

Procedure Change Proposal: Monitoring Protocol

16 March 2017

Economic Regulation Authority

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1.1 Background

Since 1 July 2016 the Economic Regulation Authority (**Authority**) has been responsible for the compliance and enforcement functions under clause 2.13 of the Wholesale Electricity Market Rules (**Market Rules**). Prior to this the Independent Market Operator (**IMO**) was responsible for these functions.

Clause 2.15.1 of the Market Rules requires the Authority to maintain and implement a Monitoring Protocol. The purpose of the Monitoring Protocol is to state how the Authority will implement its obligations under the Market Rules to monitor Rule Participants' behaviour and compliance with the Market Rules and Market Procedures (Market Rule 2.15.2).

Clause 2.15.3 of the Market Rules requires the Monitoring Protocol to specify:

- (a) the Authority's monitoring processes for assessing compliance by Rule Participants with the Market Rules and Market Procedures;
- (b) a process for Rule Participants to report alleged breaches of the Market Rules and Market Procedures;
- (c) processes for investigating alleged breaches;
- (d) guidelines for the Authority when issuing warnings about alleged breaches; and
- (e) the procedure for bringing proceedings in respect of Category B or C Market Rule breaches before the Electricity Review Board.

Before the transfer of functions on 1 July 2016, the Monitoring Protocol was published by the IMO and was last updated in October 2008.

To reflect the transfer of the compliance and enforcement functions from the IMO, the Authority made transitional amendments to the Monitoring Protocol under clause 1.17.1 of the Market Rules and published it on 19 September 2016.

The Authority is now proposing broader changes to the Monitoring Protocol as set out later in this proposal.

1.2 Procedure Change Process

The IMO, System Management, the Australian Energy Market Operator (**AEMO**), the Authority or the Rule Change Panel as applicable, may initiate the Procedure Change Process by developing a Procedure Change Proposal (Market Rule 2.10.1).

The Authority must publish Procedure Change Proposals that it develops (Market Rule 2.10.5B).

Clause 2.10.6 of the Market Rules requires the Procedure Change Proposal to include:

- the proposed Market procedure or an amendment to or replacement for a Market Procedure, indicating the proposed amended words or a proposed Market Procedure (refer to section 1.4 of this document); and

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- the reason for the proposed Market Procedure or an amendment to or replacement for a Market Procedure or proposed Market Procedure (refer to section 1.3 of this document).

At the same time the Authority publishes the Procedure Change Proposal it must make a call for submissions (Market Rule 2.10.7) – refer to section 1.6 of this document.

The Authority has also considered the Market Procedure for Procedure Administration (**Market Procedure**) that sets out processes to be followed for procedure changes. This Market Procedure was formerly the responsibility of AEMO but is now the responsibility of the Rule Change Panel (**RCP**). The Market Procedure is out of date and will need to be reviewed and updated by the RCP in due course. For example, the Market Procedure makes reference to consulting with existing relevant active working groups established by the Market Advisory Committee (**MAC**). For the Monitoring Protocol, there are no active working groups established by MAC. The Authority will however notify MAC of this Procedure Change Proposal.

The Authority is of the view that the process it intends to follow for this Procedure Change Proposal is consistent with the Market Rules and with those steps of the Market Procedure that are still relevant.

1.3 Reason for the Procedure Change

The Authority has been responsible for the compliance function for over six months now. In this time it has implemented processes required to fulfil the core requirements of the function.

As part of the function implementation work the Authority has undertaken a review of the Monitoring Protocol. The purpose of the review was to assess whether the existing document sufficiently captured the Market Rule requirements, identify changes required to align the document with the processes implemented by the Authority and identify changes needed to provide improved transparency of processes to Rule Participants.

The key updates proposed to the Monitoring Protocol are:

- a restructure of the Monitoring Protocol to better align with the individual obligations set out in clause 2.15.3 of the Market Rules as referred to in section 1.1. above; and
- the provision of further information on the processes used by the Authority, particularly in relation to:
 - o Monitoring processes: detail has been added to describe the methods used by the Authority to monitor compliance;
 - o Investigation processes and outcomes: information has been added to set out the general phases and steps that the Authority will apply when carrying out a breach investigation and also to inform participants of the potential investigation outcomes, and the circumstances when these outcomes may apply;
 - o Enforcement actions: detail has been added to set out the process prescribed by the Regulations for bringing proceedings before the Electricity Review Board.

The Authority does not expect the proposed changes to have any significant impact or require any material changes for Rule Participants.

1.4 New or amended Market Procedure

A summary of the changes proposed to the Monitoring Protocol is set out in Table 1 in Appendix 1.

Appendix 2 provides a marked up copy of the proposed changes to the Monitoring Protocol.

Given the volume of changes, a clean copy of the Monitoring Protocol is provided in Appendix 3.

1.5 Consistency with the Market Objectives

Clause 2.9.3(a)(i) of the Market Rules requires the proposed changes to be consistent with the Market Objectives. The Authority considers that the changes proposed which are predominantly aimed at improving transparency and providing more information on the Authority's approach to and processes for compliance, are consistent with the Market Objectives.

1.6 Invitation to make submissions

Clause 2.10.7 of the Market Rules provides that any person may make a submission to a Procedure Change Proposal and submissions may be made using the [Procedure Change Submission](#) form on the Market Web Site¹. The form requires:

- the submitter's views on the Procedure Change Proposal, including any objections or suggested revisions;
- the submitter's assessment of whether the Procedure Change Proposal is consistent with the Market Objectives and the Market Rules; and
- the implications the Procedure Change Proposal will have for the submitter's organisation (for example changes to IT or business systems), any costs involved in implementing these changes, and the time required to implement the changes.

Interested parties are invited to make a [Procedure Change Submission](#) on this Procedure Change Proposal by 5:00 pm Thursday, 13 April 2017 via:

Email address: publicsubmissions@erawa.com.au

Postal address: PO Box 8469, PERTH BC WA 6849

Office address: Level 4, Albert Facey House, 469 Wellington Street, Perth WA 6000

Fax: 61 8 6557 7999

¹ Refer to the 'Submissions' section of the Procedure Changes page at:
<http://www.aemo.com.au/Electricity/Wholesale-Electricity-Market-WEM/Procedures/Procedure-changes>

CONFIDENTIALITY

In general, all submissions from interested parties will be treated as being in the public domain and placed on the Authority's website. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed, and specify in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the provisions of the Market Rules and Market Procedures.

The publication of a submission on the Authority's website shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority.

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Appendix 1 - Table 1: Summary of proposed changes

Section reference	Change type	Description of change
1 Background	<ul style="list-style-type: none"> - Renamed section heading from 'Monitoring Protocol' to 'Background'. - Moved Authority contact details to new section 1.3 Compliance Contact Points. - Inserted new paragraph 1.2.1. - Retained former paragraph 1.2.1 (now 1.2.2) with minor amendments. - Retained former section 1.3 (now 1.2.3) with amendments. - New section 1.3 Compliance Contact Points inserted. - Deleted former section 1.4 Monitoring Compliance by Rule Participants and replaced with new section 1.4 Compliance Approach. - Section 1.5 moved to section 6.3 Report to Minister – AEMO's Compliance with the Market Rules and Market Procedures. 	<ul style="list-style-type: none"> - Section renamed to better reflect that the information provided in this part of the Monitoring Protocol is of a background nature. - New section 1.3 created relating to both Authority and Rule Participant contact details. - New paragraph 1.2.1 reflects the purpose of the Monitoring Protocol as set out in Market Rule 2.15.2. - This paragraph specifies the information required to be set out in the Monitoring Protocol. Minor amendments made to reference the relevant Market Rule 2.15.3 and more accurately reflect the wording used in that rule. - The information in the first paragraph of the former section 1.3 provided a general overview on the requirement for the Monitoring Protocol. This is now set out in paragraphs 1.2.1 and 1.2.2. The information relating to AEMO's Monitoring and Reporting Protocol previously covered in former section 1.3 is now covered in section 2.2. The former section 1.3 wording relating to the Authority's effectiveness functions has been retained with minor amendments and the addition of the applicable rule reference. - This section deals with the Authority's contact details and processes around Rule Participant contact details. The process in relation to the Authority obtaining compliance personnel contact details in paragraph 1.3.2 is new and intended to ensure Authority compliance related requests and communications are addressed to the correct personnel. - The former section 1.4 Monitoring Compliance by Rule Participants is now covered in new section 2 Monitoring. The new section 1.4 Compliance Approach provides transparency to Rule Participants on the Authority's approach to compliance. - This former section sets out the obligation for the Authority to provide a report to the Minister on AEMO's compliance. There is no express requirement for this obligation to be covered in the Monitoring Protocol. However, it has been retained for completeness and moved to the back of the document with minor amendments.

2 Monitoring	<ul style="list-style-type: none"> - Inserted new section heading titled 'Monitoring'. - Inserted new section 2.1 Monitoring Processes. - Inserted new section 2.2 AEMO's Role (including in its capacity as System Management) to Support the ERA in Monitoring Compliance. 	<ul style="list-style-type: none"> - The information set out in this section 2 relates to Monitoring processes. - This new section is required to more adequately cover the Authority's monitoring processes in accordance with Market Rule 2.15.3(a). - This section has been included for completeness to cover AEMO's role in supporting the Authority to monitor compliance, noting AEMO's role is to be set out in its Monitoring and Reporting Protocol.
3 Breach reporting	<ul style="list-style-type: none"> - Inserted new section titled 'Breach Reporting'. - Deleted former section 1.6 Non-compliance Reporting by Rule Participants and replaced with new section 3.1 Reporting Processes for Breach Allegations. - Deleted former paragraph 1.6.1 a) but retained paragraph b) (now 3.1.1) with minor amendments. - Deleted former paragraph 1.6.2. - Retained former paragraph 1.6.3 (now 3.1.2) with minor amendments. - Retained paragraph 1.6.4 (now 3.1.3) with minor amendments. - Retained paragraph 1.6.5 (now 3.1.4) with minor amendments. - Retained paragraph 1.6.6 (now 3.1.5) with minor amendments. - Retained paragraph 1.6.9 (now 3.1.6) with minor amendments. 	<ul style="list-style-type: none"> - The information set out in this section 3 relates to breach reporting processes. - Section renamed to more accurately reflect section content. - Wording in former section 1.6.1 paragraph a) dealing with non-compliance reporting by participants is sufficiently covered in paragraph 3.1.1 and section 4. - Former paragraph deals with AEMO reports of other participants' non-compliance. This is now captured in paragraphs 2.1.2 and 2.2.1(b). - This paragraph sets out the information required to be provided in a breach notification. Consequential amendments were made as a result of deletion of former paragraph 1.6.2 and also to add new items at (g) and (h). - This paragraph sets out the communication methods for breach notifications. The amendments reflect that the preferred notification method is via email, but also allows for alternative methods (post and facsimile). - This paragraph sets out the obligation for the Authority to record a breach notification in its compliance monitoring register. Wording has been added to clarify that recording of the breach in the Authority's compliance monitoring register will occur after receiving the written notification reporting the breach. - This paragraph requires the Authority to provide written acknowledgement to a breach notification. Minor amendments have been made to more accurately reflect this step of the process. - This paragraph sought to restrict disclosure of the identity of the party alleging the breach. In some cases it will be necessary or appropriate to disclose the identity of

	<ul style="list-style-type: none"> - Deleted former paragraphs 1.6.7 and 1.6.10. - Moved section 1.7 Compliance Monitoring Register to paragraph 6.1.1 with substantial amendments. 	<p>the party alleging the breach and therefore the paragraph has been amended to provide that the ERA has discretion in terms of disclosing these details, but that any request for anonymity will also be considered.</p> <ul style="list-style-type: none"> - These former paragraphs dealt with providing breach notifications to relevant parties. This is now covered in new section 4.1 dealing with the investigation process and new section 4.3 dealing with investigation outcomes. - Former section 1.7 set out a requirement for the Authority to maintain a compliance monitoring register and listed the range of information that should be recorded in that register. It is not practical to maintain some of the information listed in the former section 1.7 in a register (e.g. catalogue of information and evidence collected, list of investigation activities carried out, responses to warnings etc). Additionally the register is not publicly available and therefore it is not relevant for the Monitoring Protocol to provide an exhaustive list of what the compliance monitoring register should record. An abbreviated list has therefore been inserted in new paragraph 6.1.1 capturing the key items to be recorded.
4 Investigations	<ul style="list-style-type: none"> - Inserted new section 4 Investigations. - Renamed former section 1.8 from 'Investigating Alleged Breaches' to new section 4.1 'Investigation Process'. - Replaced former paragraphs 1.8.1 to 1.8.5 with new paragraphs 4.1.1 to 4.1.11. - Inserted new section 4.2 titled 'Investigation Powers'. - Deleted former paragraph 1.8.6 and replaced it with new paragraph 4.2.1. 	<ul style="list-style-type: none"> - The information set out in this section 4 relates to investigation processes. - New title more accurately reflects the content of this section. - The new paragraphs are required to more accurately describe the Authority's investigation process, noting that each investigation will be carried out in a manner appropriate to the circumstances of that individual matter – this was previously inadequately summarised in former paragraph 1.8.1. Former paragraph 1.8.2 dealt with cases where investigations could be joined and former paragraphs 1.8.3 to 1.8.5 dealt with matters that had previously been investigated. The Authority does not consider it necessary to set these matters out in the procedure. - Investigation powers warrant a standalone section. - Former paragraph 1.8.6 combined the requirements of both clause 2.13.12 of the Market Rules concerning the Authority's power to require information and inspect equipment and Division 2 of the Regulations concerning the separate powers to obtain search warrants. The latter powers have been deleted from new paragraph 4.2.1 as they are now separately set out in new paragraph 4.2.7 (formerly paragraph 1.8.8).

	<ul style="list-style-type: none"> - Inserted new paragraphs 4.2.2 and 4.2.3. - Retained former paragraph 1.8.7 (now 4.2.4) with minor amendments. - Deleted former paragraph 1.8.8. - Deleted former paragraph 1.8.9. - Inserted new paragraph 4.2.5 - Retained paragraph 1.8.10 (now 4.2.6). - Inserted new section 4.2.7. - Deleted former paragraph 1.8.11. - Deleted former paragraph 1.8.12 and inserted new section 4.3 titled 'Investigation Outcomes'. 	<ul style="list-style-type: none"> - These new paragraphs set out the requirement of Market Rule 2.13.13 for participants to cooperate with investigations and Market Rule 2.13.13 in relation to the Authority meeting with participants. - Former paragraph 1.8.7 set out that requests for information would be made in writing. Amendments made in new paragraph 4.2.4 include that any Authority request for records or access to equipment or meetings will also be made in writing and to clarify that the request will be addressed to the contact person nominated under new paragraph 1.3.2 of the Monitoring Protocol or other appropriate person. - Former paragraph 1.8.8 dealt with the process for search warrants. This is now covered in new paragraph 4.2.7. - Former paragraph 1.8.9 covered the obligation on participants to cooperate with investigations. This is now captured in new paragraph 4.2.2. - This new paragraph covers the process to request an extension to comply with any ERA request for information, access to equipment or request for meeting. - This paragraph covers the option to engage an external investigator in the event that a Rule Participant does not cooperate with the Authority's investigation. - This section is former section 1.8.8 dealing with search warrants with minor amendments. - The former section 1.8.11 dealt with the option for the Authority to meet with participants. This now appears earlier in the document at new section 4.2.3 with minor amendments to reflect that meetings may occur at any time during the course of an investigation. - Former paragraph 1.8.12 advised that on conclusion of the investigation the outcome will be recorded in the compliance monitoring register but did not provide any detail on the potential investigation outcomes available and situations on when these may apply. New section 4.3 provides this important information, including factors that will be considered when determining investigation outcomes, and processes for providing notification of the outcomes.
5. Enforcement	<ul style="list-style-type: none"> - Inserted new section 5 Enforcement. - Renumbered section 1.9 Warnings to section 5.1 Warnings. 	<ul style="list-style-type: none"> - The information set out in this section 5 relates to enforcement processes. - Consequential amendment as a result of numbering changes throughout the document.

	<ul style="list-style-type: none"> - Inserted new paragraph 5.1.1. - Retained former paragraph 1.9.1 (now 5.1.2) with minor amendments. - Deleted former paragraph 1.9.2. - Retained former paragraph 1.9.3 (now 5.1.3) with minor amendments. - Inserted new paragraph 5.1.4. - Retained former paragraph 1.9.4 (now 5.1.5) with minor amendments. - Deleted former paragraph 1.9.5. - Retained former paragraph 1.9.6 (now 5.1.6) with amendments. - Inserted new paragraph 5.1.7. 	<ul style="list-style-type: none"> - This paragraph sets out the applicable rule that requires the Monitoring Protocol to set out guidelines for issuing warnings. - Former Paragraph 1.9.1 (now 5.1.2) makes reference to the Authority's ability to issue a warning. Wording has been added to new paragraph 5.1.2 to make reference to Table 1 in section 4.3 which sets out the circumstances where a warning may be an appropriate compliance response. - This former paragraph required a warning to be issued within two Business Days of investigation completion. It is unnecessary to provide a timeframe within which to issue a warning. - Former paragraph 1.9.3 (now 5.1.3) relates to the information required to be set out in a warning. Minor wording has been added to provide context and to reference the applicable Market Rule clause 2.13.10(d). - This paragraph notes that there will be cases where certain information or actions required by the Rule Participant in response to a warning (e.g. provision of an explanation or rectification of the non-compliance) may have already occurred during the course of the investigation process, and therefore will not be requested again. - This paragraph sets out the method of delivery of the warning (i.e. post, email, facsimile). Minor amendments were made to clarify that the Authority may issue the warning to the primary nominated compliance contact person or alternatively to a senior officer of the organisation (e.g. CEO or senior manager) at the discretion of the Authority. - This former paragraph stated that the Rule Participant may request a meeting in relation to the alleged breach and proposed resolutions. This is now captured in paragraph 4.2.3. - The former paragraph specified that the response to the warning must be provided within five Business Days. The new section 5.1.6 replaces the five Business Day timeframe with a timeframe that the Authority will specify in the warning letter. The Authority considers that timeframes other than five Business Days may be appropriate in certain circumstances. The former paragraph also referred to the process for requesting an extension to the warning response timeframe – this has now been moved to new paragraph 5.1.7. - New paragraph 5.1.7 sets out the process for requesting an extension to the original warning response timeframe.
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	<ul style="list-style-type: none"> - Retained former paragraph 1.9.7 (now 5.1.8) with minor amendments. - Renumbered and renamed section 1.10 ERA Decisions to section 5.2 Civil Penalty Provisions. - Retained former paragraph 1.10.1 (now 5.2.1) with amendment. - Retained former paragraph 1.10.2 (now 5.2.2) with amendments. - Inserted new paragraphs 5.2.3, 5.2.4 and 5.2.5. - Deleted former paragraph 1.10.3. - Deleted former paragraphs 1.10.4 and 1.10.5. - Retained former paragraph 1.10.8 (now 5.2.6). - Inserted new paragraph 5.2.7. 	<ul style="list-style-type: none"> - Former paragraph 1.9.7 (now 5.1.8) deals with the Authority maintaining a record of the participant's response to a warning. Amendments have been made to require the response to be recorded in the Authority's electronic record keeping system and that a note that a response has been received will be recorded in the compliance monitoring register. - The new name more accurately reflects the content of this section. - This paragraph provides background information on civil penalty provisions and referred to the table at Appendix A which previously listed the provisions. Amended to reflect that the table at Appendix A has been removed and replaced with a reference to the Market Regulations. - This paragraph sets out the Authority's power to issue a Category A civil penalty notice. The former paragraph 1.10.2 briefly set out the matters that may be taken into account in making a decision to issue a Category A civil penalty notice – this has been deleted in the new paragraph 5.2.2 as it is now captured earlier in Table 1 of section 4.3 dealing with potential investigation outcomes. - These new paragraphs set out the information required to be provided in a Category A penalty notice (5.2.3) and subsequent processes under the Market Rules where the participant wishes to seek a review of the Authority's decision (5.2.4) or where the Authority has made an application to the Electricity Review Board for an order for payment of the penalty (5.2.5). - This former paragraph set out that if the Authority decided that a category A breach had not occurred, it would notify the parties in concern. This information is now set out in new paragraph 5.2.7. - These former paragraphs set out that the Authority has discretion to issue a category A penalty notice and provided some information on the circumstances when a notice would not be issued. Table 1 of section 4.3 deals with potential investigation outcomes, including category A civil penalties, and the circumstances when these may be applicable. Former paragraphs 1.10.4 and 1.10.5 are therefore unnecessary. - This paragraph sets out how the monies received from civil penalties are applied. - This paragraph sets out that if the Authority decided that a category A breach had not occurred, it would notify the parties in concern. This information was set out in former paragraph 1.10.3.
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	<ul style="list-style-type: none"> - Deleted former paragraphs 1.10.9, 1.10.10, 1.10.11, 1.10.12 and 1.10.13 and replaced with new paragraphs 5.2.8 and 5.2.9. - Inserted new section 5.3 Electricity Review Board Proceedings. 	<ul style="list-style-type: none"> - The former paragraphs sets out the Authority's power in relation to Category B and C civil penalties, briefly set out the matters that may be taken into account in making a decision regarding these penalties, and noted the Electricity Review Board's role in making orders for these penalties. The information as to when civil penalties may be applicable is now captured earlier in Table 1 of section 4.3 dealing with potential investigation outcomes, and the Authority's ability to bring proceedings before the Electricity Review Board and the Electricity Review Board's role is now set out in new section 5.3 Electricity Review Board proceedings as referenced in new paragraph 5.2.9. - The Monitoring Protocol is required to set out the process for commencing proceedings for Category B or C civil penalty breaches before the Electricity Review Board. New section 5.3 sets out the process for bringing proceedings for orders by the Electricity Review Board, including orders for civil penalties.
6 Recording and reporting	<ul style="list-style-type: none"> - Inserted new section 6 Recording and Reporting. - Inserted new section 6.1 Compliance Monitoring Register. - Retained former section 1.11 ERA Monitoring Activities (now 6.2 Reports of Electricity Review Board Proceedings) with minor amendments. - Retained former section 1.5 Reporting Compliance by AEMO (now 6.3 Report to Minister – AEMO's compliance with the 	<ul style="list-style-type: none"> - The former version of the Monitoring Protocol contained a range of matters relating to recording and reporting in various sections of the document. These matters are not expressly required to be included in the Monitoring Protocol, however it is considered appropriate to include them for completeness. A new section titled Recording and Reporting has therefore been created to capture this information. - Former section 1.7 set out a requirement for the Authority to maintain a compliance monitoring register and listed the range of information that should be recorded in that register. It is not practical to maintain some of the information listed in the former section 1.7 in a register (e.g. catalogue of information and evidence collected, list of investigation activities carried out, responses to warnings etc). Additionally the register is not publicly available and therefore it is not relevant for the Monitoring Protocol to provide an exhaustive list of what the compliance monitoring register should record. Abbreviated requirements have therefore been inserted in new section 6.1 capturing key information items. - The former section dealt with the requirement for the Authority to publish periodic reports on Electricity Review Board proceedings at least on a six monthly basis. Minor amendments have been made in the new section to refer to the correct name of the Electricity Review Board, and to improve the wording of the discretion available to release these reports where significant events arise in between the six monthly reporting cycle. - There is no express requirement for the Market Rule obligation relating to the Report to the Minister on AEMO's compliance to be in the Monitoring Protocol. However, it has been retained for completeness and moved to the back of the document with minor amendments.

	Market Rules and Market Procedures) with amendment.	
Appendix A	<ul style="list-style-type: none"> - Deleted former Appendix A. 	<ul style="list-style-type: none"> - The former Appendix A listed the Category A, B and C civil penalty provisions with some information to clarify who will monitor each of these provisions. This latter information is not current and in any event is not considered necessary given that it is not possible to actively monitor each and every one of these provisions at any given point in time. Furthermore the civil penalty provisions are listed in Schedule 1 of the Regulations and it is not necessary to repeat them in the Monitoring Protocol.
Various	<ul style="list-style-type: none"> - Replaced 'procedure', 'protocol' and 'Market Procedure' with 'Monitoring Protocol'. - Minor typographical and format changes. 	<ul style="list-style-type: none"> - Changes made to ensure consistent use of terminology. - Changes made to correct grammar and improve readability.

Appendix 2 – Monitoring Protocol marked up version

Appendix 3 – Monitoring Protocol clean version