

Electricity Industry Participation Code 2010

Part 5

Regime for dealing with undesirable trading situations

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5.1 Occurrence of undesirable trading situation

- (1) If the **Authority** suspects or anticipates the development, or possible development, of an **undesirable trading situation**, the **Authority** may investigate the matter.
- (2) The following are examples of what the **Authority** may consider to constitute an **undesirable trading situation**:
 - (a) manipulative or attempted manipulative trading activity;
 - (b) conduct in relation to trading that is misleading or deceptive, or is likely to mislead or deceive;
 - (c) unwarranted speculation or an undesirable practice;
 - (d) material breach of any law;
 - (e) a situation that threatens orderly trading or proper settlement;
 - (f) any exceptional or unforeseen circumstance that is contrary to the public interest.
- (3) To avoid doubt,—
 - (a) the list of examples in subclause (2) is not an exhaustive list, and does not prevent the **Authority** from finding that an **undesirable trading situation** is developing or has developed in other circumstances; and
 - (b) an example listed in subclause (2) does not constitute an **undesirable trading situation** unless the example comes within the definition of that term in Part 1.

Compare: SR 2003/374 r 54

Clause 5.1(2) and (3): inserted, on 18 July 2013, by clause 5 of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

5.1A Time limit for investigating undesirable trading situation

Despite clause 5.1(1), the **Authority** must not commence an investigation if more than 10 **business days** have passed since the situation, which the **Authority** suspects or anticipates may be an **undesirable trading situation**, occurred.

Clause 5.1A: inserted, on 18 July 2013, by clause 6 of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

Clause 5.1A: amended, on 15 May 2014, by clause 5 of the Electricity Industry Participation (Minor Code Amendments) Code Amendment 2014.

5.2 Actions Authority may take to correct undesirable trading situation

- (1) If the **Authority** finds that an **undesirable trading situation** is developing or has developed, it may take any action that—
 - (a) the **Authority** considers is necessary to correct the **undesirable trading situation**; and
 - (b) relates to an aspect of the **electricity** industry that the **Authority** could regulate in this Code under section 32 of the **Act**.
- (2) The actions that the **Authority** may take under subclause (1) include any 1 or more of the following:
 - (a) directing that an activity be suspended, limited, or stopped, either generally or for a specified period:
 - (b) directing that completion of trades be deferred for a specified period:
 - (c) directing that any trades be closed out or settled at a specified price:
 - (d) directing a **participant** to take any actions that will, in the **Authority's** opinion, correct or assist in overcoming the **undesirable trading situation**.
- (2A) A direction given to a **participant** under subclause (2)(d)—
 - (a) may be inconsistent with this Code; but
 - (b) must not be inconsistent with the **Act**, or any other law.
- (3) The **participant** must comply promptly with a direction given to it in writing.
- (4) A **participant** is not liable to any other **participant** in relation to the taking of an action, or an omission, that is reasonably necessary for compliance with an **Authority** direction under this clause.
- (5) A **participant** does not breach this Code if it acts in accordance with a direction given under subclause (2)(d).

Compare: SR 2003/374 r 56

Clause 5.2(1): substituted, on 18 July 2013, by clause 7(1) of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

Clause 5.2(2): substituted, on 18 July 2013, by clause 7(2) of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

Clause 5.2(2A): inserted, on 18 July 2013, by clause 7(2) of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

Clause 5.2(4): amended, on 18 July 2013, by clause 7(3) of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

Clause 5.2(5): inserted, on 18 July 2013, by clause 7(4) of the Electricity Industry Participation (Undesirable Trading Situation) Code Amendment 2013.

5.3 Authority must consult with system operator

- (1) The **Authority** must consult with the **system operator** if—
 - (a) the **Authority** is considering taking an action under clause 5.2 to correct an **undesirable trading situation**; and
 - (b) it is possible that the action may have an effect on **system security**.
- (2) The **system operator** must maintain procedures that are necessary to enable it to respond immediately to the **Authority**, and provide information as soon as reasonably practicable, if the **Authority** consults the **system operator** under this clause.

Compare: SR 2003/374 r 58

5.4 Authority must consult with participants

If the **Authority** finds that an **undesirable trading situation** is developing or has developed, the **Authority** must—

- (a) immediately advise all **registered participants** of its findings and of any actions that the **Authority** intends to take, or has taken, to correct the **undesirable trading situation**; and
- (b) unless the **Authority** considers that it is impractical to do so, consult with affected **participants** before taking the action.

Compare: SR 2003/374 r 59

5.5 Authority must attempt to correct and restore normal operation as soon as possible

The **Authority** must attempt to correct every **undesirable trading situation** and, consistently with section 15 of the **Act**, restore the normal operation of the **wholesale market** as soon as possible.

Compare: SR 2003/374 r 60