

Single Electricity Market

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| Final REcommendation ReportMod\_08\_14: Clarification of location of sem collateral reserve accounts 22 may 2015  |

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Document History

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| **Version** | **Date** | **Author** | **Comment** |
| 1.0 | 12th May 2015 | Modifications Committee Secretariat | Issued to Modifications Committee for review and approval |
| 2.0 | 22nd May 2015 | Modifications Committee Secretariat | Issued to Regulatory Authorities for final decision |

Reference Documents

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| **Document Name** |
| [Trading and Settlement Code](http://semopub/MarketDevelopment/MarketRules/TSC.docx) |
| (Mod\_08\_14) Clarification of Location of SEM Collateral Reserve Accounts |
| [Meeting 58 RA Slides](http://semopub/MarketDevelopment/ModificationDocuments/Modifications%20Committee%20Presentation%2004%2012%2014.pptx) |
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# MODIFICATIONS COMMITTEE RECOMMENDATION

## Recommended for approval – majority Vote

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| **Recommended for Approval by Majority Vote**  |
| Áine Dorran | Generator Member | Approved – with concerns noted |
| Connor Powell | Supplier Member | Approved |
| Kevin Hannafin-Chair | Generator Member | Rejected |
| Jill Murray | Generator Member | Approved – with concerns noted |
| Mary Doorly | Generator Member | Approved – with concerns noted |
| Patrick Liddy | DSU Member | Abstain |
| William Carr | Supplier Member | Approved |
| William Steele | Supplier Member | Rejected |

# Background

This Modification Proposal was raised by SEMO and was received by the Secretariat on 18 September 2014. The proposed change amends Section 6.19 to reflect the fact that SEM Collateral Reserve Accounts may be held in either Ireland or the United Kingdom rather than in either Ireland or Northern Ireland as currently implied by Section 6.19.

The Modification Proposal was discussed at Meeting 57 on 2nd October 2014, Meeting 58 on 04 December 2014, Meeting 59 on 12 February 2015 and Meeting 61 on 15 April 2015 where it was voted on.

# PURPOSE OF PROPOSED MODIFICATION

## 3A.) justification of Modification

As a consequence of previous modification Mod\_16\_11 Credit Worthiness Test for SEM Bank and Credit Cover Provider banks, a discrepancy has arisen in the Code with regard to the SEM Collateral Reserve Accounts. Section 6.19 of the Code refers to the maintenance of a SEM Collateral Reserve Account with the SEM Bank in each Currency Zone in which the Participant has a registered Unit. Currency Zone has the meaning set out below, where Jurisdiction refers to Ireland or Northern Ireland as appropriate.

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| **Currency Zone** | means the Jurisdiction in which a Unit is Connected. For the purpose of Interconnector Units,  Interconnector Residual Capacity Units and Interconnector Error Units only, the Jurisdiction is the SEM Jurisdiction to which the relevant Interconnector is linked. |

As Mod\_16\_11 amended the qualification criteria for the SEM Bank to include banks that had branches in Ireland and the United Kingdom, rather than just Ireland and Northern Ireland and as the sterling SEM accounts are now held in London, the reference to Currency Zone in Section 6.19 is now inconsistent with the rest of the Code. This modification proposes to amend Section 6.19 to reflect the fact that sterling bank accounts may be held outside of Northern Ireland.

## 3B.) Impact of not Implementing a Solution

A conflict will remain between Section 6.19 and the Glossary definition of Currency Zone.

## 3c.) Impact on Code Objectives

This modification aims to further code objectives 1.3.2 and 1.3.5 namely:

“to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;”

and

 “to provide transparency in the operation of the Single Electricity Market;”

1. **Assessment of Alternatives**

N/A

# Working Group and/or Consultation

N/A

# impact on systems and resources

N/A

# Impact on other Codes/Documents

N/A

# MODIFICATION COMMITTEE VIEWS

## Meeting 57 – 2 october 2014

MO Alternate provided overview advising that the proposal seeks to reflect the fact that SEM Collateral Reserve Accounts may be held in either Ireland or the United Kingdom rather than in either Ireland or Northern Ireland as currently implied by Section 6.19.

Observer noted that this proposal is tied into Registration of Charges and further advised that in relation to Mod\_16\_11 Credit Worthiness Test for the SEM Bank and Credit Cover Provider banks, it was not NIE’s intention when raising the proposal that UK Banks would be utilised. However as it was deemed discriminatory under European Legislation to disallow UK Banks, they were included and consequently the CRAs were moved out of NI to London due to Northern Bank becoming ineligible when Mod\_16\_11 ‘Credit Worthiness Test for the SEM Bank and Credit Cover Provider banks’ was approved. Observer expressed preference to remove UK Banks and have the CRAs moved back to NI. Observer expressed discontent with use of UK Banks as this will introduce English Law into the SEM.

Secretariat drew attention to Section 12.2 of the updated Deed of Charge which has removed the need for NI Participants to employ an agent of service when signing the Deed of charge over the CRAs located in London.

Observer expressed preference for Committee to review the proposal in parallel with the updated Deed of Charge and the previous Mod\_16\_11 Credit Worthiness Test for the SEM Bank and Credit Cover Provider banks when considering Mod\_08\_14 Collateral Reserve Accounts.

MO Member advised that it is not possible to move the accounts back to NI as the SEM Bank does not have a branch in NI, and also the SEM Bank Tender is in effect until April 2017. MOD\_08\_14 initiated after comments were received from Participants with regards to section 6.19 of the Code not in line with previously approved MOD\_16\_11.

Chair advised that it is important that this discrepancy has been highlighted by the proposal.

Supplier Alternate expressed the view that it would be useful to allow time for Participants to review the proposal in light of the updated deed of charge.

Generator Member queried as to whether the legal advice re-tender covered English Law. Secretariat advised that the Code is governed by NI Law and there should not be an issue with the SEM Bank being based in London. Secretariat further advised that the RFP for the re-tender specified that firms should possess the relevant expertise in both NI and ROI law.

## Meeting 58 – 4 december 2014

MO Member provided an overview of the proposal advising that the proposal seeks to reflect the fact that SEM Collateral Reserve Accounts may be held in either Ireland or the UK as opposed to either in Ireland or NI as currently implied by section 6.19.

MO Member advised that this inconsistency was identified by Viridian when undertaking a legal review of Mod\_02\_13 Registration of Charges. MO Member provided a brief background on the issues advising that as Northern Bank is not independently rated, they were not eligible to be awarded the SEM Bank tender under the new criteria, following implementation of Mod\_16\_11 V3 Banking Eligibility Requirements.

Discussion ensued in relation to Participant concerns over the sterling bank accounts being located in London and whether the accounts could be moved back to NI. Generator Member sought clarification as to whether the definition in question states that the accounts should be in NI. MO Member advised that the Currency Zone Glossary definition refers to Jurisdiction and as the sterling SEM accounts are now held in London, the reference to Currency Zone in Section 6.19 is now inconsistent with the rest of the Code. MO Member advised that the SEM Collateral Reserve bank accounts are held in London in order to meet the Code criteria requirements of acting as the SEM bank based on the outcome of the SEM Bank tender process. Generator Member expressed the view of being in favour of the accounts moving back to NI. MO Member advised that following Mod\_16\_11v3, which became effective in April 2013, Northern Bank no longer met the requirements to be the SEM Bank, as it is a subsidiary of Danske Bank but the obligations of the subsidiary are not covered by the parent bank and they are not independently rated. The SEM bank contract is with Danske Bank and not with Northern Bank so, even apart from the criteria, Northern Bank was not appointed as part of the SEM bank tender. Therefore SEMO could not move the accounts to Northern Bank based on the current SEM bank contract.

Supplier Member drew attention to the Deed of charge in relation to Mod\_02\_13 Registration of Charges advising that it would be necessary to execute the deed in English Law for the sterling accounts.

MO Member advised that a formal written response will be issued to Participants in answer to the comments submitted by Viridian.

## Meeting 59 – 12 february 2014

MO Member advised that SEMO finance contacted Dankse Bank representative who advised that there are no plans to open a branch in NI due to a number of commercially sensitive legal and regulatory reasons.

Observer drew attention to a previously submitted question from Viridian querying as to whether the sterling accounts for the CRAs could be held in the Dublin branch. MO Member advised that this had been previously addressed via a verbal update at a previous meeting advising that this would not be in accordance with the code and the timelines for transferring funds may not be met. Secretariat advised that this had formed part of the 7 issues submitted by Viridian for clarification and that the written response to the issues provided by SEMO Finance would be circulated subsequent to the meeting.

## Meeting 61 – 15 april 2014

Generator Member noted that following circulation of the answers to Viridian questions, progress had been made on this proposal and whilst they were not in agreement with, he they felt it appropriate that a vote should be taken. Chair echoed those thoughts and advised that more discussion had also taken place on this proposal on the Deed of Charge conference call as the proposals are connected.

Generator Member asked that the work undertaken during this proposal be communicated to those drafting the Trading & Settlement Code for the ISEM project. MO Member advised that the particular workstream had not commenced. Observer advised that the current SEM bank tender is in place until April 2017 with a year extension provision and that after this time this situation may occur again depending the outcome of the banking tender process. Observer noted that it was regrettable that the code was being changed to amend this circumstance and felt strongly against such a situation occurring and hoped that such would not re-occur nor should this event become normal practice. MO Member commented that this was not the case as the committee itself sought to have a more competitive process in the initial tender process and that’s why the jurisdiction was open up to UK. This was not coincidental as some Participants expressed the view that completion should have been fully opened across Europe. It was only on the advise from SEMO Finance that the final wording was agreed to explicitly state United Kingdom as this wuold be the only way to guarantee same day transactions.

Supplier Member expressed the view that the drafting of the proposal should be amended to refer to England and Northern Ireland as opposed to the United Kingdom. MO Member was not in favour of this advising that it would create an inconsistency with sections 6.15 to 6.17 of the T&SC. At the time that Mod\_16\_11 ‘Banking Eligibility Requirements’ was discussed, it was highlighted that the SEM Bank at the time would not qualify and that the likelihood was that no Bank in NI could satisfy the new criteria and the consensus was to open the tender to UK banks. This was deemed acceptable at the time because the stability of the SEM bank was considered a priority; however the discussion did not extend to the legal implication of adding a new jurisdiction. There was broad agreement that a vote should take place with a view to approving this proposal but with registered concerns regarding the overall circumstances of this proposal and for these concerns to be noted for consideration in future tendering processes and the I-SEM design.

**Dissenting View**

 On the face of it this Modification is discriminatory in that for RoI PTs the SEM Collateral Reserve Account must be in RoI (i.e. the same jurisdiction as the Euro PT where it has a registered Unit (RoI) whilst for NI PTs the SEM Collateral Reserve Account can be in another jurisdiction (i.e. a different jurisdiction to the jurisdiction in which the Sterling PT has a registered Unit (NI) those different jurisdictions being:-

 England;

 Wales and

 Scotland

This Modification changes the T&SC retrospectively to align with the completed procurement exercise, An exercise which was inconsistent with the Code requirements at that time. The Modification introduces English Law to the execution of the Deed of Charge, which is also inconsistent with the T&SC.

# Proposed Legal Drafting

As set out in Appendix 1 below.

#  LEGAL REVIEW

Complete

# IMPLEMENTATION TIMESCALE

It is proposed that this Modification is implemented on a Settlement Day basis with effect from one Working Day after an RA Decision is made.

# Appendix 1: Mod\_08\_14 make whole payments for interconnector units

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| **MODIFICATION PROPOSAL FORM** |
| **Proposer** | **Date of receipt** | **Type of Proposal** | **Modification Proposal ID** |
| **SEMO** | **18 September 2014** | **Standard**  | **Mod\_08\_14** |
| **Contact Details for Modification Proposal Originator** |
| **Name** | **Telephone number** | **Email address** |
| **Niamh Delaney** | 1. **2370321**
 | **niamh.delaney@sem-o.com** |
| **Modification Proposal Title** |
| **Clarification of Location of SEM Collateral Reserve Accounts** |
| **Documents affected** | **Section(s) Affected** | **Version number of T&SC or AP used in Drafting** |
| **T&SC** | **6.19** | **15.0** |
| **Explanation of Proposed Change** |
| The proposed change amends Section 6.19 to reflect the fact that SEM Collateral Reserve Accounts may be held in either Ireland or the United Kingdom rather than in either Ireland or Northern Ireland as currently implied by Section 6.19.  |
| **Legal Drafting Change***(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* |
| 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 ineither Ireland or the United Kingdom according to whether the Participant has a registered Unit in either Ireland or Northern Ireland respectively 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.
 |
| **Modification Proposal Justification***(Clearly state the reason for the Modification)* |
| As a consequence of previous modification Mod\_16\_11 Credit Worthiness Test for SEM Bank and Credit Cover Provider banks, a discrepancy has arisen in the Code with regard to the SEM Collateral Reserve Accounts. Section 6.19 of the Code refers to the maintenance of a SEM Collateral Reserve Account with the SEM Bank in each Currency Zone in which the Participant has a registered Unit. Currency Zone has the meaning set out below, where Jurisdiction refers to Ireland or Northern Ireland as appropriate.

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| **Code Objectives Furthered***(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* |
| This modification aims to further code objectives 1.3.2 and 1.3.5 namely:“ to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;”and “to provide transparency in the operation of the Single Electricity Market;” |
| **Implication of not implementing the Modification Proposal***(State the possible outcomes should the Modification Proposal not be implemented)* |
| A conflict will remain between Section 6.19 and the Glossary definition of Currency Zone.  |
| **Working Group***(State if Working Group considered necessary to develop proposal)* | **Impacts***(Indicate the impacts on systems, resources, processes and/or procedures)* |
| No  | No system impact.  |
| ***Please return this form to Secretariat by email to*** *modifications@sem-o.com* |