required to be imposed on the *market participant* as a condition of its registration as a *market participant* in order to preserve the financial integrity of the *wholesale electricity markets*.
- 7.3.10 Notwithstanding that an *event of default* may have been remedied by the *market participant*, the *EMC* may, where it considers that it is in the interests of preserving the integrity of the *wholesale electricity markets*, impose such conditions on the *market participant's* registration as a *market participant* as the *EMC* deems appropriate, including the conditions noted in sections 7.3.15.1 and 7.3.15.2.

If an *event of default* is not remedied within the time specified in the *default notice*, the *EMC* shall:

- 7.3.10.1 if it has not already done so, make claim upon all *credit support* held in respect of the *market participant*; and
- 7.3.10.2 request the *market surveillance and compliance panel* to issue a *suspension order* to the *market participant* suspending or restricting all or any of the *market participant's* rights to participate in the *wholesale electricity markets* or to cause or

permit a *physical service* to be conveyed into, through or out of the *transmission system*, and shall provide a copy of such request to the *market participant*, the *PSO*, the *transmission licensee*, the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee*.

7.3.11 The *market surveillance and compliance panel* shall, within 4 *business days* of the date of receipt of the request for a *suspension order* to be issued to a *market participant*, conduct and conclude a hearing providing the *market participant* with a reasonable opportunity to show cause as to why the *suspension order* should not be issued against it. In such case, the *market surveillance and compliance panel* shall not issue the *suspension order* until such reasonable opportunity has been provided.

7.3.12 Upon conclusion of the hearing referred to in section 7.3.11, the *market surveillance and compliance panel* may:

7.3.12.1 subject to section 7.3.13 or 7.3.14, issue a *suspension order* to the *market participant* suspending or restricting all or any of the *market participant's* rights to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system*;

7.3.12.2 make such other order as the *market surveillance and compliance panel* considers appropriate in order to preserve the financial integrity of the *wholesale electricity markets* in the event that the *market participant's* rights to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* are not suspended or restricted; or

7.3.12.3 issue a *suspension order* under section 7.3.12.1 and make such other order as the *market surveillance and compliance panel* considers appropriate under section 7.3.12.2,

and shall notify the *market participant*, the *EMC*, the *PSO*, the *transmission licensee*, the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee* accordingly.

7.3.13 Where, upon conclusion of the hearing referred to in section 7.3.11, the *market surveillance and compliance panel* intends to issue a *suspension order* to a *market participant* that is a *generation licensee* the *market surveillance and compliance panel* shall request that the *Authority* take action, which may include applying to the Minister responsible for the *Electricity Act* for the issuance of a special administration order under section 29(1)(a) of the *Electricity Act* in relation to the *market participant*, to ensure that all outstanding and future financial and other



obligations and liabilities of the *market participant* under the *market rules*, *market manuals* and the *system operation manual* will be met. The *Authority* shall promptly, following receipt of such request:

7.3.13.1 issue to the *market surveillance and compliance panel* a direction prohibiting the *market surveillance and compliance panel* from issuing a *suspension order* to the *market participant*, and notify the *market surveillance and compliance panel* of the action that the *Authority* proposes to take or to have taken in respect of the *market participant*; or

7.3.13.2 issue to the *market surveillance and compliance panel* a direction authorising the *market surveillance and compliance panel* to proceed with the issuance of a *suspension order* to the *market participant*.

Where section 7.3.13.1 applies, the *market surveillance and compliance panel* shall so notify the *market participant*, the *EMC*, and the *PSO* and shall not issue a *suspension order* to the *market participant* unless another *event of default* arises in respect of the *market participant*, in which case the provisions of this section 7.3 shall apply in respect of such *event of default*, or the *Authority* directs the *market surveillance and compliance panel* to issue a *suspension order* to the *market participant*. Where section 7.3.13.2 applies, the *market surveillance and compliance panel* may issue a *suspension order* to the *market participant* and shall notify the *market participant*, the *EMC*, the *PSO* and the *Authority* accordingly.

7.3.14 Where, upon conclusion of the hearing referred to in section 7.3.11, the *market surveillance and compliance panel* intends to issue a *suspension order* to the *transmission licensee* or a *market support services licensee* (as the case may be), the *market surveillance and compliance panel* shall request that the *Authority* take action, which may include applying to the Minister responsible for the *Electricity Act* for the issuance of a special administration order under section 29(1)(a) of the *Electricity Act* in relation to the *transmission licensee* or the *market support services licensee*, as the case may be, to ensure that all outstanding and future financial and other obligations of the *transmission licensee* or the *market support services licensee* under the *market rules*, *market manuals* and the *system operation manual* will be met. The *Authority* shall promptly, following receipt of such request:

7.3.14.1 issue to the *market surveillance and compliance panel* a direction prohibiting the *market surveillance and compliance panel* from issuing a *suspension order* to the *transmission licensee* or the *market support services licensee*, as the case may be, and notify the *market surveillance and compliance panel* of the action that it proposes to take or to have taken in

respect of the *transmission licensee* or the *market support services licensee*, as the case may be; or

- 7.3.14.2 issue to the *market surveillance and compliance panel* a direction authorising the *market surveillance and compliance panel* to proceed with the issuance of a *suspension order* to the *transmission licensee* or the *market support services licensee*, as the case may be.

Where section 7.3.14.1 applies, the *market surveillance and compliance panel* shall so notify the *transmission licensee* or the *market support services licensee*, as the case may be, the *EMC* and the *PSO* and shall not issue a *suspension order* to the *transmission licensee* or the *market support services licensee* unless another *event of default* arises in respect of the *transmission licensee* or the *market support services licensee*, in which case the provisions of this section 7.3 shall apply in respect of such *event of default*, or the *Authority* directs the *market surveillance and compliance panel* to issue a *suspension order* to the *transmission licensee* or the *market support services licensee*. Where section 7.3.14.2 applies, the *market surveillance and compliance panel* may issue a *suspension order* to the *transmission licensee* or the *market support services licensee*, as the case may be, and shall notify the *transmission licensee* or the *market support services licensee*, the *EMC*, the *PSO* and the *Authority* accordingly.

- 7.3.15 The *market surveillance and compliance panel* may lift a *suspension order* if the event that 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 *suspended market participant's* registration as a *market participant* as the *market surveillance and compliance panel* determines appropriate, including:

- 7.3.15.1 establishing a lower percentage of *estimated net exposure* for the purpose of notifying a *market participant* or issuing a *margin call* to a *market participant* than would otherwise be the case under section 7.4 of Chapter 2; and

- 7.3.15.2 imposing more stringent prudential requirements than would otherwise be the case under section 7 of Chapter 2,

and shall notify the *market participant*, the *EMC*, the *PSO*, the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee* accordingly.

- 7.3.16 Following the issuance of a *suspension order*, the *market surveillance and compliance panel* may, notwithstanding any other provisions of

these *market rules*, do one or more of the following to give effect to the *suspension order*:

- 7.3.16.1 instruct *EMC* to reject any *offer* or *bilateral contract data* submitted by the *suspended market participant*;
  - 7.3.16.2 instruct *EMC* to withhold the payment of any amounts otherwise due to the *suspended market participant* under the *market rules*; or
  - 7.3.16.3 make such further order or issue such directions to the *suspended market participant*, other *market participants*, a *market support services licensee*, *EMC* or the *PSO* as the *market surveillance and compliance panel* determines appropriate in order to preserve the financial integrity of the *wholesale electricity markets*.
- 7.3.17 Where section 7.3.16.2 applies in respect of a *suspended market participant* that is a *generation licensee*, any amounts that may be owing to the *suspended market participant* on account of injections by any of the *suspended market participant's* affected *generation facilities* while the *suspension order* is in effect shall be dealt with by the *market surveillance and compliance panel* in such manner as the *market surveillance and compliance panel* deems appropriate.
- 7.3.18 Where the *market surveillance and compliance panel* issues a *suspension order* against a *selling market participant*, such *suspension order* shall be deemed to constitute a revision to any *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 7.3.19, such that the *bilateral contract* quantities that relate to such period shall be considered by the *EMC* to be zero.
- 7.3.19 The *market surveillance and compliance panel* 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 *PSO*, the *EMC*, the *Authority* and, where the *suspended market participant* is a *contestable consumer* or *retail electricity licensee*, the applicable *market support services licensee* accordingly.
- 7.3.20 The *market surveillance and compliance panel* shall, immediately following the issuance of a *suspension order*, *publish* a notice to the effect that the rights of the *suspended market participant* to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* have been suspended or restricted, including details of the suspension. The *market*

*surveillance and compliance panel* shall *publish* a notice promptly after a *suspension order* is lifted, extended, modified or stayed.

7.3.21 From the time the *market surveillance and compliance panel* issues a *suspension order* to a *market participant*, the *suspended market participant* is ineligible to trade or enter into any transaction in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* to the extent specified in the *suspension order*, until such time that the *market surveillance and compliance panel* notifies the *suspended market participant* that the *suspension order* has been lifted or stayed and *publishes* a notice to that effect under section 7.3.20.

7.3.22 A *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 that may be made for the purpose of giving effect to the *suspension order* pursuant to section 7.3.16.

7.3.23 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 *EMC* in respect of any energy withdrawn from the *transmission system* 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 *EMC* or any other person, including a liability under section 9 of Chapter 2, which was incurred or arose under the *market rules*:

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

7.3.23.2 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, subject only to any applicable provisions of the Limitation Act (Cap. 163).

7.3.24 All decisions, directions and orders of the *market surveillance and compliance panel* shall be final and binding on the person(s) subjected thereto and shall not be subject to any appeal to any court of competent jurisdiction in Singapore except on issues of law, jurisdiction or natural justice.

## 7.4 TERMINATION ORDERS

7.4.1 The *market surveillance and compliance panel* may by *termination order* terminate a *suspended market participant's* right to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* where the *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 *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* if the *suspended market participant*:

7.4.1.1 has not remedied the *event of default* which triggered the issuance of the *suspension order* to the satisfaction of the *market surveillance and compliance panel* within twenty *business days* of the date of issuance of the *suspension order*;  
or

7.4.1.2 has notified the *market surveillance and compliance panel* in writing that it is not likely to remedy such *event of default*.

7.4.2 The *market surveillance and compliance panel* may:

7.4.2.1 by *termination order* terminate a *market participant's* right to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system*; or

7.4.2.2 by *revocation order* revoke the registration of one or more of a *market participant's* *registered facilities* under section 7.5.1,

if the *market participant* has been found by the *market surveillance and compliance panel* to be in breach of the *market rules, market manuals* or the *system operation manual* on a persistent basis.

7.4.3 Where the *market surveillance and compliance panel* intends to issue a *termination order*, the *market surveillance and compliance panel* shall give the *market participant* notice of its intention to do so. The notice, which shall be given no less than 5 *business days* prior to the intended date of issuance of the *termination order*, shall specify:

7.4.3.1 the grounds upon which the *termination order* is proposed to be issued and details of any evidence on which the *market surveillance and compliance panel* is relying in support of its intention to issue the *termination order*;

7.4.3.2 the time within which the *market participant* may make written representations as to why the *termination order* should not be issued; and

- 7.4.3.3 the right of the *market participant* to request a hearing before the *market surveillance and compliance panel* to show cause why the *termination order* should not be issued.
- 7.4.4 Where the *market surveillance and compliance panel* gives to a *market participant* the notice referred to in section 7.4.3, it shall notify the *PSO*, the *EMC*, the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee* of the giving of the notice.
- 7.4.5 Following expiry of the time noted in section 7.4.3.2, and after consideration of any representations made by the *market participant* pursuant to that section, the *market surveillance and compliance panel* may:
- 7.4.5.1 subject to section 7.4.6 and to section 7.4.8 or 7.4.9, issue the *termination order*; or
- 7.4.5.2 make such order, including the order referred to in section 7.4.2.2, where applicable, as the *market surveillance and compliance panel* determines appropriate in order to preserve the financial integrity of the *wholesale electricity markets* or to safeguard the *reliability* of the *PSO controlled system*, including restricting all or any of the *market participant's* rights to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system*,
- and shall notify the *market participant*, the *EMC*, the *PSO*, the *Authority* and, where the *market participant* is a contestable *consumer* or *retail electricity licensee*, the applicable *market support services licensee* accordingly.
- 7.4.6 Where the *market participant* has requested the hearing referred to in section 7.4.3.3, the *market surveillance and compliance panel* 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 *market surveillance and compliance panel* shall not issue the *termination order* until such hearing has been held and, where section 7.4.8 or 7.4.9 applies, the direction of the *Authority* referred to in section 7.4.8 or 7.4.9, as the case may be, authorising or directing the issuance of a *termination order* has been received.
- 7.4.7 Where the *market participant* requesting the hearing referred to in section 7.4.3.3 is alleged to have breached a section of the *market rules* referred to in section 7.1.6.1, the *system operation manual* or a *market manual*



referred to in section 7.1.6.3, one or more representatives of the *PSO* shall attend at any meeting convened pursuant to section 7.4.6.

7.4.8 Where the *market surveillance and compliance panel* intends to issue a *termination order* to a *market participant* that is a *generation licensee*, the *market surveillance and compliance panel* shall, at the time at which it provides the notice to the *Authority* referred to in section 7.4.4, request that the *Authority* take action, which may include applying to the Minister responsible for the *Electricity Act* for the issuance of a special administration order under section 29(1)(a) of the *Electricity Act* in relation to the *market participant*, to ensure that all outstanding and future financial and other obligations and liabilities of the *market participant* under the *market rules*, *market manuals* and the *system operation manual* will be met. The *Authority* shall promptly following receipt of such request:

7.4.8.1 notify the *market surveillance and compliance panel* of the action that the *Authority* proposes to take or to have taken in respect of the *market participant*, and issue to the *market surveillance and compliance panel* a direction prohibiting the *market surveillance and compliance panel* from issuing a *termination order* to the *market participant*; or

7.4.8.2 issue to the *market surveillance and compliance panel* a direction authorising the *market surveillance and compliance panel* to proceed with the issuance of a *termination order* to the *market participant*.

Where section 7.4.8.1 applies, the *market surveillance and compliance panel* shall so notify the *market participant*, the *EMC* and the *PSO* and shall not issue a *termination order* to the *market participant* unless the *market participant* is again in breach of the *market rules*, *market manuals* or the *system operation manual* on a persistent basis, in which case the provisions of this section 7.4 shall apply, or the *Authority* directs the *market surveillance and compliance panel* to issue a *termination order* to the *market participant*. Where section 7.4.8.2 applies, the *market surveillance and compliance panel* may issue a *termination order* to the *market participant* and shall notify the *market participant*, the *EMC*, the *PSO* and the *Authority* accordingly.

7.4.9 Where the *market surveillance and compliance panel* intends to issue a *termination order* to the *transmission licensee* or a *market support services licensee*, the *market surveillance and compliance panel* shall, at the time at which it provides the notice to the *Authority* referred to in section 7.4.4, request that the *Authority* take action, which may include applying to the Minister responsible for the *Electricity Act* for the issuance of a special administration order under section 29(1)(a) of the *Electricity Act* in relation to the *transmission licensee* or the *market support services licensee*, as the case may be, to ensure that all

outstanding and future financial and other obligations of the *transmission licensee* or the *market support services licensee* under the *market rules*, *market manuals* and the *system operation manual* will be met. The *Authority* shall promptly following receipt of such request:

- 7.4.9.1 notify the *market surveillance and compliance panel* of the action that the *Authority* proposes to take or to have taken in respect of the *transmission licensee* or the *market support services licensee*, as the case may be, and issue to the *market surveillance and compliance panel* a direction prohibiting the *market surveillance and compliance panel* from issuing a *termination order* to the *transmission licensee* or the *market support services licensee*; or
- 7.4.9.2 issue to the *market surveillance and compliance panel* a direction authorizing the *market surveillance and compliance panel* to proceed with the issuance of a *termination order* to the *transmission licensee* or the *market support services licensee*, as the case may be.

Where section 7.4.9.1 applies, the *market surveillance and compliance panel* shall so notify the *transmission licensee* or the *market support services licensee*, as the case may be, the *EMC* and the *PSO* and shall not issue a *termination order* to the *transmission licensee* or the *market support services licensee* unless the *transmission licensee* or the *market support services licensee* is again in breach of the *market rules*, *market manuals* or the *system operation manual* on a persistent basis, in which case the provisions of this section 7.4 shall apply, or the *Authority* directs the *market surveillance and compliance panel* to issue a *termination order* to the *transmission licensee* or the *market support services licensee*. Where section 7.4.9.2 applies, the *market surveillance and compliance panel* may issue a *termination order* to the *transmission licensee* or the *market support services licensee*, as the case may be, and shall notify the *transmission licensee* or the *market support services licensee*, the *EMC*, the *PSO* and the *Authority* accordingly.

- 7.4.10 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 *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* shall be terminated. Without prejudice to section 7.4.13, the registration of the *terminated market participant* shall be revoked as of the date of issuance of the *termination order*.
- 7.4.11 Where a *termination order* has been issued to a terminated market participant that is a *generation licensee*, any amounts that may be owing to the terminated *market participant* on account of injections by any of the terminated *market participant's generation facilities* after the date on which the *termination order* was issued shall be dealt with by the *market*



*surveillance and compliance panel* in such manner as the *market surveillance and compliance panel* deems appropriate.

- 7.4.12 The *market surveillance and compliance panel* shall, immediately following the issuance of a *termination order*, *publish* a notice to the effect that the rights of the *terminated market participant* to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* have been terminated.
- 7.4.13 A *terminated market participant* shall remain subject to and liable for all of its obligations and liabilities as a *market participant*, including a liability under section 9 of Chapter 2 or a liability in respect of adjustments arising from *metering errors* under Chapter 7, which were incurred or arose under the *market rules*, a *market manual* or the *system operation manual* 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, subject only to any applicable provisions of the Limitation Act (Cap. 163).
- 7.4.14 Once the *EMC* is satisfied that a *terminated market participant* has no remaining financial obligations or liabilities under the *market rules*, including a liability under section 9 of Chapter 2 or an actual, contingent or prospective liability in respect of adjustments arising from *metering errors* under Chapter 7, the *EMC* shall return to the person all remaining *credit support*, if any, held by the *EMC* in respect of such person.
- 7.4.15 A *terminated market participant* that wishes to be readmitted as a *market participant* shall be required to re-apply for registration as a *market participant* in accordance with the provisions of section 3 of Chapter 2, and shall so notify the *market surveillance and compliance panel* in writing. The *market surveillance and compliance panel* may instruct the *EMC* to impose such terms and conditions on the right of the *market participant* to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* as the *market surveillance and compliance panel* determines appropriate in the circumstances, whether or not such terms and conditions are otherwise applicable to other *market participants*.

## **7.5 REVOCATION OF REGISTRATION OF FACILITIES**

- 7.5.1 Where a *market participant* has been found to be in breach of the *market rules*, *market manuals* or the *system operation manual* on a persistent basis by the *market surveillance and compliance panel*, the *market surveillance and compliance panel* may, subject to section 7.5.7 or 7.5.8, pursuant to section 7.4.2.2 or section 7.4.5.2 and in lieu of issuing a *termination order* to the *market participant*, issue a *revocation order*

revoking the registration of such of the *market participant's registered facilities* as the *market surveillance and compliance panel* determines appropriate.

7.5.2 Where the *market surveillance and compliance panel* intends to issue a *revocation order* pursuant to section 7.4.2.2 or section 7.4.5.2, the *market surveillance and compliance panel* shall give the *market participant* notice of its intention to do so. The notice, which shall be given no less than 5 *business days* prior to the intended date of issuance of the *revocation order*, shall specify:

7.5.2.1 the grounds upon which the *revocation order* is proposed to be issued and details of any evidence on which the *market surveillance and compliance panel* is relying in support of its intention to issue the *revocation order*;

7.5.2.2 the time within which the *market participant* may make written representations as to why a *revocation order* should not be issued; and

7.5.2.3 the right of the *market participant* to request a hearing before the *market surveillance and compliance panel* to show cause why a *revocation order* should not be issued.

7.5.3 Where the *market surveillance and compliance panel* gives to a *market participant* the notice referred to in section 7.5.2, it shall notify the *PSO*, the *EMC*, the *Authority* and, where the *market participant* is a contestable *consumer*, the applicable *market support services licensee* of the giving of the notice.

7.5.4 Following expiry of the time noted in section 7.5.2.2, and after consideration of any representations made by the *market participant* pursuant to that section, the *market surveillance and compliance panel* may:

7.5.4.1 subject to section 7.5.5 and to section 7.5.7 or 7.5.8, issue a *revocation order* cancelling the registration of such of the *market participant's registered facilities* as the *market surveillance and compliance panel* determines appropriate; or

7.5.4.2 make such order as the *market surveillance and compliance panel* determines appropriate in order to preserve the financial integrity of the *wholesale electricity markets* or to safeguard the *reliability* of the *PSO controlled system*, including restricting all or any of the *market participant's* rights to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system*,

and shall notify the *PSO*, the *EMC*, the *Authority* and, where the *market participant* is a contestable *consumer*, the applicable *market support services licensee* accordingly.

- 7.5.5 Where the *market participant* has requested the hearing referred to in section 7.5.2.3, the *market surveillance and compliance panel* shall conduct a hearing providing the *market participant* with a reasonable opportunity to show cause as to why a *revocation order* should not be issued against it. In such case, the *market surveillance and compliance panel* shall not issue the *revocation order* until such hearing has been held and, where section 7.5.7 or 7.5.8 applies, the direction from the *Authority* referred to in section 7.5.7 or 7.5.8, as the case may be, authorising or directing the issuance of a *revocation order* has been received.
- 7.5.6 Where the *market participant* requesting the hearing referred to in section 7.5.2.3 is alleged to have breached a section of the *market rules* referred to in section 7.1.6.1, the *system operation manual* or a *market manual* referred to in section 7.1.6.3, one or more representatives of the *PSO* shall attend at any meeting convened pursuant to section 7.5.5.
- 7.5.7 Where the *market surveillance and compliance panel* intends to issue a *revocation order* to a *market participant* that is a *generation licensee*, the *market surveillance and compliance panel* shall, at the time at which it provides the notice to the *Authority* referred to in section 7.5.3, request that the *Authority* take action, which may include applying to the Minister responsible for the *Electricity Act* for the issuance of a special administration order under section 29(1)(a) of the *Electricity Act* in relation to the *registered facilities* of the *market participant* that would be the subject of the *revocation order*, to ensure that all outstanding and future financial and other obligations and liabilities of the *market participant* under the *market rules*, *market manuals* and the *system operation manual* in respect of such *registered facilities* will be met. The *Authority* shall promptly following receipt of such request:
- 7.5.7.1 notify the *market surveillance and compliance panel* of the action that the *Authority* proposes to take or to have taken in respect of the *registered facilities* of the *market participant* that would be the subject of the *revocation order*, and issue to the *market surveillance and compliance panel* a direction prohibiting the *market surveillance and compliance panel* from issuing a *revocation order* to the *market participant* in respect of such *registered facilities*; or
- 7.5.7.2 issue to the *market surveillance and compliance panel* a direction authorising the *market surveillance and compliance panel* to proceed with the issuance of a *revocation order* to the *market participant* in respect of such *registered facilities*

Where section 7.5.7.1 applies, the *market surveillance and compliance panel* shall so notify the *market participant*, the *EMC* and the *PSO* and shall not issue a *revocation order* to the *market participant* in respect of the applicable *registered facilities* unless the *market participant* is again in breach of the *market rules*, *market manuals* or the *system operation manual* on a persistent basis, in which case the provisions of this section 7.5 shall apply, or the *Authority* directs the *market surveillance and compliance panel* to issue a *revocation order* to the *market participant* in respect of such *registered facilities*. Where section 7.5.7.2 applies, the *market surveillance and compliance panel* may issue a *revocation order* to the *market participant* in respect of the applicable *registered facilities* and shall notify the *market participant*, the *EMC*, the *PSO* and the *Authority* accordingly.

7.5.8 Where the *market surveillance and compliance panel* intends to issue a *revocation order* to the *transmission licensee*, the *market surveillance and compliance panel* shall, at the time at which it provides the notice to the *Authority* referred to in section 7.5.3, request that the *Authority* take action, which may include applying to the Minister responsible for the *Electricity Act* for the issuance of a special administration order under section 29(1)(a) of the *Electricity Act* in relation to the *registered facilities* of the *transmission licensee* that would be the subject of the *revocation order*, to ensure that all outstanding and future financial and other obligations and liabilities of the *transmission licensee* under the *market rules*, *market manuals* and the *system operation manual* in respect of such *registered facilities* will be met. The *Authority* shall promptly following receipt of such request:

7.5.8.1 notify the *market surveillance and compliance panel* of the action that the *Authority* proposes to take or to have taken in respect of the *registered facilities* of the *transmission licensee* that would be the subject of the *revocation order*, and issue to the *market surveillance and compliance panel* a direction prohibiting the *market surveillance and compliance panel* from issuing a *revocation order* to the *transmission licensee* in respect of such *registered facilities*; or

7.5.8.2 issue to the *market surveillance and compliance panel* a direction authorising the *market surveillance and compliance panel* to proceed with the issuance of a *revocation order* to the *transmission licensee* in respect of such *registered facilities*.

Where section 7.5.8.1 applies, the *market surveillance and compliance panel* shall so notify the *transmission licensee*, the *EMC* and the *PSO* and shall not issue a *revocation order* to the *transmission licensee* in respect of the applicable *registered facilities* unless the *transmission licensee* is again in breach of the *market rules*, *market manuals* or the *system operation manual* on a persistent basis, in which case the provisions of this section 7.5 shall apply, or the *Authority* directs the *market surveillance and compliance panel* to issue a *revocation order* to the *transmission licensee* in respect of such *registered facilities*. Where section 7.5.8.2 applies, the *market surveillance and compliance panel* may issue a *revocation order* to the *transmission licensee* in respect of the applicable *registered facilities* and shall notify the *transmission licensee*, the *EMC*, the *PSO* and the *Authority* accordingly.

- 7.5.9 Upon a *revocation order* being issued revoking 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 *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* in respect of the *registered facilities* referred to in such *revocation order* shall be terminated.
- 7.5.10 Where a *revocation order* has been issued to a *market participant* that is a *generation licensee*, any amounts that may be owing to the *market participant* on account of injections by any of the *market participant's generation facilities* that are the subject of the *revocation order* after the date on which the *revocation order* was issued shall be dealt with by the *market surveillance and compliance panel* in such manner as the *market surveillance and compliance panel* deems appropriate.
- 7.5.11 The *market surveillance and compliance panel* shall, immediately following the issuance of a *revocation order*, *publish* a notice to the effect that the rights of the *market participant* to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* have been terminated in respect of the *registered facilities* referred to in such *revocation order*.
- 7.5.12 A *market participant* to whom a *revocation order* has been issued shall remain subject to and liable for:
- 7.5.12.1 all of its obligations and liabilities as a *market participant* in respect of any of its *registered facilities* that are not the subject of the *revocation order*;
  - 7.5.12.2 the payment of any monies to the *EMC* in respect of any *energy* withdrawn from the *transmission system* by the *registered facilities* that are the subject of the *revocation order* subsequent to the issuance of the *revocation order*; and

7.5.12.3 its obligations and liabilities to the *EMC* or any other person, including a liability under section 9 of Chapter 2, which was incurred or arose under the *market rules*, a *market manual* or the *system operation manual*:

- a. in respect of the *registered facilities* that are the subject of the *revocation order*; and
- b. prior to the date of issuance of the *revocation order*,

regardless of the date on which any claim relating thereto may be made, subject only to any applicable provisions of the Limitation Act (Cap. 163).

7.5.13 A *market participant* that wishes to re-register *registered facilities* the registration of which has been revoked pursuant to a *revocation order* shall be required to re-apply for their registration in accordance with the provisions of section 5 of Chapter 2, and shall so notify the *market surveillance and compliance panel* in writing. The *market surveillance and compliance panel* may instruct the *EMC* to impose such terms and conditions on the right of the *market participant* to participate in the *wholesale electricity markets* or to cause or permit a *physical service* to be conveyed into, through or out of the *transmission system* in respect of such *registered facilities* as the *market surveillance and compliance panel* determines appropriate in the circumstances, whether or not such terms and conditions are otherwise applicable to other *registered facilities*.

## **7.6 OFFICERS AND AGENTS**

7.6.1 If any director, officer, employee, partner, service provider or agent of a *market participant*, the *EMC* or the *PSO*, 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*, the *EMC* or the *PSO*, would constitute a breach of the *market rules*, a *market manual* or the *system operation manual*, such act or omission shall be deemed for the purposes of this section 7 to be the act or omission of the *market participant*, the *EMC* or the *PSO* as the case may be.