

Singapore Electricity Market Rules

Chapter 1

Introduction & Interpretation of the Market Rules

Energy Market Authority

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1 DEFINITIONS

1.1 MARKET RULES

- 1.1.1 The rules set forth in Chapters 1 to 8 are called the Singapore Electricity Market Rules and constitute the *market rules* made under the authority and for the purposes of the *Electricity Act*.

1.2 ITALICISED EXPRESSIONS

- 1.2.1 Italicised expressions used in the *market rules* have the meanings ascribed thereto in the definitions set forth in Chapter 8. Unless the context otherwise requires, words and phrases defined in the *Electricity Act* have the same meaning when used in the *market rules*.

2 LEGISLATIVE AUTHORITY

2.1 LEGISLATIVE AUTHORITY

2.1.1 The legislative authority for the *market rules* is contained in the *Electricity Act*. Specifically, subsection 46(1) of the *Electricity Act* contemplates that there will be made rules:

2.1.1.1 establishing and governing:

- a. *the wholesale electricity markets; and*
- b. *agreements and arrangements in connection with trading;*

2.1.1.2 governing the activities of the *EMC* and *market participants* in and in relation to the *wholesale electricity markets; and*

2.1.1.3 governing the operation of the *electricity system*.

2.1.2 Pursuant to subsection 3(3)(e) of the *Electricity Act*, the *market rules* also contain provisions designed to enable the *PSO* to fulfil the functions and duties described in that subsection relative to the security of *supply of electricity to consumers* and the *secure operation of the power system*.

3 MARKET RULES

3.1 OBJECTS AND CONTENT

3.1.1 The objects of the *market rules* are:

- 3.1.1.1 to establish and govern efficient, competitive and reliable markets for the wholesale sale and purchase of *electricity* and *ancillary services* in Singapore;
- 3.1.1.2 to provide *market participants* and *market support services licensees* with non-discriminatory access to the *transmission system*;
- 3.1.1.3 to facilitate competition in the *generation of electricity*; and
- 3.1.1.4 to protect the interests of *consumers* with respect to prices and the *reliability* and quality of *electricity* service.

3.1.2 Accordingly, the *market rules* include provisions:

- 3.1.2.1 governing the making, *modification* and *publication* of the *market rules*;
- 3.1.2.2 governing the conveying of *electricity* into, through or out of the *transmission system* and the provision of *ancillary services*;
- 3.1.2.3 governing the terms and conditions pursuant to which persons may be authorised by the *EMC* to participate in the *wholesale electricity markets* or to cause or permit *electricity* to be conveyed into, through or out of the *transmission system*;
- 3.1.2.4 governing the manner in which *electricity* and *ancillary services* are sold, purchased and *dispatched* in the *wholesale electricity markets*;
- 3.1.2.5 governing standards and procedures to be observed in emergencies affecting the *power system*;
- 3.1.2.6 authorising and governing the giving of directions by the *EMC* and the *PSO*;
- 3.1.2.7 authorising and governing the making of orders by the *EMC* and the *PSO*;

- 3.1.2.8 providing a mechanism for the resolution of certain disputes arising under the *market rules*;
- 3.1.2.9 providing mechanisms for monitoring, surveillance and investigation of activities in the *wholesale electricity markets* and the conduct of *market participants* and *market support services licensees*; and
- 3.1.2.10 providing generally for the exercise by the *EMC* and the *PSO* of such authority as may be necessary or desirable for the purpose of carrying out their respective functions, powers and duties in relation to the *wholesale electricity markets* and the *electricity system*.

3.2 CONTRACTUAL FORCE

- 3.2.1 In accordance with section 49 of the *Electricity Act*, the *market rules* have the effect of a contract between each *market participant* and the *EMC*. Each *market participant* and the *EMC* shall be deemed to have entered into a contract with one another under which each *market participant* and the *EMC* agree to perform and observe the *market rules* so far as they are applicable to each *market participant* and the *EMC* as provided for in the *market rules*.
- 3.2.2 The *market rules* have the effect of a contract between each *market participant* and the *PSO* by virtue of the execution by the *PSO* and each *market participant* of the *PSO/MP agreement* under which each *market participant* and the *PSO* agree to perform and observe the *market rules* so far as they are applicable to each *market participant* and the *PSO* as provided for in the *market rules*.
- 3.2.2A The *market rules* have the effect of a contract between the *EMC* and the *PSO* by virtue of the execution by the *EMC* and the *PSO* of the *EMC/PSO agreement* under which the *EMC* and the *PSO* agree to perform and observe the *market rules* so far as they are applicable to the *EMC* and the *PSO* as provided for in the *market rules*.
- 3.2.3 The *market rules* have the effect of a contract between the *EMC* and each *market support services licensee* referred to in section 3.2.4 by virtue of the execution by the *EMC* and such *market support services licensee* of an agreement under which the *EMC* and such *market support services licensee* agree to perform and observe the *market rules* so far as they are applicable to the *EMC* and such *market support services licensee* as provided for in the *market rules*.
- 3.2.4 Section 3.2.3 shall only apply to a *market support services licensee* that has been directed by the *Authority*, under the terms of the *market support*

services licensee's electricity licence, to enter into the agreement referred to in that section.

- 3.2.5 Subject to section 3.2.6, the *market rules* have the effect of a contract between the *PSO* and each *market support services licensee* by virtue of the execution by the *PSO* and each *market support services licensee* of an agreement under which each *market support services licensee* and the *PSO* agree to perform and observe the *market rules* so far as they are applicable to each *market support services licensee* and the *PSO* as provided for in the *market rules*.
- 3.2.6 Section 3.2.5 shall only apply where the agreement referred to in that section is required to be executed by the *PSO* and the *market support services licensee* in the applicable *market manual* in accordance with section 1.2.5.3 of Chapter 2.

3.3 COMING INTO FORCE AND TRANSITIONAL PROVISIONS

- 3.3.1 With the exception of section 2.4 of Chapter 7, the *market rules* shall come into force on the *market commencement date*.
- 3.3.2 The *Authority* shall determine the *market commencement date* and the *EMC* shall promptly *publish* a notice indicating the *market commencement date* so established.

4 THE EMC

4.1 RESPONSIBILITY FOR MARKET RULES

4.1.1 The body corporate responsible for the administration and supervision of the *market rules* is the *EMC*.

4.2 FUNCTIONS OF THE EMC

4.2.1 In accordance with subsection 43(1) of the *Electricity Act*, the functions of the *EMC* are to:

- 4.2.1.1 operate and administer the *wholesale electricity markets*;
- 4.2.1.2 schedule *generating units, loads* and the *PSO controlled grid*;
- 4.2.1.3 facilitate the planning and augmentation of the *PSO controlled grid*;
- 4.2.1.4 provide information and other services to facilitate decisions for investment and the use of resources in the *electricity industry*; and
- 4.2.1.5 exercise and perform the functions, powers and duties assigned to the *EMC* under the *Electricity Act*, its *electricity licence*, the *market rules* and applicable *codes of practice*,

the whole of which in accordance with the *market rules, market manuals, the system operation manual, the constituent documents, the electricity licence* of the *EMC* and *applicable law*.

4.3 COMPLIANCE WITH MARKET RULES

4.3.1 The *EMC* is bound to comply with, observe and perform any duties and obligations imposed on the *EMC* by the *market rules, all applicable market manuals* and the *system operation manual*.

5 THE PSO

5.1 FUNCTIONS OF THE PSO

5.1.1 In accordance with subsection 3(3)(e) of the *Electricity Act*, the function of the *PSO* is to ensure security of *supply of electricity to consumers* and to arrange for the *secure* operation of the *PSO controlled grid*.

5.1.2 Accordingly, the functions of the *PSO* include:

- 5.1.2.1 maintaining the *reliability* of the *PSO controlled system*;
- 5.1.2.2 forecasting and reporting on conditions on the *PSO controlled grid*;
- 5.1.2.3 coordinating the *outage* of facilities;
- 5.1.2.4 coordinating the actions of the *EMC* and *market participants* during emergencies; and
- 5.1.2.5 *dispatching* facilities,

the whole of which in accordance with the *market rules*, *market manuals*, the *system operation manual*, *operating agreements* and *applicable law*.

5.2 COMPLIANCE WITH MARKET RULES

5.2.1 The *PSO* is bound to comply with, observe and perform any duties and obligations imposed on the *PSO* by the *market rules*, *market manuals* and the *system operation manual*.

6 MARKET PARTICIPANTS

6.1 CLASSES OF MARKET PARTICIPANTS

6.1.1 The classes of *market participants* are described in section 2.1.1 of Chapter 2.

6.2 THIRD PARTY RIGHTS OR BENEFITS

6.2.1 Unless otherwise expressly stated in the *market rules* or the *Electricity Act*, a person, other than the *EMC*, the *PSO* and a *market support services licensee*, who is not a *market participant* is not entitled to any rights or benefits under the *market rules*, any *market manual* or the *system operation manual*.

6.3 COMPLIANCE WITH MARKET RULES

6.3.1 Subject to the terms of its *electricity licence* and to the *Electricity Act*, each *market participant* and each *market support services licensee* is bound to comply with, observe and perform any duties and obligations imposed on the *market participant* or the *market support services licensee* by the *market rules*, any *market manual* and the *system operation manual*.

6.4 AGENTS

6.4.1 A *market participant* or *market support services licensee* (the “*principal*”) may use any information system, communication system, business process, personnel or service provider or other agent to assist in performing the *principal*’s obligations under the *market rules*, any *market manual* or the *system operation manual*, upon the following conditions:

6.4.1.1 the *principal* shall, as between it and each of the *EMC* and the *PSO*, be bound by and fully liable for all acts or omissions of its personnel or *agents* as if those acts or omissions were its own; and

6.4.1.2 the *principal* shall, as between it and each of the *EMC* and the *PSO*, remain solely liable for the due performance of such obligations.

6.4.2 Section 6.4.1 shall not apply to the extent that the *Electricity Act*, the *electricity licence* of the *principal* or the *market rules* state otherwise.

- 6.4.3 If the *EMC* gives a *market participant* or *market support services licensee* notice that the use of an *agent* is not in the best interests of the *wholesale electricity markets*, the *market participant* or *market support services licensee* shall not use that *agent* on and from the effective date stated in the notice.
- 6.4.4 In the notice issued under section 6.4.3, the *EMC* shall state an effective date which shall be at least ten *business* days from when the notice is issued.
- 6.4.5 On and from the effective date stated in the notice issued under section 6.4.3:
- 6.4.5.1 the *EMC* shall not recognise the authority of the *agent*; and
 - 6.4.5.2 an act by the *agent* shall not constitute the performance of any obligation under the *market rules*, any *market manual* or the *system operation manual* by the *market participant* or *market support services licensee*.

7 INTERPRETATION AND RULES OF CONSTRUCTION

7.1 GENERAL

7.1.1 In the *market rules*, any *market manual* and the *system operation manual*, unless the context otherwise requires:

7.1.1.1 words importing the singular include the plural and vice versa;

7.1.1.2 words importing a gender include any gender;

7.1.1.3 when italicised, other parts of speech and grammatical forms of a word or phrase defined in the *market rules* have a corresponding meaning;

7.1.1.4 an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or body politic or collegiate;

7.1.1.5 a reference to a thing includes a part of that thing;

7.1.1.6 a reference to a Chapter, section, provision, condition, part or appendix is to a Chapter, section, provision, condition, part or appendix of the document in which the reference appears;

7.1.1.7 a reference in a Chapter of the *market rules*, other than in an appendix, to a section is to a section of that Chapter and a reference in an appendix of a Chapter to a section is to a section of that appendix;

7.1.1.8 a reference to any statute, subsidiary legislation, proclamation, ordinance, by-law, resolution, rule, order, supplements, gazette notification or directive includes all statutes, subsidiary legislation, proclamations, ordinances, by-laws or resolutions, rules, orders, supplements, gazette notifications or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all subsidiary legislation, proclamations, ordinances, orders, rules, supplements, gazette notifications, directives and by-laws of a legislative nature issued under that statute;

- 7.1.1.9 a reference to a document or provision of a document includes a *modification* or supplement to, or replacement or novation of, that document or that provision of that document, as well as any exhibit, schedule, appendix or other annexure thereto;
- 7.1.1.10 a reference to a person includes that person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- 7.1.1.11 a reference to a body (including, without limitation, an institute, association or authority), whether statutory or not, which ceases to exist or whose functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its functions, powers or duties;
- 7.1.1.12 a reference to sections of a document separated by the word "to" (i.e., "sections 1.1 to 1.4") shall be a reference to the sections inclusively;
- 7.1.1.13 a reference to the word "including" means "including but not limited to";
- 7.1.1.14 a reference to a month shall mean a calendar month; and
- 7.1.1.15 a reference to a year shall mean a calendar year.

7.2 HEADINGS

- 7.2.1 Headings in the *market rules*, in any *market manual* and in the *system operation manual* are inserted for convenience of reference only and shall not affect the interpretation of the applicable document, nor shall they be construed as indicating that all of the provisions of the document relating to any particular topic are to be found in any particular Chapter, section, subsection, clause, provision, part or appendix.

7.3 SHALL, MUST AND MAY

- 7.3.1 In the *market rules*, any *market manual* and the *system operation manual*, the words "shall" and "must" shall be construed as imperative and the word "may" shall be construed as permissive.

7.4 EXPLANATORY NOTES

7.4.1 Any provision in the *market rules* which is indicated as being an "explanatory note" or a "rule note" shall be deemed not to form a part of the *market rules*. Such explanatory notes or rule notes are inserted for convenience only and shall not affect the interpretation of the market rules nor be binding on the *EMC*, the *PSO*, any *market participant* or any *market support services licensee*.

7.5 COMPUTATION OF TIME

7.5.1 Unless otherwise stated, if the *market rules*, any *market manual* or the *system operation manual* refers to a number of days between two events, that number shall be computed by excluding the day on which the first event happens and including the day on which the second event happens.

7.5.2 Under Chapters 1 to 3 and 7, unless otherwise stated, if the deadline for doing any act or thing is not a *business day*, that deadline shall be extended to the end of the next *business day*.

7.6 CURRENCY

7.6.1 All references in:

7.6.1.1 the *market rules*, any *market manual* or the *system operation manual*;

7.6.1.2 a *settlement statement*; or

7.6.1.3 an *invoice*,

to a monetary amount are expressed in Singapore dollars.

7.6.2 Any payment required to be made by or to the *EMC*, by or to the *PSO*, by or to a *market participant* or by or to a *market support services licensee* pursuant to any of the documents referred to in sections 7.6.1.1 to 7.6.1.3 shall be made in Singapore dollars.

7.7 EXERCISE OF DISCRETION

7.7.1 Unless a contrary intention appears or the context otherwise requires, where a power is conferred or a duty is imposed on the *EMC* or the *PSO* under the *market rules*, any *market manual* or the *system operation manual*, the power may be exercised and the duty shall be performed from time to time as the circumstances may require.

7.8 RECORDS

7.8.1 Unless a contrary intention appears or the context requires otherwise requires, a reference in these *market rules* to a “record” shall be a reference to any record of information however recorded, whether in printed form, on film, by electronic means or otherwise and includes:

7.8.1.1 correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof;

7.8.1.2 any record that is capable of being produced from a machine readable record under the control of a person by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the person; and

7.8.1.3 any electronic record within the meaning of the Electronic Transactions Act (Cap. 88).

7.9 HIERARCHY OF REGULATIONS

7.9.1 The hierarchy of regulations shall be in the following sequence in order of priority and overriding precedence with the regulation first appearing in the sequence being of ultimate priority and overriding precedence:

- a. *Electricity Act*;
- b. *electricity licenses*;
- c. *transmission code*;
- d. *market rules*;
- e. regulated supply service code;
- f. market support services code;
- g. *metering code*; and
- h. code of conduct for retail electricity licensees.

7.9.2 In the event of any conflict between any of the above regulations, the regulation(s) first before appearing in the above sequence shall prevail.

8 MARKET MANUALS

- 8.1.1 The *EMC* may create, and the *EMC Board* may, subject to section 8.1.10, adopt one or more *market manuals* in accordance with the procedures set forth in sections 8.1.2 to 8.1.4. A *market manual* shall not come into force until:
- 8.1.1.1 approved by the *Authority* pursuant to section 8.1.5; and
 - 8.1.1.2 the date that is ten *business days* from the date of *publication* of the *market manual* or such later date as may be specified at the time of such *publication*, provided that such *publication* shall not be effected until such time as the approval referred to in section 8.1.1.1 has been given.
- 8.1.2 A *market manual* created by the *EMC* shall be *published* in draft form and submitted to the *rules change panel* for review. The *rules change panel* shall review a *market manual* submitted to it:
- 8.1.2.1 using such procedures;
 - 8.1.2.2 in consultation with such persons; and
 - 8.1.2.3 by means of such meetings,
- as it considers appropriate.
- 8.1.3 Following the conclusion of the review of a *market manual*, the *rules change panel* shall submit a written report, which the *EMC* shall *publish*, to the *EMC Board* indicating:
- 8.1.3.1 the recommendations of the *rules change panel* and the reasons for its recommendations; and
 - 8.1.3.2 a summary of any objections raised by any member of the *rules change panel* to the recommendations.
- 8.1.4 Following the receipt of the written report described in section 8.1.3, the *EMC Board* shall convene on one or more occasions and shall vote on whether to adopt the *market manual*. A resolution of the *EMC Board* passed by at least half of the directors then in office, excluding those who abstain voluntarily or who are required to abstain pursuant to the *constituent documents*, is required to adopt a *market manual*.
- 8.1.5 A *market manual* adopted by the *EMC Board* shall be submitted to the *Authority* for approval, together with a copy of the report of the *rules*

change panel referred to in section 8.1.3. The *Authority* shall approve the *market manual* unless the *Authority* determines that the *market manual*:

- 8.1.5.1 unjustly discriminates in favour of or against a *market participant*, a class of *market participants* or a *market support services licensee*;
 - 8.1.5.2 is inconsistent with the *market rules* or the *Electricity Act*;
or
 - 8.1.5.3 is inconsistent with the functions and duties of the *Authority* under section 3 of the *Electricity Act*.
- 8.1.6 In the event of an inconsistency between a provision in a *market manual* and:
- 8.1.6.1 a provision in the *market rules*; or
 - 8.1.6.2 a provision in the *Electricity Act*,
- the *market rules* or the *Electricity Act*, as the case may be, shall govern to the extent of the inconsistency.
- 8.1.7 Subject to section 8.1.6, once approved by the *Authority* pursuant to section 8.1.5, a *market manual* shall be *published* by the *EMC*. The *EMC*, the *PSO*, each *market participant* and each *market support services licensee* shall, subject where applicable to the provisions of their respective *electricity licences*, be bound to comply with the provisions of any such *market manual* once it has come into force in accordance with section 8.1.1.
- 8.1.8 The *EMC Board* or an *EMC Board Committee* may *modify*, replace or repeal any *market manual*. Subject to section 8.1.9, sections 8.1.1 to 8.1.7 shall apply *mutatis mutandis* to any *modification*, replacement or repeal of such *market manual*.
- 8.1.9 A *modification* to a *market manual* to correct a typographical or grammatical error, to effect a change of a non-material procedural nature or to effect a change which, in the opinion of the *rules change panel*, will not have a material effect on the conditions for participation in the *wholesale electricity markets* or the *reliable* operation of the *power system* is not required to be approved by the *Authority* and shall come into force on:
- 8.1.9.1 the date that is ten *business days* from the date of *publication* of the *modification*; or

8.1.9.2 such later date as may be specified at the time of such *publication*.

8.1.10 Any form, policy, guideline, standard or other document required by the *market rules* to be implemented as a *modification* to the *market rules* shall be implemented in accordance with the procedures set forth in section 5 of Chapter 3.

9 SYSTEM OPERATION MANUAL

- 9.1.1 The *PSO* shall create and adopt the *system operation manual* in accordance with this section 9.
- 9.1.2 The *system operation manual* shall not come into force or be used by the *PSO* in furtherance of its functions and duties under the *Electricity Act* or the *market rules* until:
- 9.1.2.1 the *PSO* has consulted with *market participants* in respect of any subject-matter to be covered by the *system operation manual* where and to the extent that these *market rules* require such consultation;
 - 9.1.2.2 the *PSO* has submitted the *system operation manual* for review by the *rules change panel* and has provided the *rules change panel* with a reasonable opportunity to submit comments in respect of the *system operation manual*;
 - 9.1.2.3 the *PSO* has published the *system operation manual*; and
 - 9.1.2.4 at least ten days, or such greater number of days as may be specified at the time of *publication* referred to in section 9.1.2.3, has elapsed from the date of such *publication*.
- 9.1.3 In the event of an inconsistency between a provision in the *system operation manual* and:
- 9.1.3.1 a provision in the *market rules*; or
 - 9.1.3.2 a provision in the *Electricity Act*,
- the *market rules* or the *Electricity Act*, as the case may be, shall govern to the extent of the inconsistency.
- 9.1.4 Subject to section 9.1.3, the *EMC*, the *PSO*, each *market participant* and each *market support services licensee* shall be bound to comply with the provisions of the *system operation manual* once it has come into force in accordance with section 9.1.2.
- 9.1.5 The *PSO* may *modify*, replace or repeal the *system operation manual*, and sections 9.1.1 to 9.1.4 shall apply *mutatis mutandis* to any such *modification*, replacement or repeal.

10 DELEGATION AND PANELS

- 10.1.1 Subject to section 10.1.2, delegation by the *EMC* of its functions, powers and duties under these *market rules* shall be governed by the provisions of the *constituent documents*, provided that the *EMC Board* shall not delegate to any person any of the functions, powers or duties that are expressly reserved to the *EMC Board* in these *market rules*.
- 10.1.2 Without prejudice to the right of the *EMC Board* to establish such other panels as it determines appropriate for the fulfilment of its functions, powers and duties under these *market rules*, the *EMC Board* shall establish and maintain a *rules change panel* and a *market surveillance and compliance panel* in accordance with the provisions of section 2 of Chapter 3.
- 10.1.3 Liability of members of the *rules change panel* and the *market surveillance and compliance panel* shall be governed by section 13.7.

11 NOTICE, NOTIFICATION, SERVICE AND FILING

11.1 PROVISION OF NOTICE

11.1.1 Subject to section 11.3, and unless otherwise stated, a notice, notification, service, filing, issuance or submission (each of these referred to in section 11 as a “notice”) shall be effected under the *market rules*, any *market manual* or the *system operation manual* in the following manner:

11.1.1.1 by courier or other form of personal delivery;

11.1.1.2 by prepaid mail to the addressee:

- a. at the address for service (if any) supplied by the addressee to the sender;
- b. at the address shown for that addressee in the list of *market participants* maintained under section 3.1.12 of Chapter 2 if the addressee is a *market participant*;
- c. at the registered office of the *EMC* if the addressee is the *EMC*; or
- d. at the registered office of the *PSO* if the addressee is the *PSO*; or

11.1.1.3 by facsimile or electronic mail addressed to the addressee at the facsimile number or electronic mail address supplied by the addressee to the sender.

11.2 TIME OF NOTICE

11.2.1 Subject to section 11.3, and unless otherwise stated, a notice shall be deemed duly effected at the following times:

	Method by which notice effected	Time notice deemed duly effected
11.2.1.1	By courier or other form of personal delivery	Upon actual receipt of the notice
11.2.1.2	By prepaid mail on day	- 4 th <i>business day</i> after day ‘D’

	'D' in accordance with section 11.1.1.2	<p>if to an address in Singapore; and</p> <ul style="list-style-type: none"> - 20th <i>business day</i> after day 'D' if to an address outside Singapore
11.2.1.3	By facsimile in accordance with section 11.1.1.3 where a complete transmission report is issued from the sender's facsimile transmission equipment indicating a day of transmission 'D' and time of transmission 'T'	<ul style="list-style-type: none"> - where the addressee is obliged to monitor receipt of such type of notice by facsimile at all times, on day 'D' and at time 'T'; and - in all other cases, <ul style="list-style-type: none"> - on day 'D' and at time 'T' if 'D' is a <i>business day</i> and 'T' is before 5:00 pm (addressee's time); or - on the 1st <i>business day</i> after day 'D' at 9:00 am if 'D' is not a <i>business day</i> or 'T' is after 5:00pm.
11.2.1.4	By electronic mail in accordance with section 11.1.1.3 where the notice is recorded by the sender's electronic communication system as having been first received at the electronic mail destination on day 'D' and at time 'T'	<ul style="list-style-type: none"> - where the addressee is obliged to monitor receipt of such type of notice by electronic mail at all times, on day 'D' and at time 'T'; and - in all other cases, <ul style="list-style-type: none"> - on day 'D' and at time 'T' if 'D' is a <i>business day</i> and 'T' is before 5:00 pm (addressee's time); or - on the 1st <i>business day</i> after day 'D' at 9:00 am if 'D' is not a <i>business day</i> or 'T' is after 5:00pm.

In this table, 'D' denotes a given day and 'T' denotes a given time.

11.3 NOTICE OF DIRECTIONS AND ORDERS

11.3.1 Unless otherwise stated, instructions, directions and orders of the *EMC* or the *PSO* may be given to *market participants* and *market support services licensees*:

11.3.1.1 in accordance with sections 11.1 or 11.2; or

11.3.1.2 by voice communication, in which case the instruction, direction or order shall be deemed duly given at the time of communication.

12 PUBLICATION

- 12.1.1 Subject to section 12.1.3, where any document or information, including the *market rules*, is required by the *market rules*, any *market manual*, the *system operation manual*, *applicable law*, the *constituent documents* or the *electricity licence* of the *EMC* to be *published* by the *EMC*, publication shall be effected by placing the document or information on the *EMC* web site. The document or information shall be deemed to be *published* when the document or information has been so placed.
- 12.1.2 Subject to section 12.1.3, where any document or information is required by the *market rules*, any *market manual*, the *system operation manual* or *applicable law* to be *published* by the *PSO*, the *PSO* shall submit such document or information to the *EMC* and the *EMC* shall place the document or information on the *EMC* web site. The document or information shall be deemed to be *published* when the document or information has been so placed.
- 12.1.3 Where the *market rules*, any *market manual*, the *system operation manual*, *applicable law*, the *constituent documents* or the *electricity licence* of the *EMC* prescribe a mode of publication other than that described in section 12.1.1 or 12.1.2 in respect of a specified document or information, the *EMC* or the *PSO*, as the case may be, shall, in addition to complying with section 12.1.1 or 12.1.2, comply with the publication requirement applicable to such document or information as is so prescribed. In such a case, the document or information shall be deemed to be *published* on the date on which the prescribed publication requirement has been satisfied.

13 LIABILITY AND INDEMNIFICATION

13.1 LIABILITY OF EMC

- 13.1.1 Except as otherwise provided in these *market rules*, the *EMC* shall not be liable for any claim, loss, cost, liability, obligation, action, judgement, suit, expense, disbursement or damages of a *market participant* or its directors, officers or employees whatsoever, howsoever arising and whether as claims in contract, claims in tort (including but not limited to negligence) or otherwise, arising out of any act or omission of the *EMC* in the execution or the purported execution of any function, power or duty under these *market rules*, any *market manual* or the *system operation manual* except to the extent that such claim, loss, cost, liability, obligation, action, judgement, suit, expense, disbursement or damages arises out of any wilful misconduct by or any negligent act or omission of the *EMC* in the execution or purported execution of any function, power or obligation under these *market rules*, any *market manual* or the *system operation manual*.
- 13.1.2 Subject to section 13.1.4, the *EMC* shall indemnify and hold harmless a *market participant* and the *market participant's* directors, officers and employees from any and all claims, losses, liabilities, obligations, actions, judgements, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the *market participant*, its directors, officers or employees from or in respect of any matter with respect to which liability may be imposed on the *EMC* pursuant to section 13.1.1.
- 13.1.3 For the purposes of section 13.1.1, an act or omission of the *EMC* effected in compliance with these *market rules*, any *market manual* or the *system operation manual* shall be deemed not to constitute wilful misconduct or a negligent act or omission.
- 13.1.4 Except as otherwise provided in these *market rules*, in no event shall the *EMC* be liable to indemnify and hold harmless a *market participant* or the *market participant's* directors, officers or employees from or in respect of:
- 13.1.4.1 any indirect or consequential loss or incidental or special damages including, but not limited to, punitive damages;
 - 13.1.4.2 any loss of profit, loss of contract, loss of opportunity or loss of goodwill; or,
 - 13.1.4.3 any damages where the amount claimed, exclusive of amounts claimed for costs, in respect of a given event or

circumstance and a given person, is in the aggregate less than \$5,000;

and no *market participant* shall assert or attempt to assert against the *EMC* any claim in respect of any of the losses or damages referred to in section 13.1.4.1 to 13.1.4.3.

- 13.1.5 Each *market participant* shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the *market participant* pursuant to section 13.1.2.

13.2 LIABILITY OF PSO

- 13.2.1 Except as otherwise provided in these *market rules*, the *PSO* shall not be liable for any claim, loss, cost, liability, obligation, action, judgement, suit, expense, disbursement or damages of a *market participant* or its directors, officers or employees whatsoever, howsoever arising and whether as claims in contract, claims in tort (including but not limited to negligence) or otherwise, arising out of any act or omission of the *PSO* in the execution or the purported execution of any function, power or duty under these *market rules*, any *market manual* or the *system operation manual* except to the extent that such claim, loss, cost, liability, obligation, action, judgement, suit, expense, disbursement or damages arises out of any wilful misconduct by or any negligent act or omission of the *PSO* in the execution or purported execution of any function, power or obligation under these *market rules*, any *market manual* or the *system operation manual*.
- 13.2.2 Subject to section 13.2.4, the *PSO* shall indemnify and hold harmless a *market participant* and the *market participant's* directors, officers and employees from any and all claims, losses, liabilities, obligations, actions, judgements, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the *market participant*, its directors, officers or employees from or in respect of any matter with respect to which liability may be imposed on the *PSO* pursuant to section 13.2.1.
- 13.2.3 For the purposes of section 13.2.1, an act or omission of the *PSO* effected in compliance with these *market rules*, any *market manual* or the *system operation manual* shall be deemed not to constitute wilful misconduct or a negligent act or omission.
- 13.2.4 Except as otherwise provided in these *market rules*, in no event shall the *PSO* be liable to indemnify and hold harmless a *market participant* or the *market participant's* directors, officers or employees from or in respect of:

- 13.2.4.1 any indirect or consequential loss or incidental or special damages including, but not limited to, punitive damages;
- 13.2.4.2 any loss of profit, loss of contract, loss of opportunity or loss of goodwill; or,
- 13.2.4.3 any damages where the amount claimed, exclusive of amounts claimed for costs, in respect of a given event or circumstance and a given person, is in the aggregate less than \$5,000;

and no *market participant* shall assert or attempt to assert against the *PSO* any claim in respect of any of the losses or damages referred to in sections 13.2.4.1 to 13.2.4.3.

- 13.2.5 Each *market participant* shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the *market participant* pursuant to section 13.2.2.

13.3 LIABILITY OF MARKET PARTICIPANTS

- 13.3.1 Except as otherwise provided in these *market rules*, a *market participant* shall not be liable for any claim, loss, cost, liability, obligation, action, judgement, suit, expense, disbursement or damages of the *EMC* or the *PSO*, their respective directors, officers or employees or any member of a *panel* whatsoever, howsoever arising and whether as claims in contract, claims in tort (including but not limited to negligence) or otherwise, arising out of any act or omission of the *market participant* in the execution or the purported execution of any function, power or duty under these *market rules*, any *market manual* or the *system operation manual* except to the extent that such claim, loss, cost, liability, obligation, action, judgement, suit, expense, disbursement or damages arises out of any wilful misconduct by or any negligent act or omission of the *market participant* in the execution or purported execution of any function, power or obligation under these *market rules*, any *market manual* or the *system operation manual*.
- 13.3.2 Subject to section 13.3.4, a *market participant* shall indemnify and hold harmless the *EMC*, the *PSO* or both, as the case may be, their respective directors, officers or employees and any member of a *panel* from any and all claims, losses, liabilities, obligations, actions, judgements, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the *EMC*, the *PSO* or both, as the case may be, their respective directors, officers or employees and any member of a *panel* from or in respect of any matter with respect to which liability may be imposed on the *market participant* pursuant to section 13.3.1.

13.3.3 For the purposes of section 13.3.1, an act or omission of a *market participant* effected in compliance with the *market rules*, any *market manual* or the *system operation manual* shall be deemed not to constitute wilful misconduct or a negligent act or omission.

13.3.4 Except as otherwise provided in these *market rules*, in no event shall a *market participant* be liable to indemnify and hold harmless the *EMC*, the *PSO*, their respective directors, officers or employees or any member of a *panel* from or in respect of:

13.3.4.1 any indirect or consequential loss or incidental or special damages including, but not limited to, punitive damages;

13.3.4.2 any loss of profit, loss of contract, loss of opportunity or loss of goodwill; or,

13.3.4.3 any damages where the amount claimed, exclusive of amounts claimed for costs, in respect of a given event or circumstance and a given person, is in the aggregate less than \$5,000;

and neither the *EMC* nor the *PSO* shall assert or attempt to assert against a *market participant* any claim in respect of any of the losses or damages referred to in section 13.3.4.1 to 13.3.4.3.

13.3.5 Nothing in this section 13.3 shall be read as limiting the right of the *EMC* to impose a financial penalty or other sanction, including the issuance of a *suspension order*, a *disconnection order* or a *termination order*, on a *market participant* in accordance with the provisions of these *market rules*.

13.3.6 Each of the *EMC* and the *PSO* shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the *EMC* or the *PSO*, as the case may be, pursuant to section 13.3.2.

13.4 FORCE MAJEURE

13.4.1 Subject to section 13.4.14, neither the *EMC* nor the *PSO* shall be liable to any *market participant* for any failure or delay in the performance of any of their respective obligations under these *market rules*, any *market manual* or the *system operation manual*, other than the obligation to make payments of money, to the extent that such failure or delay is due to a *force majeure event*, provided that the *EMC* or the *PSO*, as the case may be, shall only be excused from performance pursuant to this section 13.4.1:

13.4.1.1 for so long as the *force majeure event* continues and for such reasonable period of time thereafter as may be necessary for

the *EMC* or the *PSO*, as the case may be, to resume performance of the obligation; and

13.4.1.2 where and to the extent that the failure or delay in performance would not have been experienced but for such *force majeure event*.

13.4.2 Subject to section 13.4.14, a *market participant* shall not be liable to the *EMC* or the *PSO* for any failure or delay in the performance of any of its obligations under these *market rules*, any *market manual* or the *system operation manual*, other than the obligation to make payments of money, to the extent that such failure or delay is due to a *force majeure event*, provided that the *market participant* shall only be excused from performance pursuant to this section 13.4.2:

13.4.2.1 for so long as the *force majeure event* continues and for such reasonable period of time thereafter as may be necessary for the *market participant* to resume performance of the obligation; and

13.4.2.2 where and to the extent that such failure or delay would not have been experienced but for such *force majeure event*.

13.4.3 The *EMC*, the *PSO* or a *market participant* shall not invoke a *force majeure event* unless it has given notice in accordance with section 13.4.4 or 13.4.5, as the case may be.

13.4.4 Where the *EMC* or the *PSO* invokes a *force majeure event*, it shall give notice to *market participants* and shall *publish* notice of the *force majeure event* as soon as reasonably practicable but in any event within two *business days* of the date on which the *EMC* or the *PSO*, as the case may be, becomes aware of the occurrence of the *force majeure event*, which notice shall include particulars of:

13.4.4.1 the nature of the *force majeure event*;

13.4.4.2 the effect that such *force majeure event* is having on the *EMC's* or the *PSO's*, as the case may be, performance of its obligations under these *market rules*, any *market manual* or the *system operation manual*; and

13.4.4.3 the measures that the *EMC* or the *PSO*, as the case may be, is taking, or proposes to take, to alleviate the impact of the *force majeure event*.

13.4.5 Where a *market participant* invokes a *force majeure event*, it shall give notice to the *EMC* and the *PSO* of the *force majeure event* as soon as reasonably practicable but in any event within two *business days* of the

date on which the *market participant* becomes aware of the occurrence of the *force majeure event*, which notice shall include particulars of:

- 13.4.5.1 the nature of the *force majeure event*;
 - 13.4.5.2 the effect that such *force majeure event* is having on the *market participant's* performance of its obligations under these *market rules*, any *market manual* or the *system operation manual*; and
 - 13.4.5.3 the measures that the *market participant* is taking, or proposes to take, to alleviate the impact of the *force majeure event*.
- 13.4.6 Subject to section 13.4.7, where the *EMC*, the *PSO* or a *market participant* invokes a *force majeure event*, it shall:
- 13.4.6.1 use all reasonable endeavours to mitigate or alleviate the effects of the *force majeure event* on the performance of its obligations under these *market rules*, any *market manual* or the *system operation manual*; and
 - 13.4.6.2 continue to comply with its obligations under these *market rules*, any *market manual* or the *system operation manual* to the maximum extent practicable.
- 13.4.7 The settlement of any strike, lockout, restrictive work practice or other labour disturbance constituting a *force majeure event* shall be within the sole discretion of the *EMC*, the *PSO* or the *market participant*, as the case may be, involved in such strike, lockout, restrictive work practice or other labour disturbance and nothing in section 13.4.6 shall require the *EMC*, the *PSO*, or the *market participant*, as the case may be, to mitigate or alleviate the effects of such strike, lockout, restrictive work practice or other labour disturbance.
- 13.4.8 Where the *EMC* or the *PSO* invokes a *force majeure event*, it shall as soon as practicable *publish* notice of any material change in the information contained in the notice referred to in section 13.4.4 or in any previous notice given and *published* pursuant to this section 13.4.8.
- 13.4.9 Where a *market participant* invokes a *force majeure event*, it shall as soon as practicable notify the *EMC* and the *PSO* of any material change in the information contained in the notice referred to in section 13.4.5 or in any previous notice given pursuant to this section 13.4.9.
- 13.4.10 Where the *EMC* or the *PSO* invokes a *force majeure event*, it shall *publish* notice of the cessation of the *force majeure event* and of the cessation of

the effects of such *force majeure event* on the *EMC*'s or the *PSO*'s, as the case may be, performance of its obligations under these *market rules*.

13.4.11 Where a *market participant* invokes a *force majeure event*, it shall give notice to the *EMC* and the *PSO* of the cessation of the *force majeure event* and of cessation of the effects of such *force majeure event* on the *market participant's* performance of its obligations under these *market rules*.

13.4.12 The *EMC* shall *publish* any notice provided to it pursuant to section 13.4.5, 13.4.9 or 13.4.11.

13.4.13 Nothing in this section 13.4 shall be read as limiting the right of the *EMC* to impose on a *market participant* a sanction, other than a financial penalty, including the issuance of a *suspension order*, a *disconnection order* or a *termination order*, in accordance with the provisions of these *market rules*.

13.4.14 Nothing in this section 13.4 shall excuse the *EMC*, the *PSO* or a *market participant* from performing any of their respective obligations contained in:

13.4.14.1 those provisions of these *market rules*, any *market manual* and the *system operation manual* that govern the *EMC*, the *PSO* or the *market participant* during an emergency or while the *PSO controlled system* is in a *high-risk operating state* or an *emergency operating state*;

13.4.14.2 the Singapore electricity emergency plan;

13.4.14.3 the Singapore power system restoration plan;

13.4.14.4 the *EMC's* or the *market participant's*, as the case may be, emergency preparedness plan; or

13.4.14.5 the *market participant's* restoration plan *market participant* attachment,

during an emergency or while the *power system* is in a *high-risk operating state* or an *emergency operating state*.

13.5 CONTRACTUAL LIABILITY

13.5.1 The liability and indemnification provisions of sections 13.1 to 13.3 and, where applicable, of any other section of these *market rules* other than this section 13.5, and the *force majeure provisions* of section 13.4 shall apply to any agreement referred to in these *market rules* to which the *EMC* and a *market participant* or the *PSO* and a *market participant* are parties and to

all acts or omissions of the *EMC* or the *PSO*, as the case may be, or the *market participant* in the execution or purported execution of any function, power or duty under such agreement. In the event of an inconsistency between such liability, indemnification and *force majeure provisions* and the liability, indemnification and *force majeure provisions* of such agreement, the liability and indemnification provisions of sections 13.1 to 13.3 and, where applicable, of any other section of these *market rules* other than this section 13.5, and the *force majeure provisions* of section 13.4 shall prevail to the extent of the inconsistency.

13.6 CESSATION OF EFFECT OF CERTAIN SECTIONS

- 13.6.1 Subject to section 13.6.5, sections 13.1.1 to 13.1.3 shall cease to have effect in respect of any act or omission of the *EMC* that occurs on or after the date that is the last day of the 3rd month following the month in which the *market commencement date* occurs.
- 13.6.2 Subject to section 13.6.5, sections 13.2.1 to 13.2.3 shall cease to have effect in respect of any act or omission of the *PSO* that occurs on or after the date that is the last day of the 3rd month following the month in which the *market commencement date* occurs.
- 13.6.3 Subject to section 13.6.5, sections 13.3.1 to 13.3.3 shall cease to have effect in respect of any act or omission of a *market participant* that occurs on or after the date that is the last day of the 3rd month following the month in which the *market commencement date* occurs.
- 13.6.4 Subject to section 13.6.5, section 13.5.1 shall cease to have effect in respect of any agreement having an effective date that occurs on or after the date that is the last day of the 3rd month following the month in which the *market commencement date* occurs.
- 13.6.5 The *Authority* may, by notice given to the *EMC* no less than twenty *business days* prior to the date referred to in each of sections 13.6.1 to 13.6.4, extend the application of those sections for a period of three months. In such case, sections 13.6.1 to 13.6.4 shall remain in effect for an additional period of three months, calculated from the last day of the month referred to in those sections.
- 13.6.6 The *EMC* shall promptly *publish* any notice received from the *Authority* pursuant to section 13.6.5 and shall give notice of the extension of the application of sections 13.6.1 to 13.6.4 in the manner described in section 5.13.2 of Chapter 3.
- 13.6.7 The *Authority* shall not, in the exercise of the power referred to in section 13.6.5, extend the application of some but not all of sections 13.6.1 to 13.6.4.

13.6.8 The *Authority* may, subsequent to the initial exercise of the power referred to in section 13.6.5, extend the application of sections 13.6.1 to 13.6.4 for such further periods of three months each as the *Authority* determines appropriate. Sections 13.6.5 to 13.6.7 shall apply *mutatis mutandis* to each such additional extension.

13.7 LIABILITY OF PANEL MEMBERS AND DISPUTE RESOLUTION COUNSELLOR

13.7.1 No suit or other legal proceeding shall lie against the *dispute resolution counsellor* or any member of the *rules change panel*, the *market surveillance and compliance panel* or the *dispute resolution and compensation panel* for anything which is in good faith done or not done in the purported execution of the functions, powers and duties respectively of such office.

13.7.2 Nothing in section 13.7.1 shall be construed as limiting the right of a person to appeal from or seek the judicial review of a decision of the *rules change panel*, the *market surveillance and compliance panel* or an *arbitration tribunal* in accordance with these *market rules* and *applicable law*.

13.8 LIABILITY OF MARKET SUPPORT SERVICES LICENSEES

13.8.1 Sections 13.1, 13.3, 13.4 and 13.6 apply in respect of liability, indemnification and *force majeure* as between the *EMC* and any *market support services licensee* that has executed the agreement referred to in section 3.2.3 and, for such purpose, all references in sections 13.1, 13.3, 13.4 and 13.6 to a *market participant* shall be deemed to include references to any such *market support services licensee*.

13.8.2 Sections 13.2, 13.3, 13.4 and 13.6 apply in respect of liability, indemnification and *force majeure* as between the *PSO* and any *market support services licensee* that has executed the agreement with the *PSO* referred to in section 3.2.5 and, for such purpose, all references in sections 13.2, 13.3, 13.4 and 13.6 shall be deemed to include references to any such *market support services licensee*.

14 DEROGATIONS

14.1 SCOPE

14.1.1 Subject to section 14.1.2, a *derogation applicant* may, in accordance with section 14.2.1, apply to the *EMC* for a derogation from the application of any obligation, requirement or standard which is or may be imposed upon the *derogation applicant* or in respect of the *derogation applicant's* facilities or equipment pursuant to these *market rules*, any *market manuals* or the *system operation manual*.

14.1.2 [Intentionally Left Blank].

Explanatory Note: The preceding clause is reserved for any obligations (i.e., confidentiality, payment, etc.) with respect to which a derogation cannot be granted. The text would read:

This section 14 shall not apply in respect of any obligation, requirement or standard referred to in [•].

14.1.3 In this section 14, a reference to a *derogation applicant* shall, where the context so requires, be deemed to include a reference to a *derogation applicant* to whom a derogation has been granted pursuant to this section 14.

14.2 APPLICATION

14.2.1 A *derogation applicant* shall apply for a derogation by filing with the *EMC* a *derogation application* in such form as may be prescribed in the applicable *market manual* and containing the information and supporting documentation:

14.2.1.1 prescribed in the applicable *market manual*; and

14.2.1.2 described in section 14.2.2.

14.2.2 A *derogation application* shall include:

14.2.2.1 the identification of the specific obligation, requirement or standard that is the subject of the *derogation application*;

14.2.2.2 the reasons and a detailed justification for the *derogation application*;

14.2.2.3 a plan:

- a. containing:
 - (i) details of the manner and time within which the *derogation applicant* will become compliant with the obligation, requirement or standard that is the subject of the *derogation application*;
 - (ii) a request for a permanent derogation from any obligation, requirement or standard that is the subject to the *derogation application*; and
- b. specifying the manner in which the *derogation applicant* proposes to mitigate any adverse effects of any non-compliance the obligation, requirement or standard, and to operate or modify its equipment or facilities or to otherwise conduct its operations during the period of time for which the derogation would be in effect so as to operate in a manner that achieves, as closely as possible, the objectives of the obligation, requirement or standard that is the subject of the *derogation application*; and

14.2.2.4 the *derogation applicant's* estimate of any costs that may be imposed on the *EMC*, the *PSO*, *market participants* or *market support services licensees* if the derogation requested in the *derogation application* were to be granted.

14.3 PROCESSING OF DEROGATION APPLICATIONS

14.3.1 The *EMC Board* or an *EMC Board Committee* shall, within 20 *business days* of receipt of a *derogation application* or within such longer period of time as may be required having regard to the complexity of the *derogation application*:

14.3.1.1 subject to section 14.3.4, grant a derogation to the *derogation applicant*, on such terms and conditions as the *EMC Board* or the *EMC Board Committee* considers appropriate; or

14.3.1.2 reject the *derogation application*,

and shall provide reasons for its decision. Where the *EMC Board* or the *EMC Board Committee* does not expect to issue such decision within 20 *business days* of receipt of the *derogation application*, it shall so notify the *derogation applicant*, indicating the date on or before which the decision will be issued and the reasons for the inability to issue the decision within the 20 *business day* period.

14.3.2 In considering a *derogation application*, the *EMC Board* or an *EMC Board Committee* shall have regard to the following:

- 14.3.2.1 whether and the extent to which the derogation that is the subject of the *derogation application* would, if granted:
- a. materially threaten the ability of the *PSO* to direct the operation or maintain the *reliability* of the *PSO controlled system*;
 - b. materially affect the ability of the *EMC* to operate the *wholesale electricity markets* in an efficient manner;
 - c. give the *derogation applicant* an undue preference or advantage over other *market participants* in the *wholesale electricity markets*;
 - d. impose significant extra costs on *market participants* or *market support services licensees*; or
 - e. impose significant extra costs on the *EMC* or the *PSO*;
- 14.3.2.2 the adequacy and efficacy of the plan submitted by the *derogation applicant* pursuant to section 14.2.2.3;
- 14.3.2.3 whether the cost or delay to the *derogation applicant* of complying with the obligation, requirement or standard that is the subject of the *derogation application* is unreasonable, having regard to:
- a. the nature of such obligation, requirement or standard;
 - b. the identity and nature of the *derogation applicant*; and
 - c. the anticipated impact of non-compliance by the *derogation applicant* with such obligation, requirement or standard in terms of the elements referred to in section 14.3.2.1;
- 14.3.2.4 where section 14.3.4 applies, the submissions of the *PSO* with respect to the *derogation application*; and
- 14.3.2.5 such other matters as the *EMC Board* or the *EMC Board Committee* determines appropriate.

- 14.3.3 In considering a *derogation application*, the *EMC Board* or the *EMC Board Committee* may have regard to any previous decision on *derogation applications* but is not bound to follow any previous decision.
- 14.3.4 The *EMC* shall consult with the *PSO* in respect of any *derogation application* that would, if the derogation were granted, be likely to have the effect referred to in section 14.3.2.1(a). In such cases, the *EMC Board* or the *EMC Board Committee* shall not grant a derogation without the consent of the *PSO*.
- 14.3.5 A derogation granted pursuant to section 14.3.1.1 shall identify:
- 14.3.5.1 the obligation, requirement or standard that is the subject of the derogation;
 - 14.3.5.2 any terms and conditions attaching to the grant of the derogation, including the manner in which the *derogation applicant* must operate or modify its equipment or facilities or otherwise conduct its operations during the period of time for which the derogation is in effect; and
 - 14.3.5.3 the dates on which the derogation takes effect and expires.

14.4 EFFECT OF DEROGATION AND MONITORING

- 14.4.1 A *derogation applicant* to whom a derogation has been granted pursuant to this section 14 shall, for the period of time that the derogation is in effect:
- 14.4.1.1 not be required to comply with:
 - a. the obligation, requirement or standard in respect of which, and only to the extent to which, the derogation has been granted; or
 - b. any reporting or similar obligation to the extent that compliance with such obligation is rendered inapplicable by reason of the derogation; and
 - 14.4.1.2 comply with all of the terms and conditions of the derogation, including any *modified* terms and conditions imposed pursuant to section 14.5.5.2 or 14.5.8.2.
- 14.4.2 A *derogation applicant* to whom a derogation has been granted pursuant to this section 14 shall from time to time provide to the *EMC* such information as the *EMC* may request for the purposes of monitoring:

- 14.4.2.1 compliance by the *derogation applicant* with any terms and conditions of the derogation, including any *modified* terms and conditions imposed pursuant to section 14.5.5.2 or 14.5.8.2; and
 - 14.4.2.2 the progress of implementation by the *derogation applicant* of the plan referred to in section 14.2.2.3, as such plan may be *modified* by the terms and conditions of the derogation, including any *modified* terms and conditions imposed pursuant to section 14.5.5.2 or 14.5.8.2.
- 14.4.3 Failure by a *derogation applicant* to comply with any of the terms and conditions of a derogation, including any *modified* terms and conditions imposed pursuant to section 14.5.5.2 or 14.5.8.2, shall constitute a breach of these *market rules*.

14.5 CANCELLATION, RECONSIDERATION AND REVOCATION OF DEROGATIONS

- 14.5.1 A *derogation applicant* may, at any time prior to the date of expiry of a derogation, request that the *EMC Board* or an *EMC Board Committee* cancel the derogation on the date specified by the *derogation applicant* in the request, which date shall be earlier than the date of expiry of the derogation.
- 14.5.2 Upon receipt of a request referred to in section 14.5.1, the *EMC Board* or an *EMC Board Committee* shall cancel the derogation with effect from:
- 14.5.2.1 the date specified in the request; or
 - 14.5.2.2 such later date as may be specified by the *EMC Board* or the *EMC Board Committee*,
- and the derogation shall cease to have effect as of such date.
- 14.5.3 The *EMC Board* or an *EMC Board Committee* may at any time reconsider a derogation granted pursuant to this section 14 where the *EMC Board* or the *EMC Board Committee* determines that such reconsideration is necessary in light of a change in circumstances relative to the circumstances that existed on the date on which the derogation was granted.
- 14.5.4 Where the *EMC Board* or an *EMC Board Committee* intends to reconsider a derogation pursuant to section 14.5.3, it shall give notice of such intention to the *derogation applicant*, together with reasons, and shall provide the *derogation applicant* with a reasonable opportunity to show

cause as to why its derogation should not be withdrawn or *modified* pursuant to section 14.5.5.

14.5.5 Where the *EMC Board* or an *EMC Board Committee* reconsiders a derogation pursuant to section 14.5.3, the *EMC Board* or the *EMC Board Committee* may:

14.5.5.1 withdraw the derogation with effect from a specified date, having regard to the time needed to bring the applicable facility or equipment into compliance with the obligation, requirement or standard that is the subject of the derogation;

14.5.5.2 *modify* the derogation with effect from a specified date, having regard to the time needed to bring the applicable facility or equipment into compliance with such *modified* terms and conditions; or

14.5.5.3 confirm the derogation as originally granted,
and shall give reasons for its decision.

14.5.6 A derogation that is withdrawn pursuant to section 14.5.5.1 shall cease to have effect on the date referred to in that section.

14.5.7 In the event that the circumstances of section 14.5.3 arise as a result of the granting of subsequent derogations by the *EMC Board* or an *EMC Board Committee*, the *EMC* shall compensate the *derogation applicant* for any costs that will need to be incurred by it as a result of the withdrawal or *modification* of its derogation pursuant to section 14.5.5. The *EMC* shall recover any costs so paid in accordance with section 4.2.1 of Chapter 7.

14.5.8 Without prejudice to section 14.4.3, where a *derogation applicant* fails to comply with any term or condition of a derogation, including any *modified* terms and conditions imposed pursuant to section 14.5.5.2 or 14.5.8.2, the *EMC Board* or an *EMC Board Committee* may:

14.5.8.1 revoke the derogation with effect from a specified date; or

14.5.8.2 *modify* the derogation with effect from a specified date,
and shall give reasons for its decision.

14.5.9 Where the *EMC Board* or an *EMC Board Committee* intends to revoke or *modify* a derogation pursuant to section 14.5.8, it shall give notice of such intention to the *derogation applicant*, together with reasons, and shall provide the *derogation applicant* with a reasonable opportunity to show cause as to why its derogation should not be revoked or *modified*.

14.5.10 A derogation that is revoked pursuant to section 14.5.8.1 shall cease to have effect on the date referred to in that section.

14.6 TRANSFER OF DEROGATIONS

14.6.1 A derogation granted in respect of facilities or equipment shall remain in full force and effect in accordance with its terms notwithstanding the sale, assignment, lease, transfer of control or other disposition of such facilities or equipment by the *derogation applicant* to a third party transferee provided that:

14.6.1.1 the *derogation applicant* submits to the *EMC* a request for approval of the transfer of the derogation to such third party transferee in such form as may be prescribed in the applicable *market manual*; and

14.6.1.2 the *EMC Board* or an *EMC Board Committee* approves the transfer in accordance with section 14.6.2.

14.6.2 Subject to section 14.6.4.2, the *EMC Board* or an *EMC Board Committee* shall approve a request for the transfer of a derogation where:

14.6.2.1 the *EMC Board* or the *EMC Board Committee* is satisfied that the transfer would not affect the ability of the proposed transferee to comply with all of the terms and conditions of the derogation;

14.6.2.2 the proposed transferee is a *market participant* or undertakes in writing to the *EMC* to apply for registration as a *market participant*;

14.6.2.3 the proposed transferee and the *derogation applicant* undertake in writing to the *EMC* to provide such information and documentation as may be required by the *EMC* as a result of or to reflect the transfer;

14.6.2.4 the *EMC Board* or the *EMC Board Committee* is satisfied that the transfer of the derogation will not materially threaten the implementation of the plan referred to in section 14.2.2.3, as such plan may be *modified* by the terms and conditions of the derogation, including any *modified* terms and conditions imposed pursuant to section 14.5.5.2 or 14.5.8.2; and

14.6.2.5 the *EMC Board* or the *EMC Board Committee* is satisfied that the transfer of the derogation will not increase concerns relating to the elements referred to in section 14.3.2.1

beyond those that exist in respect of the *derogation applicant*.

14.6.3 The transfer of a derogation shall not take effect until:

14.6.3.1 the date on which the *EMC Board* or the *EMC Board Committee* approves the transfer;

14.6.3.2 where the proposed transferee is not a *market participant*, the date on which the proposed transferee is registered as a *market participant*; or

14.6.3.3 where the *derogation applicant* or the proposed transferee are required pursuant to section 14.6.2.3 to provide information or documentation, on the date on which such information or documentation is provided,

whichever is the later.

14.6.4 In considering a request for the transfer of a derogation, the *EMC Board* or an *EMC Board Committee* shall:

14.6.4.1 consult with the *PSO* if approval of the transfer would be likely to have the effect referred to in section 14.3.2.1(a); and

14.6.4.2 not approve the transfer without the consent of the *PSO*.

14.6.5 All references in this section 14 to a *derogation applicant* shall be deemed to include a reference to an approved transferee of that *derogation applicant*.

14.7 PUBLICATION, THIRD PARTY SUBMISSIONS AND COSTS

14.7.1 The EMC shall publish:

14.7.1.1 notice of each derogation application filed pursuant to section 14.2.1;

14.7.1.2 notice of the cancellation of a derogation pursuant to section 14.5.2;

14.7.1.3 notice of an intention to reconsider a derogation pursuant to section 14.5.3;

14.7.1.4 notice of each request for the transfer of a derogation filed pursuant to section 14.6.1.1; and

- 14.7.1.5 notice of any decision made pursuant to section 14.3.1, 14.5.5, 14.5.8 or 14.6.2.
- 14.7.2 Any person may make representations to the *EMC* in respect of a *derogation application*, the reconsideration of a derogation or a request for the transfer of a derogation within such time as the *EMC* may specify when it *publishes* the applicable notice pursuant to section 14.7.1.1, 14.7.1.3 or 14.7.1.4.
- 14.7.3 Subject to section 14.5.7, each *derogation applicant* shall bear all costs associated with:
- 14.7.3.1 the processing of its *derogation application*;
 - 14.7.3.2 the processing of a request to cancel its derogation;
 - 14.7.3.3 the processing of a request for the transfer of its derogation;
 - 14.7.3.4 the derogation granted to it, including compliance with the terms and conditions of the derogation including any *modified* terms and conditions imposed pursuant to section 14.5.5.2 or 14.5.8.2; and
 - 14.7.3.5 the provision and processing of the monitoring information referred to in section 14.4.2.
- 14.7.4 The costs of processing any of the elements referred to in sections 14.7.3.1 to 14.7.3.3 and 14.7.3.5 shall be considered to create an obligation under the *market rules* to pay the amount of such costs and such amount may, without prejudice to any other manner of recovery available under *applicable law*, be recovered accordingly.

14.8 DISPUTE RESOLUTION

- 14.8.1 A decision of the *EMC Board* or an *EMC Board Committee*:
- 14.8.1.1 rejecting a derogation application;
 - 14.8.1.2 respecting the terms and conditions of a derogation;
 - 14.8.1.3 revoking, withdrawing or *modifying* a derogation, other than with respect to the calculation of the costs referred to in section 14.5.7; or
 - 14.8.1.4 approving or denying the transfer of a derogation pursuant to section 14.6,

shall, subject to section 14.8.2, be final and binding and shall not be the subject of dispute resolution, appeal or review by the *derogation applicant* or any other person in any civil or other proceeding.

14.8.2 Section 14.8.1 shall not preclude a *derogation applicant* from disputing a decision referred to in that section in relation to matters of law and jurisdiction, including on the grounds that the *EMC Board* or the *EMC Board Committee*, as the case may be, failed to follow the procedures set forth in this section 14 in arriving at the decision.

14.8.3 A dispute that:

14.8.3.1 is not final and binding in accordance with section 14.8.1.3;
or

14.8.3.2 is subject to dispute resolution, appeal or review pursuant to section 14.8.2,

shall be resolved using the dispute resolution process described in section 3 of Chapter 3.

14.8.4 Initiation of the dispute resolution process shall, notwithstanding section 3.2.2 of Chapter 3, stay implementation of a decision to withdraw or *modify* a derogation pursuant to section 14.5.5.

15 INTERPRETATION BULLETINS

- 15.1.1 The *EMC* may, from time to time upon receipt of material requests for clarification of the interpretation or application of the *market rules*, *publish* bulletins as to the interpretation or application of the *market rules*.
- 15.1.2 Where the request for clarification referred to in section 15.1.1 relates to a section of the *market rules* that sets forth a function, power or duty of the *PSO*, any bulletin *published* pursuant to section 15.1.1 shall be prepared jointly by the *EMC* and the *PSO*.
- 15.1.3 No bulletin *published* pursuant to section 15.1.1 shall be binding on the *EMC* or the *PSO*.