|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **MODIFICATION PROPOSAL FORM** | | | | | | |
| **Proposal Submitted by:** | **Date Proposal received by Secretariat:**  *(to be assigned by Secretariat)* | | **Type of Proposal**  *(please delete as appropriate)* | | | **Number:**  *(to be assigned by Secretariat)* |
| SEMO | 26 May 2011 | | **Standard** | | | 20\_11 |
| **Contact Details for Modification Proposal Originator** | | | | | | |
| **Name:**  **Aodhagan Downey** | | **Telephone number:**  +353-1-2370124 | | **e-mail address:**  [aodhagan.downey@sem-o.com](mailto:aodhagan.downey@sem-o.com) | | |
| **Modification Proposal Title:**  Reversal of Mod\_07\_09: SEMO Cash Pooling | | | | | | |
| **Trading and Settlement Code and/or Agreed Procedure change?** | | | | | T&SC | |
| **Section(s) affected by Modification Proposal:** | | | | | 6.17A – 6.36  Glossary | |
| **Version Number of the Code/Agreed Procedure used in Modification drafting:** | | | | | v9.0 | |
| **Modification Proposal Description**  *(Clearly show proposed code change using* ***tracked changes*** *& include any necessary explanatory information)* | | | | | | |
| * 1. Any Interest received on the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts shall accrue to the Market Operator and shall not therefore be part of those accounts for the purposes the trusts established under this section 6. The Market Operator shall take such Interest into account in proposing to the Regulatory Authorities any Market Operator Charge or component thereof.   Provision of Cash Collateral   * 1. A Participant may at any time provide a cash deposit as part of its Required Credit Cover as permitted pursuant to paragraph 6.162. Where a Participant decides to provide such a cash deposit, then the Participant shall instruct the Market Operator to establish and maintain a SEM Collateral Reserve Account with the SEM Bank in each Currency Zone in which the Participant has a registered Unit as applicable and so that the relevant cash deposit shall be paid into such SEM Collateral Reserve Account. Each SEM Collateral Reserve Account shall be an interest bearing account. If a Participant chooses to provide a cash deposit as part of its Required Credit Cover, then it must provide to the Market Operator such documents and in such form as the Market Operator may require from time to time in order to establish and maintain the SEM Collateral Reserve Account.   2. The SEM Collateral Reserve Account in relation to each relevant Participant shall contain the cash element of that Participant’s Posted Credit Cover on the following terms:  1. the SEM Collateral Reserve Account shall be in the sole name of the Market Operator with the designation “SEM Collateral Reserve Account relating to [Insert Participant Details]”; 2. the Participant and the Market Operator shall have irrevocably instructed the SEM Bank to make payment against the sole instruction of the Market Operator in accordance with the Code and the Bank Mandate. The Code shall take precedence over the Bank Mandate; and 3. to give effect to the provisions of the Code in relation to SEM Collateral Reserve Accounts, with effect from the time of payment into the relevant SEM Collateral Reserve Account, the relevant Participant thereby charges all sums paid into and accruing on that account by way of first fixed charge over cash at the SEM Bank in favour of the Market Operator as agent and trustee for it and the SEM Creditors to secure the relevant Participant’s payment obligations under the Code, subject always to the provisions of paragraphs 6.32 to 6.36 inclusive.    1. Where, at any time, a Participant (or Applicant, as applicable) wishes the Market Operator to establish a SEM Collateral Reserve Account on its behalf for the purposes of paragraph 6.19 and, where appropriate, having regard to the legal form, jurisdiction of incorporation or registration of the relevant Party and the location of the proposed SEM Collateral Reserve Account, to ensure the enforceability of the charge created under paragraph 6.20.3, the Participant (or Applicant, as applicable) shall complete and sign the particulars of charge in respect of such SEM Collateral Reserve Account and SEM Collateral Reserve Assets for registration of the charge with the relevant companies registry or other appropriate body in the appropriate jurisdiction or jurisdictions and the Participant shall do all such things and execute all such documents as necessary to facilitate such registrations (if any) within such timelines as may be specified by the Market Operator, having regard to any applicable time limit for the registration of such a charge. Without prejudice to the foregoing, the Market Operator shall, unless the relevant Participant otherwise does so, register the prescribed particulars with regard to the establishment of each SEM Collateral Reserve Account pursuant to Article 402 Companies (Northern Ireland) Order 1986 and/or section 395 of the Companies Act 1985 (United Kingdom) and/or section 99 of the Companies Act 1963 (Ireland), as appropriate, and/or at such other registry or registries as may be appropriate.    2. The SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts shall be established and maintained in the name of the Market Operator. The cash in and rights relating to each SEM Trading Clearing Accounts, the SEM Capacity Clearing Accounts and each SEM Collateral Reserve Account opened and any balance in any of the accounts shall be held on trust by the Market Operator without obligation to invest in accordance with the provisions of this section 6. Subject to the provisions of this Section 6, the Market Operator shall not commingle any funds standing to the credit of the SEM Trading Clearing Accounts, the SEM Capacity Clearing Accounts or any SEM Collateral Reserve Account with its own personal or any other funds. This is without prejudice to the Market Operator’s rights to transfer funds between the euro and pounds sterling SEM Trading Clearing Accounts and SEM Capacity Clearing Accounts respectively for the purposes of Settlement and Resettlement. The Market Operator shall be entitled to transfer funds between the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts as necessary in order to correct any manifest errors in payments by Participants.    3. Notwithstanding paragraph 6.22, the Market Operator shall hold the trusts as provided for in this Section 6 subject to its entitlement to make payments into and out of the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts for the purpose of settling any Balancing Costs.    4. Except as expressly provided for in this Code, no Party or Participant shall enter into any arrangements which assign or charge or purport to assign or charge any interest any Party or Participant may have in any SEM Trading Clearing Account, SEM Capacity Clearing Account or SEM Collateral Reserve Account.    5. The Market Operator shall procure that an electronic funds transfer (EFT) facility with the SEM Bank is provided to enable it to make all payments to Participants under the Code. Payments shall only be made by the Market Operator and Participants in the Pool through an EFT facility.    6. The EFT facilities procured by the Market Operator shall be consistent with standard banking practice and the methods and procedures described in Agreed Procedure 17 “Banking and Participant Payments”.    7. In procuring the establishment of the EFT facility, the Market Operator shall use its reasonable endeavours to ensure that the use of the EFT facility does not impose unreasonable restrictions on the Participants’ normal banking arrangements.    8. Each Party (or Applicant, as applicable) shall give to the Market Operator in accordance with the registration requirements set out in Section 2 details of the bank account or bank accounts to which the Market Operator is instructed to make payments pursuant to the Code to such Party’s Participant(s), and shall provide to the Market Operator such further information in relation to such bank account or bank accounts as the Market Operator may reasonably request. Each Party shall establish and maintain such a bank account at a bank in each Currency Zone in which its Participant has a registered Unit as applicable. Where a Party or Participant changes the bank account or bank accounts to which payments are made pursuant to the Code, it shall inform the Market Operator and provide details of the new bank account or bank accounts. The Market Operator shall not be responsible for any loss to any Party or Participant where the Market Operator has not been informed by the relevant Party or Participant of any change in bank account details.    9. The Market Operator shall maintain detailed ledger accounts of all funds held in the SEM Trading Clearing Accounts, SEM Capacity Clearing Accounts, SEM Collateral Reserve Accounts and all other bank accounts held by it at the SEM Bank showing all monies paid in and paid out in respect of each Participant and, where requested by a Participant or its Party, the Market Operator shall provide full details of all such payments and funds in relation to such Participant only and shall keep all information in respect of each Participant confidential. Notwithstanding the foregoing, the Market Operator shall be entitled to disclose any information or data in relation to any SEM Trading Clearing Account, SEM Capacity Clearing Account or SEM Collateral Reserve Account held at the SEM Bank to the Market Auditor or relevant Revenue Authority where required or where otherwise required by law.   Establishment of Trusts   * 1. The Market Operator shall hold all funds in the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts and such rights (including, without limitation, all rights of action) as shall from time to time be vested in it with regard to payments due and owing by Participants or with regard to the provision of Credit Cover by each Participant including:  1. all monies from time to time standing to the credit of each SEM Trading Clearing Account and each SEM Capacity Clearing Account relating to any Trading Period; 2. all rights of the Market Operator to call for and enforce payment of amounts owing under the Code (including, for the avoidance of doubt, any Shortfall or Unsecured Bad Debt) or to make a Credit Call; 3. the Letters of Credit and all rights to, and monies representing, any proceeds therefrom up to the amount of any applicable Shortfall; and 4. any interest receivable in respect of any amounts due pursuant to the Code relating to any Trading Period,   on trust for SEM Creditors in accordance with their individual respective proportionate entitlements as they arise in accordance with the Code (or to the extent that any Credit Cover shall relate to any Variable Market Operator Charge, on trust for the Market Operator in accordance with the Code). Upon termination of the said trusts, any residual balance after satisfaction of the entitlement of all SEM Creditors shall be held for all Participants in accordance with their individual respective proportionate entitlements as they arise in accordance with the Code.   * 1. The respective rights of the SEM Creditors to the assets held by the Market Operator on trust in the SEM Trading Clearing Accounts and the SEM Capacity Clearing Accounts as set out in paragraphs 6.16 and 6.17 respectively and as provided for in paragraph 6.30 shall be determined in accordance with the Code and in accordance with the following principles:  1. the extent of each SEM Creditor’s individual rights shall be deemed to consist of the aggregate of the claims (to the extent not paid or otherwise settled) of such SEM Creditor in respect of each Trading Period; and 2. the assets referred to in paragraph 6.30 above shall be deemed to consist of a series of funds, each fund representing the rights or monies owed, paid, held or otherwise attributable to each Trading Period in relation to Trading Payments and Capacity Payments.   The Market Operator shall not be obliged to segregate moneys into separate funds.   * 1. The Market Operator shall hold the SEM Collateral Reserve Assets in respect of each Participant that establishes and maintains a SEM Collateral Reserve Account in accordance with the Code on trust as follows:  1. at any time when no amounts owed by any such Participant are overdue, on trust to repay (subject always to and in accordance with paragraphs 6.33 to 6.35 inclusive, 6.50 and 6.51 to 6.68 as appropriate) to that Participant the monies, together with any interest accrued on such monies, held in the relevant SEM Collateral Reserve Account as part of that Participant’s Posted Credit Cover; and 2. with automatic effect as soon as any amount owed by a Participant becomes overdue and becomes a Shortfall (excluding any Market Operator Charge), such amount of the monies deposited in the relevant SEM Collateral Reserve Account by such Participant as is equal to the amount of the Shortfall and any applicable Interest (or Default Interest as applicable) in respect of the relevant Participant on trust for the SEM Creditors on the same basis as set out in paragraph 6.30 above and the balance (if any) shall be held in trust in respect of the Participant as provided for in paragraph 6.32.1 subject to paragraph 6.32.3 where applicable; and 3. with automatic effect as soon as any Variable Market Operator Charge owed by a Participant becomes overdue and where there is no Shortfall or Unsecured Bad Debt in respect of that Participant at that time or, if there is such Shortfall or Unsecured Bad Debt only after the SEM Collateral Reserve Assets have been applied to meet the Shortfall or Unsecured Bad Debt in full, such amount of the monies then held in the relevant SEM Collateral Reserve Account as is available up to the amount of the Variable Market Operator Charge outstanding and any applicable Interest on trust for the Market Operator in accordance with the Code and the balance (if any) shall be held on trust as provided for in paragraph 6.32.1    1. Each Participant which has funds remitted by it for the credit of a relevant SEM Collateral Reserve Account agrees that none of the remittances shall be repayable (or capable of being repaid) to it or its Party, except where provided otherwise in accordance with the provisions of the Code, until Deregistration of the Participant’s Unit(s) becomes effective in accordance with the Code and, in particular, subject to paragraph 2.273, and the Participant has paid in full all amounts actually or contingently owed by the relevant Participant to any SEM Creditor or the Market Operator pursuant to the Code.    2. Each Participant with a SEM Collateral Reserve Account undertakes not to seek withdrawal of any funds to which it may otherwise be entitled in the relevant SEM Collateral Reserve Account except in the circumstances permitted by paragraph 6.35. The Market Operator shall reject any purported notice of withdrawal not complying with this paragraph 6.34, the Code or the Bank Mandate. The Code shall take precedence over the Bank Mandate.    3. Notwithstanding paragraphs 6.33 and 6.34, if a Participant is not in default in respect of any amount owed to a SEM Creditor, then: 4. the Market Operator shall transfer quarterly to the relevant Participant the interest credited to the relevant SEM Collateral Reserve Account unless the Participant requests otherwise; 5. the Market Operator shall transfer to such Participant within 2 Working Days after a written request from such Participant (exclusive of the day of request) any amount of the balance which exceeds the amount which such Participant has agreed to maintain in the relevant SEM Collateral Reserve Account from time to time in accordance with this Section 6, the Code and the Bank Mandate, provided that the Participant at all times maintains its Required Credit Cover. The Code shall take precedence over the Bank Mandate; 6. the Participant shall be entitled to change the composition of its Posted Credit Cover in satisfying the Required Credit Cover provided any reduction in any amount standing to the credit of the relevant SEM Collateral Reserve Account does not result in a breach of the Required Credit Cover. 7. the Market Operator shall transfer from the relevant Collateral Reserve Account an amount specified by the Participant, in order to make payment on any outstanding Invoice for such Participant, within one Working Day after a written request from such Participant (exclusive of the day of the request) providing that such Participant at all times maintains its Required Credit Cover.    1. Except as expressly provided for in the Code, each Party and Participant waives any right it might otherwise have to set off against any obligation owed to the Market Operator, the SEM Bank or any other Party or Participant any claims such Party or Participant may have to or in respect of any monies standing to the credit of the relevant SEM Trading Clearing Account, SEM Capacity Clearing Account or SEM Collateral Reserve Account as applicable.    2. The provisions of section 10(2)(c) of the Trustee Act, 1893 shall not apply to any change in the identity of the Market Operator.    3. No Party or Participant shall have any claim against the Market Operator for breach of trust or fiduciary duty by the Market Operator under the Code except in the case of reckless or wilful misconduct.   **Glossary**   |  |  | | --- | --- | | SEM Collateral Reserve Assets | means the aggregate of: (1) amounts from time to time credited to the SEM Collateral Reserve Account(s); (2) amounts which any Participant, where applicable, is from time to time obliged to pay to the credit of their respective SEM Collateral Reserve Accounts; and (3) Interest receivable on the SEM Collateral Reserve Account(s). | | | | | | | |
| **Modification Proposal Justification**  *(Clearly state the reason for the Modification & how it furthers the Code Objectives)* | | | | | | |
| Mod\_07\_09 was approved in 2009 relating to the setting up of 'mirror' deposit accounts in National Irish Bank for the Pounds sterling accounts held in Northern Bank. The Danish government bank guarantee scheme did not cover Northern Bank as a result of it being a subsidiary of Danske Bank (National Irish Bank is a branch and so was covered by the guarantee). In order to allow the cash held in Northern Bank to be covered, it was agreed to set up ‘mirror’ accounts in National Irish Bank.  There were a number of legal and tax issues that came out of this that resulted in the deposit accounts never having been set up. The banking guarantee of the Danish government has since expired and this Modification Proposal seeks to remove the obligation from the Code to set up these accounts. Non-compliance with this section of the Code has been raised as an issue in both the market audit report for 2009 and 2010 and also in the Code compliance audit.  This Modification Proposal furthers Code objective 1.3.1:  “to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;” | | | | | | |
| **Implication of not implementing the Modification**  *(Clearly state the possible outcomes should the Modification not be made , or how the Code Objectives would not be met)* | | | | | | |
| These provisions would continue to place obligations on SEMO that it cannot meet. These provisions serve no purpose as the conditions under which they were drafted have since expired. | | | | | | |
| ***Please return this form to Secretariat by e-mail 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.**
4. **For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:**

**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.**