



Market Rule Amendment Proposal

PART 1 – MARKET RULE INFORMATION

Identification No.: MR-00203-R00	
Subject: IMO Administration / Panels	
Title: Bill 58 – Consequential Changes to the Powers of the Market Surveillance Panel	
Nature of proposal (please indicate with X): <u> X </u> Alteration <u> </u> Deletion <u> </u> Addition	
Chapter: 3	Appendix:
Sections: 3.3	
Sub-sections proposed for amending: 3.3.3 and 3.3.2A	

PART 2 – PROPOSAL HISTORY

Version	Reason for Issuing	Version Date
	Amendment submission (IMOTP 115-7b) received by Technical Panel	October 31, 2002
1	Amendment Proposal Submitted to Technical Panel	November 15, 2002
2	Recommended by Technical Panel and submitted to the IMO-Board for approval.	November 22, 2002
3	IMO-Board Approved	December 13, 2002

Approved Amendment *Publication* Date: December 17, 2002

Approved Amendment *Effective* Date: March 5, 2003

PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

Provide a brief description of the following:

- The reason for the proposed amendment and the impact on the *IMO-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 *IMO-administered markets*.

Bill 58 was passed and received Royal Assent on June 27, 2002. Amongst other things it expands the powers of the Market Surveillance Panel. Section 37 of the Electricity Act, 1998 has been replaced with new sections 37, 37.1, 37.2 and 37.3 (see Attachment A). The proposed amendments contained herein are consequential to these changes resulting from the enactment of Bill 58. Several other relatively minor amendments are also proposed as noted below. The following is a summary of the proposed changes to the market rules, cross referenced to the legislation, and the proposed market rule amendments:

MR-00203-R00:

Section 3.3.2A – the Market Surveillance Panel’s rights to access information have been expanded from requesting to compelling market participants to produce information for the purposes of allowing the panel to carry out its duties *[section 37.1]*.

Section 3.3.3 – This section has been amended to correct a reference to the information confidentiality catalogue.

MR-00203-R01:

Sections 3.4.1A, 3.4.1B and 3.4.2 – the term “investigation” has been replaced by “review” when referring to the activities authorized by sections 3.1.1.2 (monitoring activities related to “design or other flaws and inefficiencies in the market rules”) and 3.1.13 (monitoring activities related to “design or other flaws in the overall structure of the IMO-administered market”). The term investigation has a pejorative connotation, which is inappropriate when referring to the Panel’s general market monitoring activities. The term investigation, however, continues to be used in reference to activities authorized by section 3.1.1.1 (i.e. monitoring activities related to “inappropriate or anomalous conduct” on the part of a market participant).

Section 3.4.6 – the existing section 3.4.6 compels the Market Surveillance Panel to inform market participants when they are the subject of an investigation. This is inappropriate in certain circumstances. It is also inconsistent with the new *ex parte* search and seizure warrant powers given to the Panel by Bill 58, sections 37 (2) and (9). It is therefore proposed that the wording be changed from “The market surveillance panel shall ... inform” to “Where the *market surveillance panel* reasonably determines that notification will not jeopardize an investigation, the market surveillance panel shall ... inform”.

Section 3.4.7 – the Market Surveillance Panel’s rights to access information needed to enable it to undertake investigations have been greatly expanded. Among the new investigative powers conferred on the Panel are powers to compel production of information, to summons and compel witness testimony and to enter upon premises and search and seize information. *[section 37]*.

Sections 3.4.8, 3.4.9 and 3.4.10 – the deletion of these sections are consequential to the amendment of section 3.4.7. The Market Surveillance Panel, rather than relying on the powers of the OEB to compel the production of information, now itself has the power to compel market participants to provide

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information. Formerly, in order to compel the production of information, the market surveillance panel:

- would make a request for the information in writing ... (section 3.4.8);
- would require a response to such requests to be certified under oath ... (section 3.4.9); and
- where a market participant fails to respond, apply to the OEB for an order to compel the market participant to provide the information.

The Market Surveillance Panel now has the power to compel the production of information, without having to approach the OEB.

MR-00203-R02:

Section 3.1.4 – the Market Surveillance Panel has been given the new authority to make disclosure of *confidential information* if it is of the opinion that disclosure is in the public interest [*section 37.3 (3)*].

PART 4 – PROPOSED AMENDMENT

3.3 Market Monitoring Functions

...

- 3.3.2A For the purpose of carrying out the monitoring activities described in section 3.1.1, the market surveillance panel has the powers to compel the production of information from market participants and to enter upon the premises of market participants as authorized by the Electricity Act, 1998. The market surveillance panel may request that a market participant provide it with information other than that referred to in section 3.3.2.1 if the market surveillance panel needs such

~~information to enable to fulfill the activities described in section 3.1.1 prior to it being included in the data catalogue.~~

3.3.3

The *market assessment unit* shall, under the supervision and direction of the *market surveillance panel*, establish procedures it and the *market surveillance panel* will use to handle the data they will have the need or means of acquiring and creating, including procedures for protecting *confidential information*. Such procedures shall not conflict or be inconsistent with the provisions of section 5 and shall be included in the *information confidentiality catalogue*.~~confidentiality catalogue referred to in section 5.8.~~

PART 5 – IMO BOARD COMMENTS

Attachment A

Investigation by Market Surveillance Panel

37. (1) The Market Surveillance Panel may investigate any activity related to the IMO-administered markets or the conduct of a market participant.

Right to examine

(2) For the purposes of an investigation under this section, the Panel may examine any documents or other things, whether they are in the possession or control of the person whose activities are being investigated or any other person.

Power to compel testimony

(3) For the purposes of an investigation under this section, the Panel has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions.

Contempt

(4) The Superior Court of Justice has the same power to punish for contempt a person who refuses to attend, testify or produce documents or other things when required to do so by the Panel under this section as it would if the person had disobeyed an order of the Court.

Rights of witness

(5) A person giving evidence under subsection (3) may be represented by counsel and may claim any privilege to which the person is entitled.

Inspection

(6) A person authorized in writing by the Panel may, on production of the authorization, enter any business premises, other than premises used as a dwelling, during business hours for the purposes of conducting an investigation under this section, where the person reasonably believes that relevant documents, records or other things may be found in the business premises.

Copies

(7) On giving a receipt, a person mentioned in subsection (6) may remove documents, records or other things for the purpose of making copies or extracts, and shall promptly return them to the person who produced them.

Documents in electronic form

(8) If a document, record or other thing is kept in electronic form, the person mentioned in subsection (6) may require that a copy of it be provided on paper or in a machine-readable medium or both.

Authorization to search

(9) For the purposes of an investigation under this section, a person authorized in writing by the Panel may apply to a judge of the Ontario Court of Justice in the absence of the public and without notice for a warrant authorizing the person or persons named in the warrant to enter and search any building, receptacle or place specified and to seize anything described in the authorization that is found in the building, receptacle or place and to bring it before the judge granting the authorization or another judge to be dealt with according to law.

Grounds

(10) No authorization shall be granted under subsection (9) unless the judge to whom the application is made is satisfied on information under oath that there are reasonable grounds to believe that there is in the building, receptacle or place to be searched anything that may reasonably relate to an investigation under this section.

Power to enter, search and seize

(11) A person named in a warrant under subsection (9) may, on production of the warrant, enter any building, receptacle or place specified in the warrant between 6 a.m. and 9 p.m. and search for and seize anything specified in the warrant.

Expiration

(12) Every warrant under subsection (9) shall name the day that it expires, which shall not be later than 15 days after the warrant is granted.

Dwellings

(13) For the purposes of subsections (9), (10) and (11), “building, receptacle or place” does not include premises used as a dwelling.

Application

(14) Sections 159 and 160 of the *Provincial Offences Act* apply to searches and seizures under this section with such modifications as the circumstances require.

Report and recommendations

(15) On completion of an investigation, the Panel shall prepare a report that may include recommendations for amendment of the market rules or other recommendations.

Same

(16) The Panel shall submit the report to the IMO, the Board and any other person that the Panel considers appropriate.

Same

(17) The report shall be deemed, for the purpose of section 14 of the *Freedom of Information and Protection of Privacy Act*, to be a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

Review of materials by Panel

37.1 (1) Every market participant shall deliver to the Market Surveillance Panel, at any time required by the Panel, any books, records or documents that are required to be kept by the market participant under the market rules or Ontario law.

Same

(2) The Panel may review and keep copies of any books, records or documents provided under subsection (1) for the purposes of market surveillance.

Inspection

(3) A person authorized in writing by the Panel may enter the business premises of any market participant, other than premises used as a dwelling, during business hours, and may examine and make copies of any books, records or documents mentioned in subsection (1) for the purposes of market surveillance.

No obstruction

37.2 (1) No person shall obstruct, hinder or interfere with a person who is acting pursuant to an authorization granted under subsection 37 (6) or (9) or 37.1 (3).

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$50,000.

Confidentiality

37.3 (1) All information and material that is not otherwise public and that is furnished to or received or obtained by the Panel or anyone acting on behalf of the Panel pursuant to section 37 or 37.1 is confidential, and no person shall communicate the information or allow access to or inspection of the material except in the ordinary course of his or her duties, unless,

(a) the Panel has made an order under subsection (3);

(b) the information or material was considered by the Panel in preparing a report under subsection 37(15) and communication of the information or access to or inspection of the material is required by a summons or direction of the Board; or

(c) the information is communicated to or access to or inspection of the material is allowed to a police force or other investigatory agency or to a regulatory agency.

Not evidence in proceedings

(2) No document, record, copy or other thing obtained pursuant to section 37 or 37.1 is admissible in evidence in any proceeding, except a review by the Board under section 38, unless the Panel has made an order under subsection (3).

Disclosure by Panel

(3) The Panel shall make an order permitting the disclosure of information or material obtained pursuant to section 37 or 37.1 if, after giving the person from whom the information or material was obtained and any other person who, in the opinion of the Panel, is an interested party an opportunity to be heard, the Panel is of the opinion that disclosure is in the public interest.



Market Rule Amendment Proposal

PART 1 – MARKET RULE INFORMATION

Identification No.: MR- MR-00203-R01	
Subject: IMO Administration / Panels	
Title: Bill 58 – Consequential Changes to the Powers of the Market Surveillance Panel	
Nature of proposal (please indicate with X): <u> X </u> Alteration <u> </u> Deletion <u> </u> Addition	
Chapter: 3	Appendix:
Sections: 3.4	
Sub-sections proposed for amending: 3.4.1A, 3.4.1B, 3.4.2, and 3.4.6 through 3.4.10	

PART 2 – PROPOSAL HISTORY SEE MR-00203-R00

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Approved Amendment *Publication* Date:

Approved Amendment *Effective* Date:

PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

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- The reason for the proposed amendment and the impact on the *IMO-administered markets* if the amendment is not made
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See MR-00203-R00

PART 4 – PROPOSED AMENDMENT**3.4 Investigations and Reviews**

3.4.1 The *market surveillance panel* may conduct an investigation into any activities in the *IMO-administered markets* or the conduct of a *market participant* identified as a result of the activities conducted under section 3.1.1.1.

3.4.1.1 [Intentionally left blank]

3.4.1.2 [Intentionally left blank]

3.4.1A The *market surveillance panel* may undertake reviews of ~~conduct an investigation into~~ actual or potential design or other flaws and inefficiencies in the *market rules* and other rules and procedures of the *IMO* identified as a result of its activities under section 3.1.1.2 with the prior concurrence of either the Chief Executive Officer of the *IMO* or the Chair of the *IMO Board*.

3.4.1B The *market surveillance panel* may undertake reviews of ~~conduct an investigation into~~ actual or potential design or other flaws in any one or more specific aspects of the underlying structure of the *IMO-administered markets* identified as a result of its activities under section 3.1.1.3 with the prior concurrence of the Chair of the *IMO Board*.

3.4.2 The *market surveillance panel* shall, at the request of the Chair of the *IMO Board*, conduct or resume an investigation or review into any matter that may be the subject of investigation by the *market surveillance panel* pursuant to section 3.4.1 or of a review pursuant to section, 3.4.1A or 3.4.1B.

...

- 3.4.6 Where the market surveillance panel reasonably determines that notification will not jeopardize an investigation, ~~The market surveillance panel shall, upon determining that there is a *prima facie* case in respect of the conduct of a person subject to a complaint or referral, inform the person who is the subject of the complaint or referral that the person is the subject of an investigation and shall inform that person or cause that person to be advised of the outcome of the investigation. On the written request of the person making the complaint or referral, the *market surveillance panel* shall inform that person or cause that person to be advised of the outcome of the investigation.~~
- 3.4.7 For the purposes of carrying out an investigation, the market surveillance panel has the power to examine and compel production of any documents or other things, to summon and compel testimony, and to enter upon premises and search and seize as authorized by the *Electricity Act, 1998*. ~~may request any person, including the person who made the complaint or referral that resulted in the investigation, to provide information to the investigation.~~
- 3.4.8 [Intentionally left blank] ~~A request for information pursuant to section 3.4.7 shall:~~
- 3.4.8.1 [Intentionally left blank] ~~be in writing;~~
- 3.4.8.2 [Intentionally left blank]
- 3.4.8.3 [Intentionally left blank] ~~specify the information requested; and~~
- 3.4.8.4 [Intentionally left blank] ~~specify a time that the *market surveillance panel* considers to be reasonable within which the information is to be provided to the *market surveillance panel*.~~
- 3.4.9 [Intentionally left blank] ~~Information provided to the *market surveillance panel* pursuant to a request made under section 3.4.8 shall, if the *market surveillance panel* so requires, be certified under oath or statutory declaration by the person to whom the request is directed or, in the case of a person who is not an individual, an officer or duly authorized representative thereof, as being correct and complete to the best of that person's knowledge.~~
- 3.4.10 [Intentionally left blank] ~~Where a *market participant* or an *affiliate of a market participant* fails to respond to or refuses a request for information made under section 3.4.8, the *market surveillance panel* may apply to the *Ontario Energy Board* for an order pursuant to subsection 37(3) of the *Electricity Act, 1998*.~~

PART 5 – IMO BOARD COMMENTS



Market Rule Amendment Proposal

PART 1 – MARKET RULE INFORMATION

Identification No.: MR- MR-00203-R02	
Subject: IMO Administration / Panels	
Title:	
Nature of proposal (please indicate with X): <u> X </u> Alteration <u> </u> Deletion <u> </u> Addition	
Chapter: 3	Appendix:
Sections: 3.1	
Sub-sections proposed for amending: 3.1.4 (new)	

PART 2 – PROPOSAL HISTORY SEE MR-00203-R00

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See MR-00203-R00

PART 4 – PROPOSED AMENDMENT

3.1.4 Notwithstanding any other section of the market rules, the market surveillance panel shall make an order permitting the disclosure of confidential information obtained pursuant to section 3 if, after giving the person from whom the information or material was obtained and any other person who, in the opinion of the market surveillance panel, is an interested party an opportunity to be heard, the market surveillance panel is of the opinion that disclosure is in the public interest.

PART 5 – IMO BOARD COMMENTS