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| **MODIFICATION PROPOSAL FORM** | | | | | |
| **Proposer**  *(Company)* | **Date of receipt**  *(assigned by Secretariat)* | | **Type of Proposal**  *(delete as appropriate)* | | **Modification Proposal ID**  *(assigned by Secretariat)* |
| **NIE Energy, PPB** | **17 January 2012** | | **Standard** | | **Mod\_16\_11\_V2** |
| **Contact Details for Modification Proposal Originator** | | | | | |
| **Name** | | **Telephone number** | | **Email address** | |
| **Sinead O’Hare** | | **0044 2890 690532** | | **Sinead.o’hare@powerni.co.uk** | |
| **Modification Proposal Title** | | | | | |
| **Credit Worthiness Test for the SEM Bank and Credit Cover Provider banks** | | | | | |
| **Documents affected**  *(delete as appropriate)* | | **Section(s) Affected** | | **Version number of T&SC or AP used in Drafting** | |
| **T&SC** | | **Section 6, Glossary** | | **10** | |
| **Explanation of Proposed Change**  *(mandatory by originator)* | | | | | |
| To improve the credit worthiness test for the SEM Bank and credit cover provider banks. To extend the possibility of qualifying to banks with a branch in the United Kingdom. | | | | | |
| **Legal Drafting Change**  *(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* | | | | | |
| **TSC Section 6**   * 1. The SEM Bank shall be a bank which must:  1. hold a Banking Licence in Ireland under Section 9 of the Central Bank Act 1971 (Ireland) or be authorised by the Financial Services Authority to take deposits, under the Banking Act 1987 (Northern Ireland) or be otherwise authorised to provide banking services in Ireland or the United Kingdom; and   either:   1. be a Clearing Bank in either Ireland or the United Kingdom: 2. with a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody’s Investors Service Inc.); or 3. with a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investor Service Inc ) and have a Balance Sheet Net Asset Value of not less than €1,000 million;   or   1. be an international bank that is approved by the relevant regulatory authority to provide banking services in Ireland or the United Kingdom and complies with paragraphs 6.15.2.a or 6.15.2.b.   and:   1. have branches in Ireland and the United Kingdom    1. The Market Operator shall establish and operate in accordance with the Code: 2. a euro SEM Trading Clearing Account at a branch of the SEM Bank in Ireland; and 3. a pounds sterling SEM Trading Clearing Account at a branch of the SEM Bank in the United Kingdom,   to and from which all Trading Payments calculated in accordance with the Code are to be made.  Each SEM Trading Clearing Account shall be an interest bearing account.   * 1. The Market Operator shall establish and operate in accordance with the Code:  1. a euro SEM Capacity Clearing Account at a branch of the SEM Bank in Ireland; and 2. a pounds sterling SEM Capacity Clearing Account at a branch of the SEM Bank in the United Kingdom,   to and from which all Capacity Payments calculated in accordance with the Code are to be made.  Each SEM Capacity Clearing Account shall be an interest bearing account.   * 1. A Credit Cover Provider shall be a Bank which must:  1. hold a Banking Licence in Ireland under Section 9 of the Central Bank Act 1971 (Ireland) or be authorised by the Financial Services Authority to take deposits, under the Banking Act 1987 (Northern Ireland) or be otherwise authorised to provide banking services in Ireland or the United Kingdom; and   either,   1. be a Clearing Bank in either Ireland or the United Kingdom: 2. with a long term debt rating of not less than A- (Standard & Poors) or A3 (Moody’s Investors Service Inc.); or 3. with a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc.) and have a Balance Sheet Net Asset Value of not less than €1,000 million,   or   1. be an international bank that is authorised or approved by the relevant regulatory authority or is otherwise eligible to provide banking services in Ireland or the United Kingdom and complies with paragraphs 6.163.2.a or 6.163.2.b.    1. If a bank is a subsidiary that is not independently rated, then its parent company must guarantee the obligations of the subsidiary and either (i) have a long term debt rating of not less than A- (Standard & Poors) or A3 ( Moody’s Investors Service Inc.) or (ii) have a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc.) and have a Balance Sheet Net Asset Value of not less than €10,000 million.    2. The Market Operator shall, before accepting a Letter of Credit tendered by a Participant as a part of that Participant’s Posted Credit Cover, validate that Letter of Credit in accordance with Agreed Procedure 9 “Management of Credit Cover and Credit Default” to ensure compliance with paragraphs 6.162 to 6.164.   **Glossary**   |  |  | | --- | --- | | Balance Sheet Net Asset Value | means have a long term debt rating of not less than BB- (Standard & Poors) or Ba3 (Moody’s Investors Service Inc.) and have a | | Bank Eligibility Requirements | means as defined in paragraph 6.163 and 6.164. | |  |  | | | | | | |
| **Modification Proposal Justification**  *(Clearly state the reason for the Modification)* | | | | | |
| In relation to 6.15 (2.a) and 6.163 (2.a), the debt ratings A (S&P) and A2 (Moody’s) represent the mid range value in their respective categories. We propose that the lowest range in these categories (A- & A3) are appropriate limits, as any entity with a rating in the A range is classified as a low credit risk and therefore should be considered suitable for credit purposes. We would also propose that, where there is more than one credit rating, the lowest credit rating should be used.  The current Code includes a “Total Balance Sheet Assets” test for a bank which, in our opinion, is not an appropriate assessment of a bank’s credit worthiness as it does not take into consideration balance sheet liabilities. As a result, we believe that this test does not provide the necessary comfort of financial stability and a more appropriate test is the level of Net Assets (which is defined as the sum of all current and long-term assets and liabilities as set out in the published accounts of the company) on the bank’s balance sheet.  Due to the time lag associated with published financial statements, we believe it is essential to combine this Net Asset test with a minimum credit rating requirement as the main credit rating agencies provide the earliest indicator of a company in distress. As such, it is proposed that a Net Asset Value test should be combined with a credit rating assessment to account for cases where the credit rating is downgraded to unsatisfactory levels. In our opinion any rating below BB- (S&P) or Ba3 (Moody’s) is an indication of very high credit risk and therefore such entities would not be creditworthy not withstanding that they may satisfy a Net Asset Value test that may have become outdated. | | | | | |
| **Code Objectives Furthered**  *(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* | | | | | |
| This modification proposal furthers the second code objective:  “to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner” | | | | | |
| **Implication of not implementing the Modification Proposal**  *(State the possible outcomes should the Modification Proposal not be implemented)* | | | | | |
| Leaving the long term debt rating at the middle value of the A range excludes banks that are rated at the lower limit of the A range and that are considered a low credit risk from qualifying under this test.  Under the current Code, a bank could satisfy the creditworthiness test by having assets in excess of €1,000 million but be in distress because its liabilities greatly exceed its assets. This creates a risk for all market participants where it relates to the SEM Bank and to Generator participants in the case of providers of credit cover (which is largely provided by Suppliers).  The existing test would not provide an early indication of a company going into distress and Code objective 2 would not be realised.  It should be noted that the main credit rating agencies significantly downgraded the Icelandic banks a few weeks before they collapsed. | | | | | |
| **Working Group**  *(State if Working Group considered necessary to develop proposal)* | | | **Impacts**  *(Indicate the impacts on systems, resources, processes and/or procedures)* | | |
| Not required. | | | No impact on systems | | |
| ***Please return this form to Secretariat by email to*** [***modifications@sem-o.com***](mailto:modifications@sem-o.com) | | | | | |

**Notes on completing Modification Proposal Form:**

1. **If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.**
2. **Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.**
3. **Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.**
4. **For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:**

**Agreed Procedure(s): means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in Appendix D “List of Agreed Procedures”.**

**T&SC / Code: means the Trading and Settlement Code for the Single Electricity Market**

**Modification Proposal: means the proposal to modify the Code as set out in the attached form**

**Derivative Work: means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal**

**The terms “Market Operator”, “Modifications Committee” and “Regulatory Authorities” shall have the meanings assigned to those terms in the Code.**

**In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of the Code (and Agreed Procedure 12), which I have read and understand, I agree as follows:**

**1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:**

* 1. **to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;**
  2. **to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;**
  3. **to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;**

**1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.**

**2. The licences set out in clause 1 shall equally apply to any Derivative Works.**

**3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.**

**4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.**

**5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.**