



## Market Rule Amendment Proposal

### PART 1 – MARKET RULE INFORMATION

Identification No.:	MR-00259-R00		
Subject:	Disputes; Compensation		
Title:	Impact of Limitations Act		
Nature of Proposal:	<input checked="" type="checkbox"/> Alteration	<input type="checkbox"/> Deletion	<input type="checkbox"/> Addition
Chapter:	3	Appendix:	
Sections:	2.4		
Sub-sections proposed for amending:	2.4.1A (new); 2.4.2 and 2.4.4 (new)		

### PART 2 – PROPOSAL HISTORY

Version	Reason for Issuing	Version Date
1.0	Submitted for Technical Panel for review.	27 May 2004
2.0	Incorporated Technical Panel comments and posted for stakeholder review and written comment.	1 June 2004
3.0	Submitted to Technical Panel for review and vote.	8 July 2004
4.0	Recommended by Technical Panel and submitted for IMO Board approval.	13 July 2004
5.0	Approved by IMO Board.	August 5 2004
Approved Amendment Publication Date:	August 6 2004	
Approved Amendment Effective Date:	September 1 2004	

### 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*.

#### Summary

Amendments are proposed that would align the market rules with the new Ontario *Limitations Act, 2002* (the “Act”). The Act, which came into effect on January 1, 2004, specifies a two-year time limit for a party to bring a claim against another party. The Act has general application to commercial transactions in Ontario and therefore would apply to commercial related activities within the IMO-administered markets. The specific proposed amendments would apply this two-year time limit to the following market situations:

- Market participants or the IMO initiating disputes under section 2 of Chapter 3; and
- Circumstances where a market participant may make claims for compensation e.g. outage recall or complying with IMO instructions related to dispatch during a market suspension.

For events that occurred before January 1, 2004, the former six-year time limit would continue to apply for the above situations, consistent with the application of the new Act.

These amendments will clarify that the statutory limitation periods apply to the IMO-administered markets, and therefore will provide more certainty in regard to potential financial liabilities arising from disputes or claims for compensation.

#### Background

The existing market rules have several provisions that relate to market participants raising disputes or claiming compensation.

Section 2 of Chapter 3 of the market rules outlines the procedure through which disputes between the IMO and market participants are to be resolved. Section 2.4 of Chapter 3 specifies the time frame within which the good faith negotiation aimed at the resolution of a dispute must commence. Section 2.4.2.1 of Chapter 3 provides for a limitation period of six years from the receipt of an order, direction or instruction from the IMO. Section 2.4.2.2 also provides for a six-year limitation period, beginning on the date the subject-matter of the dispute occurred or the date on which the party initiating the negotiation became aware or ought, with the exercise of due diligence, to have become aware of the event that is the subject-matter of the dispute. This six-year limitation period applies to most types of disputes between the IMO and market participants as set out in Section 2 of Chapter 3.

Provisions that relate to market participant claims for compensation include:

- Chapter 7, section 13.6.3. In the event of a temporary suspension of market operations, the market rules provide for administered prices to be used during the suspension. To the extent that the administrative prices do not adequately compensate a market participant for complying with dispatch instructions, the IMO shall provide compensation determined in accordance with section 13.6.3A.
- Chapter 5, section 6.7. Generators, distributors or wholesale consumers shall be entitled to

### PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

compensation, under specified conditions, in the event that the IMO revokes advance approval of a planned outage or recalls a planned outage.

- Chapter 5, section 5.3.4. In certain situations, for system reliability reasons, the IMO may limit the amount of energy or ancillary services that a participant may supply into, or withdraw from, the Ontario grid. In instances where the IMO initiates the reduction, the market participant is eligible for compensation for financial losses suffered as a result of the limitation being imposed.
- Chapter 4, sections 5.2.3 and 5.3.4. In certain circumstances the IMO will compensate a market participant for unrecoverable costs it incurred when testing its systems at the IMO's request.
- Chapter 7, sections 9.4.3 (ancillary services), 9.4.4 (reactive support) and 9.5.2.1 (contracted ancillary services). These sections refer to payments to market participants for the provision of ancillary services to maintain the reliability of the IMO-controlled grid, including (but not limited to) reactive power (VARs) to support the necessary level of voltage.

#### Discussion

The following two issues arise with respect to the existing provisions related to market participants raising disputes or claiming compensation.

Firstly, Sections 2.4.2.1 and 2.4.2.2 of Chapter 3 were drafted to reflect the limitation period provided in the former Ontario *Limitations Act*, which, like the current market rules, required a party to bring a claim within six years of discovering that a cause for a claim existed. The new Act provides for a shorter limitation period of two years. The new Act still allows for a six-year time limit for events that occurred before January 1, 2004.

A shorter limitation period of two years would still provide ample time within which to commence the negotiation of a dispute. A two year limit would provide some assurance that neither the IMO nor market participants would be required to negotiate or resolve the disputes referred to above after the two-year time period had elapsed.

Secondly, although not explicit in the market rules, the six-year limitation period also applies to market participant claims for compensation cited above.

To improve transparency of the market rules regarding such claims, and for consistency with the new Act, the market rules should explicitly indicate that such claims must be made within two years of the event.

The following amendments to section 2.4 of Chapter 3 are proposed:

- Require a person to initiate negotiations within 2 years of the order, direction, instruction or other decision of the IMO, provided that the event occurred on or after January 1, 2004 (section 2.4.1A.1);
- Require a person to initiate negotiations within 6 years of the order, direction, instruction or other decision of the IMO, provided that the event occurred before January 1, 2004 (section 2.4.1A.2).

The above-referenced sections divide former section 2.4.2.1 into two, in order to address orders, directions, instructions or other decisions of the IMO both prior to and post the effective date of the Act.

- In all other cases, including claims for compensation, require a person to initiate negotiations within the time limits established in the Act (section 2.4.1A.3);

**PART 3 – EXPLANATION FOR PROPOSED AMENDMENT**

The above-noted reference to the Act, in section 2.4.1A.3, was incorporated to allow the application of the discoverability provisions of the Act (i.e. negotiation of a dispute within two years of the day on which a reasonable person with the abilities and in the circumstances of the party to the dispute first ought to have known of the subject-matter of the dispute).

- Clarify that the event that commences the limitation period with respect to claims for compensation will be the event that gave rise to the claim, rather than the filing of the claim for compensation with the IMO, excluding the time required for the IMO to process the claim (2.4.4).

This amendment will ensure that the time period for market participants to file claims for compensation and commence the negotiation of disputes with respect to same will be limited to two years.

**PART 4 – PROPOSED AMENDMENT****Chapter 3****2.4 Negotiation**

2.4.1 Subject to section 2.4.3, parties to a dispute shall, within the time specified in section 2.4.1A.2, make good faith efforts to negotiate and amicably resolve any dispute between them arising pursuant to the *market rules* prior to filing a *notice of dispute* under section 2.5.1. Each person who is a party to a dispute shall, to this end, designate an individual with authority to negotiate the matter in dispute and to participate in such negotiations.

2.4.1A Parties to a dispute shall commence the negotiation referred to in section 2.4.1:

2.4.1A.1 where the dispute involves an order, direction, instruction or other decision of the IMO issued prior to January 1, 2004, within six years of the date of receipt of the order, direction, instruction or decision;

2.4.1A.2 where the dispute involves an order, direction, instruction or other decision of the IMO issued on or after January 1, 2004, within two years of the date of receipt of the order, direction, instruction or decision; and

2.4.1A.3 in all other cases, including, without limitation, claims for compensation, where such claims are not the subject matter of the dispute referred to in section 2.4.1A.1, 2.4.1A.2 or 2.4.3, within the limitation periods set out in the *Limitations Act, 2002*.

2.4.2 In the event that a dispute, other than one to which section 2.4.3 applies, is not settled amicably through good faith negotiations, one of the parties shall file with the other a notice of termination of negotiation in such form as may be established by the *IMO*. Proceedings to resolve the dispute may thereafter be initiated by any party to the dispute by filing a *notice of dispute* in accordance with the procedures set forth in section 2.5.1 within the time set forth in section 2.5.1A. ~~Parties to a dispute shall commence the negotiation referred to in section 2.4.1:~~

~~2.4.2.1 — where the dispute involves an order, direction, instruction or other decision of the *IMO*, within six years of the date of receipt of the order, direction, instruction or decision; and~~

~~2.4.2.2 — in all other cases, within six years of:~~

~~a. the date on which the event that is the subject matter of the dispute occurred; or~~

~~b. the date on which the party initiating the negotiation became aware or ought, with the exercise of due diligence, to have become aware of the event that is the subject matter of the dispute,~~

~~whichever is the later.~~

.....

2.4.4 The time period for the commencement of the negotiation specified in section 2.4.1A shall, with respect to claims for compensation, commence on the date on which the event that gave rise to the claim for compensation occurred, and not from the date of the submission of the claim for compensation. Such time period shall exclude the time between the submission of the claim for compensation to the *IMO* and when the *IMO* first notifies the claimant that some or all of the claim will not be allowed.

**PART 5 – IMO BOARD COMMENTS**

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Chapter:	3	Appendix:	
Sections:	2.5		
Sub-sections proposed for amending:	2.5.7.2		

### PART 2 – PROPOSAL HISTORY – Refer to MR-00259-R00.

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Approved Amendment Publication Date:		
Approved Amendment Effective Date:		

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Refer to MR-00259-R00.

This amendment is to correctly reference the limitation period section as this section has been changed from 2.4.2.1 and 2.4.2.2 to 2.4.1A.

**PART 4 – PROPOSED AMENDMENT****Chapter 3**

2.5.7 Subject to sections 2.5.8 and 2.5.9, the secretary shall reject and shall not take any further action:

2.5.7.1 with respect to a notice of dispute, a response or a response to a crossclaim that does not comply with the provision of this section 2.5;  
or

2.5.7.2 with respect to a notice of dispute in respect of which the negotiation referred to in section 2.4.1 was not commenced within the applicable time specified in section 2.4.1A.

Where the secretary rejects a notice of dispute, a response or a response to a crossclaim pursuant to this section 2.5.7, the secretary shall so notify the applicant and the respondent filing the response or the response to the crossclaim, as the case may be, and shall provide written reasons for the rejection.

**PART 5 – IMO BOARD COMMENTS**

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