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Submissions  
Electricity Authority  
PO Box 1041  
Wellington 6143  
By email: [submissions@ea.govt.nz](mailto:submissions@ea.govt.nz)

## **Retailer Default Code Amendment Consultation Paper**

Meridian appreciates the opportunity to submit on the Authority's 'Arrangements to Manage a Retailer Default' Code amendment consultation paper.

This submission is provided on behalf of Meridian and its subsidiary Powershop.

### **Current arrangements are unsatisfactory and a new approach is strongly needed**

Meridian continues to support introducing a new process for dealing with a retailer default. In contrast to other industries, electricity participants have limited ability to terminate supply following an insolvency event and it is unacceptable that a retailer default situation could at present expose NZEM participants to upwards of 84 days of accumulated losses. In our view current "backstop" retailer default Code amendments are deficient in several respects, with the amendments not providing any clarity on critical matters like the process by which customers may be allocated and transfer fees established. We consider it is entirely conceivable that ad hoc interventions will emerge if well defined procedures are not in place.

Meridian considers a robust time estimate and procedures for exiting a defaulting retailer to be a critical element of a well designed prudential regime and we appreciate the efforts of the Authority and the RAG to align their work with the WAG/SPRTG's work to develop prudential reforms.

## **The proposed arrangements are a positive development**

At their core, the new arrangements consist of a three phased approach that favours, in the first instance, market-led responses to facilitate the orderly exit of a participant who becomes insolvent, defaults on their wholesale market prudential and settlement obligations, or commits an act of serious financial breach involving a distributor.

Having mechanisms in place that facilitate the timely exit of a defaulting participant are critical to addressing our concerns highlighted above and we appreciate the advances the proposed arrangements will make in ensuring this objective is met whilst also allowing time for a commercial solution to be progressed to address other wider objectives.

While Appendix 1 addresses specific questions the Authority has asked, in our view there are several considerations that are particularly important.

Meridian considers it is important and appropriate that the Authority discloses that a default has occurred, at a minimum, where wholesale payments are scaled, but also more broadly where the prospect of scaling is considered likely. The Authority has an important role to play in maintaining confidence in the market arrangements, and in fact may need to play a role in correcting harmful mis-information.

While we acknowledge the overall approach and specific timeframes allowed for later stages of the process have been developed with the specific intention of dealing with “most probable” eventualities, it is important to recognise the risks this creates. For instance, it is clear that the 1 day timeframe allowed for processing switches will be difficult to achieve where large numbers of customers are involved.

Meridian recognises and appreciates the efforts of the RAG and Authority to ensure the arrangements incorporate measures that will provide retailers with the information they will require on the customers they may acquire. If this does not occur, problems will be inevitable due to incomplete information. We consider it is important the Authority requests as part of its communications with stranded customers information on whether they are registered as a medically dependent or vulnerable consumer. We also consider it is important this retailer default arrangement is supplemented with careful monitoring regarding the accuracy of registry information.

## **The proposed code drafting is in Meridian's view largely reasonable**

While we consider there are some specific drafting improvements that can be made, Meridian generally supports the Code amendments that have been proposed. We consider many of these will be important to ensure the regime operates smoothly and provides retailers with the information they will need to assist in progressing the process of transferring customers in the timeframes that have been allowed.

## **Practical allocation methodologies and tender guidance need to be provided**

While Meridian is broadly comfortable with the concept of the Authority trialling a voluntary tender process to allocate stranded customers within the compressed (three calendar day) timeframe proposed, we consider there is a strong need for further guidance on how the process will be run for this timeframe to be met and to attract interest from retailers in participating. It will be particularly important that the precise format in which bids are to be submitted – that we consider should involve making bids at the GXP level – and criteria for assessing bids are addressed as part of the guidelines. The requirement to quote a “standard price” as part of the tender will often not be practical where commercial customers are involved and will need to be modified in developing the guidelines.

For the tender process to be worthwhile, it will be important that retailers have reasonable information made available in advance about the customers that are to be transferred, including, for instance, on their geographic location and usage.

It is important in Meridian's view the arrangements protect against creating wider threats to financial viability, as per the focus of current work of the Australian energy regulator, and supports the Authority's proposal to ensure participants are provided the opportunity to provide information on potential flow on risks in advance of allocations being made. As they presently stand, the proposed mandatory allocation rules, however, contain no controls to prevent retailers being allocated customers on GXPs or meter types (e.g. pre-payment meters) they do not currently serve and need to be adjusted to address this.

Further details on our comments above are contained in Appendix 1 that provides our responses to the specific consultation questions.

If you have any queries regarding this submission please contact me.

Yours sincerely,



Alannah MacShane  
Regulatory Analyst

**DDI** 04 381 1378

**Mobile** 021 811 362

**Email** [alannah.macshane@meridianenergy.co.nz](mailto:alannah.macshane@meridianenergy.co.nz)

## Appendix 1: Responses to Consultation Questions

	Question	Response
1	Has there been any development since submissions were received on the problem definition developed by the RAG that might warrant the Authority reconsidering its view as to the nature of the problem?	<p>Meridian remains of the view that the current arrangements expose market participants to unacceptable risks of extended financial losses that cannot be assumed will be dealt with effectively by existing 'backstop' Code amendments or by distributor-led disconnection. Meridian's 19 March 2012 submission to the RAG<sup>1</sup> details the reasons why we consider this to be the case that, in broad terms, relate to a likely reluctance by lines companies to pursue disconnection owing to sensitivities around associated public relations issues and deficiencies in current backstop Code amendments.</p> <p>We note that a focus on addressing these issues aligns with the approach of Australian energy regulator, the Australian Energy Market Commission (AEMC) in terms of their current work to review the suitability of the NEM financial resilience arrangements and the retailer of last resort regime in the light of how risks in other markets with similarly high levels of financial interdependency, most notably the financial sector, have recently played out.<sup>2</sup></p>
2	Do you agree with the objectives of the proposed amendment? If not, why not?	<p>Mostly, although to ensure consistency with objective (c) (regarding maintaining the confidence of industry participants that a default situation will be resolved in a finite timeframe), we consider objective (a) needs to be rephrased as follows:</p> <p>"facilitate, where feasible, a <i>timely</i> commercial solution to an event of retailer default."</p>

<sup>1</sup> Available at <http://www.ea.govt.nz/dmsdocument/12731>

<sup>2</sup> Further details available at the following link: <http://www.aemc.gov.au/market-reviews/open/nem-financial-market-resilience.html>

	Question	Response
3	<p>Do you agree with the proposed Code amendment which would introduce a new category of default when the following conditions are satisfied:</p> <p>a. The retailer is no longer entitled to trade on a distribution network because its use of system agreement has been terminated due to a 'serious financial breach' by the retailer.</p> <p>b. no unresolved disputes remain between the retailer and the distributor.</p> <p>c. the retailer has not taken timely steps to arrange a customer switch.</p> <p>d. the distributor has been unable to remedy the situation.</p> <p>e. the distributor requests the Authority to initiate its process for managing an event of default.</p>	<p>Broadly yes, although, as per the drafting suggestions set out in our response to Q28, we consider the provisions need to spell out what 'serious financial breach' means. Most distributors are still not using the Authority's model use of system agreement, and in a number of the existing use of system agreements that we are aware of, 'serious financial breach' is either not defined or is defined in a way that is not consistent with the Authority's model. Also, greater clarity is needed on the third criterion ('failure by the retailer to remedy the situation'). We suggest it is better to replace it with a notice requirement.</p> <p>It is important that the Code is drafted to clarify <u>all</u> of the specified criteria will be required to be met in the way the Authority has proposed.</p> <p>To avoid similar risks to those discussed in our response to Q4, we support a consistent approach to dealing with retailer default regardless of whether it is distributor-prompted or otherwise.</p>

	Question	Response
4	Do you agree that the proposed Code amendment should apply not only to the network or networks across which the event of default has occurred? If not, why not?	Meridian agrees the amendment should apply across all networks on which the defaulting retailer trades, irrespective of whether the actual default event is constrained to one (or some other lesser number) of networks. As the paper correctly points out, this will avoid incentives for defaulting parties to engage in undesirable types of behaviour, for instance, by focusing on how payments are prioritised across different industry participants in an attempt to stave off the process from occurring or, as suggested in the paper, targeting the process to capture less economic customers. We also consider this approach is likely to be more aligned with the underlying policy objective regarding encouraging prompt resolution.
5	Do you agree that the trigger for the actions to be undertaken by the Authority should be limited to a breach of sub-clauses 14.55(a), 14.55(b), 14.55(f), and (the new) 14.55(h)? If not, why not?	<p>Broadly yes, although we consider several improvements are needed to the drafting of these clauses as detailed in our response to Q28.</p> <p>Regarding the proposal to designate a serious financial breach under a distribution use of system agreement as a qualifying event, we consider it is important that in these instances the onus at all times is on distributors to provide the Authority with the information needed to confirm whether or not contractual notice terms have been complied with.</p> <p>Meridian agrees it is appropriate to limit other circumstances that may trigger the commencement of the new retailer default process to instances where a participant has failed to meet its NZEM financial obligations, either by failing to post adequate prudentials or meet its settlement obligations.</p>
6	Do you agree that the process for managing a retailer default should ensure that responsibility for all ICPs of the retailer in default, active and inactive, are transferred to another retailer? If not, why not?	Yes. By limiting the focus to active customers only this could lead, as the paper suggests, to a similarly protracted period as was needed in the case of E-Gas to deal with inactive ICPs (i.e. two and a half years).

	Question	Response
7	Do you agree that the process should accommodate situations where the default may not be resolved but an acceptable resolution has been agreed and all payments that should have been made have been made? If not, why not?	Meridian agrees that invoicing errors and other similar technical defaults that are unable to be resolved in a timely manner should be excluded in the way the Authority has proposed.
8	Do you agree with the judgement arrived at by the RAG that a total period of 17 days for managing an event of default would provide a reasonable balance between the costs of too short a period and the costs of an extended period? If not, why not?	<p>Relative to current arrangements, Meridian considers the proposed 17 (calendar) day timeframe for managing an event of default establishes a more appropriate limit on the credit exposure of sellers in the market while also allowing a reasonable period of time for a market response to be progressed. From a net seller perspective, a quicker exit is preferable. The 17 day timeframe is a balance between competing interests.</p> <p>In general, we consider the analysis undertaken by the RAG in establishing the timeframe was comprehensive, in particular with the group having considered advice from insolvency practitioners suggesting a commercial sale process could be progressed relatively quickly. While we understand and accept the process has been designed to cater to 'most probable' scenarios, it is important to recognise the considerable challenges certain timeframes will create in some situations. Where large numbers of customers are involved, we consider the expected 1 day timeframe for processing voluntary switches is likely to be one example where difficulties could arise. Were this to fall over a public holiday weekend, we also consider the three calendar day period for completing the tender and mandatory allocation phase of the process could be similarly challenging.</p>

	<b>Question</b>	<b>Response</b>
9	If a period of 17 days is maintained, should this time be allocated as follows: seven days for a retailer to resolve the dispute or transfer its customer base, seven days for customers to voluntarily switch to another retailer, and a maximum of three days communicate with customers and ensuring all switches are processed?	<p>Yes provided the process, at a minimum, embeds a 2 business day warning for retailers of the possible commencement of the voluntary switching phase. If the Authority were to run a mass media campaign without providing 2 BDs warning for retailers to, for example, resource their call centres accordingly, this could be unmanageable.</p> <p>See also responses to Q8 and Q13.</p>
10	Do you agree that the Code should be amended to require a retailer in default to provide information on its customers to the Authority and for the Authority to obtain this information from distribution networks and the registry if the information is not forthcoming from the defaulting retailer? If not, why not?	<p>We consider it is important and appropriate the Code places obligations on the defaulting retailer to provide necessary customer information and allows for the Authority as an alternative to seek to access this information from the registry and distributors, given the limited incentives a defaulting retailer dealing with the demands of multiple agents (banks, receivers etc.) may have to provide this information.</p>

	<b>Question</b>	<b>Response</b>
11	Do you agree that the Code should be amended to provide for the registry to complete the switch of any customer of a retailer in default that choose to switch to another retailer, if the retailer in default does not meet its obligations under the switching rules? If not, why not?	Meridian considers it is important the registry is assigned the right to transfer customers where a defaulting retailer fails to do so to assist in enabling the situation to be resolved as quickly as possible.
12	Do you agree that the Code should be amended to provide for the Authority to direct the registry not to complete the switch of any customer to a retailer in default after the Authority has advised the customers of that retailer that their retailer is in default and that they should transfer to another retailer? If not, why not?	Yes to avoid the risk highlighted in the consultation paper of problems compounding in scale as customers seek to switch to secure the potentially lower prices of the defaulting retailer.

	Question	Response
13	Do you agree that the Authority should advise retailers and other interested parties that an event of default has occurred, and if it considers appropriate, identify the entity in default, to enable these parties to make necessary preparations? If not, why not?	<p>Meridian considers it is important and appropriate that the Authority is, at a minimum, required to publicise information on the default where it results in payment shortfalls and subsequent scaling of payments in the wholesale market as per the Authority's proposals.</p> <p>We consider it is important that notification is provided in wider circumstances also and, because of this, consider it is essential the provisions are drafted in a way that allows for this to occur where considered appropriate by the Authority, as has been proposed. By having the provisions drafted in this way, they could play an important role in ensuring retailers are provided with the lead time they require for later stages of the process, particularly where large numbers of customers are involved. As we highlight in comments set out in our cover letter, the Authority has an important role to play in maintaining confidence in market arrangements and the provisions would provide the Authority with the means to correct harmful mis-information, for instance regarding the identity of the distressed participant, and to provide participants with advance warning where the scaling of forward wholesale market payments has been assessed as highly likely. We are also concerned that the arrangements may otherwise prevent the Authority from making customers aware earlier than 7 days into the process they will need to switch retailers, even in instances where it is known from an early stage that a commercial transfer will not be progressed.</p> <p>See also response to questions 8 and 9.</p>

14	<p>Do you agree that the Code should provide for the Authority to communicate directly with the customers of the retailer in default, including via mass media? If not, why not?</p>	<p>Meridian agrees the Code should provide for the Authority to communicate with orphaned or stranded customers using a variety of mediums, including (but not limited to) mass media. While we accept mass media will most likely provide the quickest means of communicating with customers, we consider it is important this is supplemented with posted communications to maximise the campaign's 'reach'.</p> <p>Meridian supports the suggestion raised at the May workshop that the Authority seeks guidance from retailers in drafting their communications with customers of defaulting retailers. To assist with later stages of the process, we consider the communications material should request from customers information on whether they are registered as a vulnerable or medically dependent consumer.</p> <p>See also our response to Q13.</p>
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	<b>Question</b>	<b>Response</b>
15	Do you agree that the Code should provide for the Authority to provide customer information to the retailers to whom it transfer customers, should a mandatory transfer be required? If not, why not?	Yes. This may assist in allowing retailers to fill in essential gaps in information, for instance, on customer contact details.
16	Do you agree that the Code should be amended to require that contracts between the retailer and its customers provide for the Authority to assign the contract to another retailer if an event of default is unresolved after 17 days? If not, why not?	Yes, to ensure a workable approach.
17	Do you agree that the terms offered by the recipient retailer (who is assigned customers by the Authority) should be those terms (including price) normally offered by the recipient retailer at the date the Authority was notified of the default? If not, why not?	Yes.

	Question	Response
18	Should the arrangements for managing an event of default provide for the Authority to tender the remaining customer base of the retailer in default after the Authority had exercised its rights to assign the contract on the terms of the recipient retailer? If not, why not?	<p>In principle, Meridian has no issue with the Authority attempting in the first instance to allocate remaining customers using a voluntary competitive process as we consider the truncated timeframe over which the tender process is to be run addresses our previous concerns regarding a tender process creating unnecessary delays to the situation being resolved.<sup>3</sup></p> <p>We request the Authority quickly works to develop detailed guidelines providing fuller information on how the tender process will operate. At a minimum, these guidelines will need to cover the format in which bids are to be submitted (for instance, providing clarity on whether prices are to be quoted in a 'standardised' form, adjusted for discounts) and criteria for assessing bids. In our view, they should be designed in a way that involves bids being submitted at the GXP level to avoid the risk discussed in our response to Q20 below that retailers are allocated customers on GXPs not currently served by the acquiring retailer.</p> <p>Without further guidance being provided, we consider it is highly possible the tender will fail to attract much interest. Having limited information made available in advance on the location of customers, their status (residential or commercial), and the number of inactive ICPs involved, will likely exacerbate the situation further. In any case, we consider guidelines will be an important pre-requisite to ensuring the tender could be progressed in the compressed three day timeframe proposed.</p>

<sup>3</sup> Refer Meridian's 25 September 2012 submission to the RAG (available at: <http://www.ea.govt.nz/dmsdocument/13745>) for further details.

	Question	Response
19	If a tender arrangement is provided for, should the Authority invite tenders on the basis of the prices that would be charged to the customers by the recipient retailer (but no higher than the standard terms offered by that retailer) with the Authority assigning the customers on the basis of the lowest priced retailer? If not, why not?	For domestic customers, yes.  We consider further consideration is needed on the rules that will apply for commercial customers as determining a “standard price” for business customers will often not be possible because of the common practice amongst retailers to provide customised quotes for business customers.
20	Do you agree that, should the Authority be required to allocate customers of the retailer in default, it should do so on the basis of market share in the relevant networks but without any de minimus threshold? If not, why not?	Yes, subject to the arrangements allowing for the Authority to take account of advice from retailers on risks regarding financial viability when assigning customers and ensuring retailers are only allocated customers on GXPs they serve and on compatible meter types. <sup>4</sup>

<sup>4</sup> As highlighted in Meridian’s 19 March submission to the RAG, we consider it is important that retailers who do not currently trade on a particular GXP, for instance because of considerations regarding transmission and other risks, are not assigned customers served by that GXP. It is also important that retailers not offering pre-payment services are not allocated customers using this meter type.

	Question	Response
21	Do you agree that the arrangements for managing a retailer default should provide an opportunity for any retailer that is assigned customers to object on the basis that the assignment would threaten its financial viability, with the onus on the retailer to substantiate such a claim? If not, why not?	Meridian considers it is critical the arrangements embed protections against the regime threatening the financial viability of other market participants and supports the proposal.
22	Do you agree that the Code should require that the recipient retailer is responsible for notifying their assigned customers that they were now a customer of the recipient retailer, and advising the terms and conditions of their new contract? If not, why not?	<p>Meridian agrees the responsibility for advising new customers of contractual terms and conditions should sit with acquiring retailers but considers the obligation should only extend so far as taking reasonable steps to ensure customers are advised of their new terms. As the consultation paper and draft guidelines correctly point out, retailers may have only partial information regarding their newly acquired customers and it is important that the Code provisions are drafted in a way that recognises there is no guarantee retailers will have access to accurate customer contact details.</p> <p>We also acknowledge that acquiring retailers will be expected to meet the standards set out in the <i>Principles and Minimum Terms and Conditions for Domestic Contracts for Delivered Electricity (Interposed)</i> in terms of making available information to customers on different options / choices, and termination provisions prior to the contract being entered into.</p>

	Question	Response
23	Do you agree that the Code should require that contracts between retailers and their customers should include provisions that: provide for the retailer to give customer details to the Authority in the event of a default; allow the contract to be assigned by the Authority in the event of default, with the terms and conditions to be replaced by the recipient retailer's terms and conditions; and provide for the retailer to assign the contract? If not, why not?	Yes. We consider these provisions are an important part of ensuring a workable approach.
24	Do you agree the proposed amendment is preferable to other options? If you disagree, please explain your preferred option in terms of consistency with the Authority's statutory objective in section 15 of the Electricity Industry Act? If not, why not?	Yes.

	<b>Question</b>	<b>Response</b>
25	Do you agree that a period of 17 days strikes the right balance to achieve the benefits of an arrangement for managing an event of default while minimising the costs of achieving those benefits? If not, what period of time should be specified and why?	Refer response to Q8.
26	Do you agree that the benefits of the proposed arrangements would exceed the costs? If not, why not?	Yes. As we discuss in further detail in our cover letter, the current arrangements are in Meridian's view unsuitable in many respects and expose participants to unacceptable levels of risk. We consider it is distinctly possible that if new arrangements are not established, ad hoc responses that are costly to develop will arise.
27	Do you agree that the proposed arrangements meet the Authority's Statutory Objective? If not, why not?	Yes. As per the comments in our cover letter, we consider the proposals will promote competition and efficiency by bringing the credit risks inherent in current arrangements into more acceptable bounds whilst ensuring market solutions can be progressed and services to consumers are maintained.

	Question	Response
28	Do you have any comments on the drafting of the proposed amendment?	<p>Meridian considers the following amendments are needed to address the feedback set out in our responses to questions 3, 5, and 18 and improve alignment with the current set of Code amendments being consulted on as part of wholesale prudential and settlement reforms. Other more general drafting suggestions are also provided below.</p> <p><b>Suggested changes to Part 11, Clause 11.15B, Process for retailer events of default:</b></p> <p><del>(1) This clause applies if</del> If the <b>Authority</b> is satisfied that a <b>retailer</b> has committed an <b>event of default</b> under paragraph (a) or (b) or (f) or (h) of clause 14.55 <u>the <b>Authority</b> and each <b>participant</b> must comply with Schedule 11.5.</u></p> <p><del>(2) The <b>Authority</b> and each participant must comply with Schedule 11.5.</del></p> <p><b>Suggested changes to Schedule 11.5:</b></p> <p><b>1 Purpose</b></p> <p>The purpose of this Schedule is to set out the process that the <b>Authority</b> and each <b>participant</b> must comply with when <u>the Authority is satisfied that</u> a <b>retailer</b> <u>has</u> committed an <b>event of default</b> under paragraph (a) or (b) or (f) or (h) of clause 14.55.</p>

	Question	Response
28	Do you have any comments on the drafting of the proposed amendment?	<p><b>5 Authority may assign contracts</b></p> <p>(1) This clause applies if, by the end of the 17th day after the defaulting <b>retailer</b> was given notice under clause 2(1), —</p> <p>(a) the defaulting <b>retailer</b> has not remedied the <b>event of default</b> or, in the case of an <b>event of default</b> under clause 14.55(b) in respect of which there is an unresolved invoice dispute under clause 14.64, has not reached an agreement with the <b>Authority</b> to resolve the <b>event of default</b>; and</p> <p>(b) the defaulting <b>retailer</b> continues to have 1 or more contracts under which a <b>customer</b> of the defaulting <b>retailer</b> purchases <b>electricity</b> from the defaulting <b>retailer</b>.</p> <p>(2) The <b>Authority</b> may—</p> <p>(a) exercise its right under a contract under which a <b>customer</b> purchases <b>electricity</b> from the defaulting <b>retailer</b> to assign the rights and obligations of the defaulting <b>retailer</b> under the contract to a recipient <b>retailer</b> in accordance with the contract; and</p> <p>(b) specify the recipient <b>retailer</b> to whom the rights and obligations under the contract will be assigned.</p> <p>(3) The <b>Authority</b> must, by notice in writing to each recipient <b>retailer</b>, direct the recipient <b>retailer</b> to accept an assignment under subclause (2).</p> <p>(4) Before the <b>Authority</b> gives notice to a recipient <b>retailer</b> under subclause (3), the <b>Authority</b> may decide not to assign rights and obligations of the defaulting <b>retailer</b> under a contract to a recipient <b>retailer</b> if the recipient <b>retailer</b> satisfies the <b>Authority</b> that the assignment would pose a serious threat to the financial viability of the recipient <b>retailer</b>.</p> <p>(5) A recipient <b>retailer</b> must comply with a direction given to it under subclause (3).</p> <p>(6) Before the <b>Authority</b> gives notice under subclause (2), the <b>Authority</b> must, if the <b>Authority</b> considers it is practicable, consult with the defaulting <b>retailer</b> as to the need for the notice.</p> <p>(7) Nothing in this clause prevents the <b>Authority</b> from <del>deciding</del> selecting <u>the retailer or retailers to whom it will</u> give a notice under subclause (3) by undertaking a tender or other competitive process.</p>

	Question	Response
28	Do you have any comments on the drafting of the proposed amendment? (cont.)	<p><b>8 Terms of assigned contract</b></p> <p>(1) If the <b>Authority</b> exercises its right to assign rights and obligations under clause 5(2), the <b>Authority</b> must attempt to advise the <b>customer</b> that the terms of the contract may be amended on assignment.</p> <p>(2) The recipient <b>retailer</b> must <u>take reasonable steps</u> to advise the <b>customer</b> of those terms.</p> <p><b>Suggested changes to Part 14 Clause 14.55 Definition of an event of default</b></p> <p>Each of the following events constitutes an <b>event of default</b>:</p> <p>(a) the failure of a <b>payer participant</b> to comply with clauses 14.2 to 14.17 or to satisfy a <b>call</b> in accordance with clause 14.18(4):</p> <p>(b) the failure of a <b>payer participant</b> to pay the full amount invoiced to it in accordance with clauses 14.36 to 14.54:</p> <p>(c) any action taken for, or with a view to, the declaration of a <b>payer participant</b> as a corporation at risk under the Corporations (Investigation and Management) Act 1989:</p> <p>...</p> <p>(e) a person being appointed under section 19 of the Corporations (Investigation and Management) Act 1989 to investigate the affairs or run the <b>business</b> of the <b>payer participant</b>:</p> <p>(f) if a <b>payer participant</b> is (or admits that it is or is deemed under any applicable law to be) unable to pay its debts as they fall due or is otherwise insolvent, or stops or suspends, or threatens to stop or suspend, or a moratorium is declared on, payment of its indebtedness, or makes or commences negotiations or takes any other steps with a view to making any assignment or composition with, or for the benefit of, its creditors, or any other arrangement for the rescheduling of its indebtedness or otherwise with a view to avoiding, or in expectation of its inability to pay, its debts:</p> <p>....</p>

	Question	Response
28	Do you have any comments on the drafting of the proposed amendment? (cont.)	<p>(h) termination of a <b>retailer's use-of-system agreement</b> with a <b>distributor</b> because of <u>a failure by the <b>retailer</b> to provide security as required by the <b>use-of-system agreement</b> or a failure by the <b>retailer</b> to pay an amount due that exceeds \$100,000 or 20% of the actual charges payable by the <b>retailer</b> in a month and, in either case a serious financial breach as defined in the <b>use-of-system agreement</b> if—</u></p> <ul style="list-style-type: none"> <li>(i) the <b>retailer</b> continues to have a <b>customer</b> or <b>customers</b> on the <b>distributor's local network</b>; and</li> <li>(ii) there are no unresolved disputes between the <b>retailer</b> and the <b>distributor</b> in relation to the termination</li> <li>(iii) the <b>distributor</b> <u>has given the <b>retailer</b> two <b>business days</b>' notice that it intends to give notice to the <b>Authority</b> that this clause applies</u> <del>has not been able to remedy the situation in a reasonable time</del>; and</li> <li>(iv) the <b>distributor</b> gives notice to the <b>Authority</b> that this clause applies.</li> </ul>