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## Market Rule Amendment Proposal

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### PART 1 – MARKET RULE INFORMATION

Identification No.:	MR-00341-R00		
Subject:	Enforcement		
Title:	Revise Non-Compliance Level Descriptions and Incorporate Compliance Sanctioning Guidelines Framework		
Nature of Proposal:	<input checked="" type="checkbox"/> Alteration	<input type="checkbox"/> Deletion	<input checked="" type="checkbox"/> Addition
Chapter:	3	Appendix:	
Sections:	6.6		
Sub-sections proposed for amending:			

### PART 2 – PROPOSAL HISTORY

Version	Reason for Issuing	Version Date
1.0	Issued for Technical Panel Review and Comment	April 15, 2008
2.0	Published for Stakeholder Review and Comment	May 1, 2008
3.0	Draft for Technical Panel Vote	June 3, 2008
4.0	Recommended by Technical Panel: Submitted for IESO Board Approval	June 10, 2008
5.0	Approved by IESO Board	June 19, 2008
Approved Amendment Publication Date:	June 26, 2008	
Approved Amendment Effective Date:	September 10, 2008	

### PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

Provide a brief description of the following:

- The reason for the proposed amendment and the impact on the *IESO-administered markets* if the amendment is not made.
- Alternative solutions considered.
- The proposed amendment, how the amendment addresses the above reason and impact of the proposed amendment on the *IESO-administered markets*.

#### Summary

The amendment proposes to include in the market rules the framework used by the Market Assessment and Compliance Division (MACD) to establish a financial penalty greater than \$10,000. This framework is currently found in the MACD sanctioning guidelines. In addition, this amendment includes revisions to the descriptions of the non-compliance levels in section 6.6.3.

The additions and modifications to the existing rules would give market participants a greater degree of certainty about when they might be subject to financial penalties greater than \$10,000, what factors would be considered and the gradations up to \$1 million. Furthermore, the amendments to section 6.6.3 add clarity and transparency to better reflect the factors considered by the IESO when determining a level of non-compliance for penalties up to \$10,000.

#### Background

In November 2006, the IESO Board approved MR-00284 – Include Reliability Impact as Criterion for determining Financial Penalties. The amendments ensure that breaches of the market rules that have an impact on reliability are treated consistently with breaches that have an impact on market operations. Furthermore, the introduction into the rules of a maximum financial penalty (\$1 million) addressed stakeholder concerns regarding the previous unlimited liability facing market participants for breaches of the market rules<sup>1</sup>.

On December 11, 2006, Hydro One filed an application with the OEB under subsection 33(4) of the *Electricity Act, 1998* for a review of market rule amendment MR-00284. The IESO and Hydro One agreed to settle the application and outlined the terms of the settlement in a letter of understanding dated January 11, 2007. MACD addressed this objective by establishing a stakeholder forum to consult on the development of the sanctioning guidelines which addressed stakeholder concerns. As of June 20, 2007, the sanctioning guidelines were effective and were published<sup>2</sup>.

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<sup>1</sup> For more information on MR-00284, please visit the amendment archive page (<http://www.ieso.ca/imoweb/amendments/amendArchive.asp> )

<sup>2</sup> The guidelines are available on the IESO public web-site at the following link:

<http://www.ieso.ca/imoweb/pubs/consult/se34/se34-20070620-Sanctioning-Guidelines.pdf>

### **PART 3 – EXPLANATION FOR PROPOSED AMENDMENT**

In addition to the sanctioning guideline consultation, MACD undertook to introduce market rule amendments which would incorporate the sanctioning guideline principles in to the rules. The rule amendments would be used in conjunction with the sanctioning guidelines. The IESO committed to bring such amendments forward within the 12 months following the letter of understanding.

The IESO has yet to apply the sanctioning guidelines as there have been no circumstances warranting their application.

For further information on the compliance sanctioning guidelines, refer to MR-00341-Q00.

In addition to the above issue, there have been several instances where misunderstandings and disagreements have arisen between the IESO and a market participant regarding the appropriate non-compliance level for a non-compliance event. Although these disagreements have been resolved, the IESO believes clarification of the non-compliance level descriptions is warranted to avoid future misunderstandings and disagreements and to increase transparency on how the IESO determines non-compliance levels.

#### **Discussion**

##### **Sanctioning Guidelines**

This amendment proposes to include the framework used by MACD to establish a financial penalty greater than \$10,000 but up to \$1 million. This addition would give market participants a greater degree of certainty about when they might be subject to financial penalties greater than \$10,000, what factors would be considered and the gradations up to \$1 million.

This framework starts on page 7 of this proposal as part of section 6.6.6A through 6.6.7 in chapter 3 of the market rules. Sections 6.6.6A.1 through 6.6.6A.4 were previously section 6.6.13. This section was moved before the sanctioning guideline insert for flow and ease of reading with the rest of section 6.6. The non-compliance level table and the establishment of the penalty ranges within that table are taken directly from the published MACD sanctioning guidelines.

##### **Clarification of Non-Compliance Level Descriptions**

In addition, this amendment clarifies the descriptions of the non-compliance levels, as the existing rules have caused confusion amongst market participants. The clarity provided by this amendment would improve transparency and remove ambiguity.

The revised descriptions of the non-compliance levels start on page 4 of this proposal in sections 6.6.2A and 6.6.3. The second bullet in section 6.6.2A is a new authority added to allow MACD to establish appropriate non-compliance levels when circumstances do not fit any level definition or when times to remedy non-compliance events are unreasonable. The levels themselves are rewritten for clarity.

##### **Additional Factor to Consider when Determining Penalty Amounts**

The IESO also proposes adding an additional factor to section 6.6.7 for voluntary repayment of any benefit obtained as a result of a breach. This factor is currently considered as an action in factor 6.6.7.5 (an action of the market participant on becoming aware of the breach). However, for transparency, the IESO proposes adding voluntary repayment by the market participant as a separate consideration factor.

### PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

These factors are seen in section 6.6.7, starting on page 8 of this proposal. The IESO also proposes the addition of factors 6.6.7.12 and 6.6.7.13, which are taken directly from the published compliance sanctioning guidelines. This addition is part of the incorporation of the compliance sanctioning guidelines into the Market Rules.

Furthermore, the revised wording for factor 6.6.7.10 was stakeholdered for the compliance sanctioning guidelines. The revision was to include the words “actual or potential” to describe the impact of the breach. The wording of factor 6.6.7.9 was revised to be consistent with factor 6.6.7.10, as the intent is the same.

### PART 4 – PROPOSED AMENDMENT

## 6.6 Non-compliance Letters and Financial Penalties

6.6.1 This section 6.6 sets forth the manner in which the *IESO* will pursuant to section 6.2.7 issue non-compliance letters and fix financial penalties to be imposed on *market participants* for breaches of the *market rules*.

6.6.2 Where the *IESO* has determined that it is appropriate to issue a letter of non-compliance [under 6.6.5](#) or impose a financial penalty [under section 6.6.6](#) upon a *market participant*, the *IESO* shall:

6.6.2.1 determine the level of non-compliance by the *market participant* in accordance with section 6.6.3;

6.6.2.2 determine the rate of recurrence of non-compliance by the *market participant* in accordance with section 6.6.4;

6.6.2.3 based on the determinations made in accordance with sections 6.6.2.1 and 6.6.2.2, ~~determine whether to~~ issue a non-compliance letter or impose a financial penalty; and

6.6.2.4 where a determination is made to impose a financial penalty, fix the amount of the penalty in accordance with section 6.6.6.

6.6.2A3 [When determining the particular level of non-compliance referred to in section 6.6.2.1, the IESO shall establish:](#)

- [whether all of the conditions for a level have been met; and](#)
- [that the manner and time, proposed by the market participant, within which the non-compliance event will be remedied are reasonable under the circumstances.](#)

If a market participant

- meets some but not all of the conditions of any single level; or
- proposes a manner and time in which the non-compliance event will be remedied that are not reasonable under the circumstances in the opinion of the IESO,

then the IESO shall assign what it considers to be the appropriate non-compliance level.

6.6.3 The IESO shall determine the level of non-compliance referred to in section 6.6.2.1 as follows:

6.6.3.1– Level “L1” shall apply where the market participant:

- (i) failed to comply, in part, with the requirements of a market rule, and
- (ii) on its own initiative informed the IESO on a timely basis of:
  - the reasons for the non-compliance, and
  - the manner and time in which the non-compliance will be remedied.

6.6.3.2– Level “L2” shall apply where the market participant:

- (i) failed to comply in whole with the requirements of a market rule, and
- (ii) on its own initiative informed the IESO on a timely basis of:
  - the reasons for the non-compliance, and
  - the manner and time in which the non-compliance will be remedied.

6.6.3.3– Level “L3” shall apply where the market participant:

- (i) failed to comply, in whole or in part, with the requirements of a market rule,
- (ii) did not on its own initiative inform the IESO on a timely basis of the non-compliance; but
- (iii) did inform, at the IESO’s request and within the time specified in the request, the IESO of:
  - the reasons for the non-compliance, and
  - the manner and time in which the non-compliance will be remedied.

6.6.3.4— Level “L4” shall apply where the *market participant*:

- (i) failed to comply, in whole or in part, with the requirements of a *market rule*,
- (ii) did not on its own initiative inform the *IESO* on a timely basis of the non-compliance; and
- (iii) did not inform, at the *IESO*’s request and within the time specified in the request, the *IESO* of:
  - the reasons for the non-compliance, and
  - the manner and time in which the non-compliance will be remedied.

~~6.6.3.1— Level “L1” shall be determined where the *market participant* has complied in part, but not in whole, with all the requirements of a *market rule* and where the *market participant* has, on its own initiative, informed the *IESO* on a timely basis of the non-compliance, the reasons for non-compliance and the manner in and the time within which such non-compliance will be remedied;~~

~~6.6.3.2— Level “L2” shall be determined where the *market participant* has failed to comply with all of the requirements of a *market rule* and where the *market participant* has, of its own initiative, informed the *IESO* on a timely basis of the non-compliance, the reasons for non-compliance and the manner in which and the time within which such non-compliance will be remedied;~~

~~6.6.3.3— Level “L3” shall be determined where the *market participant* has failed to comply, in whole or in part, with all of the requirements of a *market rule* and has failed to inform the *IESO* of the non-compliance on its own initiative and on a timely basis but, at the *IESO*’s request and within the time specified in the request, informs the *IESO* of the reasons for non-compliance and the manner in which and the time within which such non-compliance will be remedied; and~~

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

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

6.6.5 [Intentionally left blank – section deleted] ~~Where the *IESO* has determined, based on the determinations made under section 6.6.2 and the provisions of the chart set forth in~~

~~section 6.6.6, that the applicable sanction is the issuance of a letter of non-compliance, the IESO shall issue a letter of non-compliance to the market participant.~~

6.6.6 Where the IESO has determined, based on the determinations made under section 6.6.2, that the applicable sanction is the imposition of a financial penalty, the IESO shall, subject to section 6.6.136A, consider the factors listed in section 6.6.7 and impose a financial penalty on the *market participant* within the ranges set out in the following table.:

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

6.6.6A The IESO may impose on a market participant a financial penalty in excess of the amount otherwise provided for in section 6.6.6 and no greater than \$1,000,000 per occurrence, where:

6.6.6A.1 the market participant has breached a market rule while a declaration that the IESO-controlled grid is in an emergency operating state or a high-risk operating state was in effect;

6.6.6A.2 the market participant breached a market rule while a declaration that market operations have been suspended was in effect;

6.6.6A.3 the IESO Board determines that the impact of the market participant's breach of a market rule on either the IESO-administered markets or the reliability of the integrated power system is particularly severe; or

6.6.6A.4 the rate of recurrence of non-compliance by the market participant with the market rules is of such frequency or duration as to warrant the imposition of a higher financial penalty.

6.6.6B Where at least one of the conditions of 6.6.6A are met and the IESO has determined that the applicable sanction is the imposition of a financial penalty, the IESO shall, consider the factors listed in section 6.6.7 and impose a financial penalty on the market participant within the ranges set out in the following table.

	<u>Non-Compliance Level (Severity and Breach History)</u>	

<u>Impact Level</u>	<u>Low</u>		<u>Moderate</u>		<u>High</u>		<u>Severe</u>	
	<u>Range Limit</u>		<u>Range Limit</u>		<u>Range Limit</u>		<u>Range Limit</u>	
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>
<u>Low</u> <u>Little or None</u>	<u>\$2,000</u>	<u>\$25,000</u>	<u>\$2,000</u>	<u>\$50,000</u>	<u>\$3,000</u>	<u>\$75,000</u>	<u>\$5,000</u>	<u>\$100,000</u>
<u>Medium</u> <u>Material</u>	<u>\$2,000</u>	<u>\$100,000</u>	<u>\$4,000</u>	<u>\$250,000</u>	<u>\$6,000</u>	<u>\$450,000</u>	<u>\$10,000</u>	<u>\$600,000</u>
<u>High</u> <u>Severe</u>	<u>\$4,000</u>	<u>\$250,000</u>	<u>\$8,000</u>	<u>\$500,000</u>	<u>\$12,000</u>	<u>\$750,000</u>	<u>\$20,000</u>	<u>\$1,000,000</u>

The IESO shall establish the penalty range at the intersection of the determined impact level and non-compliance level in accordance with the applicable market manual which includes:

- The IESO shall determine the impact level by examining all the impacts of the breach under investigation and selecting an appropriate impact level.
- The IESO shall determine the non-compliance level by examining breach history contributions, severity, and any aggravating or mitigating adjustments.

6.6.7 In fixing the amount of the financial penalty within the ranges described in the tables set forth in sections 6.6.6 and 6.6.6B, the IESO shall have regard to:

- 6.6.7.1 the circumstances in which the breach occurred;
- 6.6.7.2 the severity of the breach;
- 6.6.7.3 the extent to which the breach was inadvertent, negligent, deliberate or otherwise;
- 6.6.7.4 the length of time the breach remained unresolved;
- 6.6.7.5 the actions of the *market participant* on becoming aware of the breach;
- 6.6.7.6 whether the *market participant* disclosed the matter to the IESO on its own or whether it was prompted to do so;
- 6.6.7.7 any benefit that the *market participant* obtained or may have obtained as a result of the breach;
- 6.6.7.8 any previous breach by the *market participant* of the *market rules* or of the conditions of its *licence*;



6.6.7.9 the actual or potential impact of the breach on other *market participants*;

6.6.7.10 the actual or potential impact of the breach on the *IESO-administered markets* as a whole;

6.6.7.10A the actual or potential impact of the breach on the *reliability* of the *integrated power system*;

6.6.7.11 any sanctions that may be imposed on the *IESO* by a *standards authority* as a result of the breach; ~~and~~

~~6.6.7.12 such other matters as the *IESO* considers appropriate.~~

6.6.7.12 the immediacy of the threat that the breach poses to the *reliability* of the *integrated power system* or the *IESO-administered market*;

6.6.7.13 presence and quality of the *market participant's* compliance program;

6.6.7.14 whether on its own initiative, a *market participant* has undertaken to reasonably compensates the *IESO-administered market* for the value of any benefit it obtained as a result of the breach; and

6.6.7.15 such other matters as the *IESO* considers appropriate.

6.6.8 Where Appendix 3.1 provides for the imposition of a formula-based penalty in respect of the breach of a *market rule*, the *IESO* may issue a letter of non-compliance pursuant to sections 6.6.2.3 and 6.6.5 or impose a financial penalty upon the *market participant*, the amount of which shall be determined by the application of the following formula:

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

Where:

P = the amount of the financial penalty, in dollars

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

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

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

6.6.9 The amount C referred to in section 6.6.8 shall be determined, in respect of the breach of a particular *market rule*, by multiplying the *market price* prevailing at the time of the breach by an amount determined by the *IESO* having regard to the criteria set forth in section 6.6.7 and to the factors noted in sections 6.6.136A.1 to 6.6.6A13.4, where applicable.

6.6.10 Where Appendix 3.1 specifies more than one sanction in respect of the breach of a particular *market rule*, the *IESO* may impose all of the sanctions so specified on the *market participant* provided that no financial penalty may be imposed in respect of a breach for which the *IESO* has issued a letter of non-compliance pursuant to section 6.6.56.6.2.3. Nothing in this section 6.6.10 shall prevent the *IESO* from imposing a financial penalty for failure by a *market participant* to remedy a breach in respect of which a letter of non-compliance has been issued or if there is any repetition or continuation of such breach.

6.6.10A In respect of a breach of section 7.5.8A of Chapter 7, the *IESO* may:

6.6.10A.1 issue a letter of non-compliance or impose a financial penalty upon the *market participant* pursuant to sections 6.6.2.3, 6.6.5 and 6.6.6; and

6.6.10A.2 adjust *settlement amounts* paid or payable to a *registered market participant* such as *transmission rights* payments, congestion management *settlement* credits or other *settlement amounts* that the *registered market participant* received or avoided due to an act or omission or a course of conduct of either the *registered market participant* alone or the *registered market participant* by agreement or arrangement with one or more other *market participants* that led to the breach of section 7.5.8A of Chapter 7.

6.6.11 Nothing in this section 6.6 shall preclude the *IESO* from making an order under one or more of sections 6.2.7.1, 6.2.7.2, 6.2.7.3 or 6.2.7.6 in respect of a breach of the *market rules* with respect to which a sanction has been imposed pursuant to this section 6.6.

6.6.12 [Intentionally left blank]

6.6.12.1 [Intentionally left blank]

6.6.12.2 [Intentionally left blank]

~~6.6.13–[Intentionally left blank – section deleted]~~

~~\_\_\_\_\_The *IESO* may impose on a *market participant* a financial penalty in excess of the amount otherwise provided for in section 6.6.6 and no greater than \$1,000,000 per occurrence, where:~~

~~6.6.13.1—the *market participant* has breached a *market rule* while a declaration that the *IESO* controlled grid is in an emergency operating state or a high risk operating state was in effect;~~

~~6.6.13.2—the *market participant* breached a *market rule* while a declaration that *market operations* have been suspended was in effect;~~

~~6.6.13.3—the IESO Board determines that the impact of the market participant's breach of a market rule on either the IESO-administered markets or the reliability of the integrated power system is particularly severe; or~~

~~6.6.13.4—the rate of recurrence of non-compliance by the market participant with the market rules is of such frequency or duration as to warrant the imposition of a higher financial penalty.~~

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

## 6.7 Officers and Agents

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

### PART 5 – IESO BOARD DECISION RATIONALE

This amendment proposes to include in the market rules the framework used by the Market Assessment and Compliance Division (MACD) to establish a financial penalty greater than \$10,000. This framework is currently found in the MACD sanctioning guidelines. Including this framework in the market rules meets a commitment made by the IESO when developing the framework.