|  |  |  |  |
| --- | --- | --- | --- |
| Reference Number  (to be filled out by Secretariat) | MCF\_03 | | |
| Change Title | All Avenues for Cost Recovery | | |
| Proposer | Date | Phone | Email |
| Nigel Thomson | 26/01/2018 |  |  |
| Document section to change | B.2.3.2, B.2.9 | | |
| Changes explained | | | |
| While considering the mitigation measures for recovery of costs related to Invalid Contracted Quantities, it was raised that SEMOpx should have available all avenues (under the Clearing House Clearing Conditions and the SEMOpx Rules) to attempt to recover from the relevant Exchange Member the imbalance costs associated with the Invalid Contracted Quantities.  SEMOpx Rules clause G.3.3.1 means an Exchange Member is required to indemnify SEMOpx for losses and expenses arising from its breach of the Rules or the Procedures. Each of the situations that give rise to an invalid Contracted Quantity will now be a breach of the Rules. However, an additional clause in section G.3.3 so that the imbalance amount due to the invalid Contracted Quantity under the TSC is still considered a loss for SEMOpx under clause G.3.3.1 would provide further weight to ensuring SEMOpx has available all avenues to recover costs.  Therefore, it was considered that it should be explicitly stated in the SEMOpx Rules that these costs as a result of Invalid Contracted Quantities should be considered a XXX.  The proposal is to add a clause, G.3.3.3 to the SEMOpx Rules to cater for this requirement.  Note: baseline text below is taken on the assumption that the proposed Invalid Contracted Quantities changes to the TSC are approved under MOD\_17\_17. | | | |
| Text changes (tracked) | | | |
| ***Addition to G.3 as follows:***  G.3.3 Exchange Member Indemnity  G.3.3.1 Each Exchange Member agrees to indemnify and hold harmless SEMOpx and its affiliates, directors, employees, officers, representatives, contractors, service providers and suppliers and third parties involved in the operation of the Exchange, Price Coupling of Regions, Market Coupling or Settlement arrangements ("**Indemnified Person**"), from and against any losses, claims, demands, damages or liabilities of any kind, including expenses (including fees and disbursements of counsel) reasonably incurred by such Indemnified Person in connection with investigating, preparing or defending any investigative, administrative, judicial or regulatory action or proceeding in any jurisdiction (collectively, "**Liabilities**"), relating to or arising out of any breach by the Exchange Member of its obligations under these SEMOpx Rules and the Procedures and each Contract to which it is a party. An Exchange Member shall not be liable under the indemnity in this paragraph G.3.3.1 to the extent that any Liabilities result from any negligence by any Indemnified Person or any breach by any Indemnified Person of its obligations under these SEMOpx Rules and the Procedures.  G.3.3.2 Each Indemnified Person shall:   1. within a reasonable time notify the Exchange Member of any actual or (a)threatened claim to which the indemnity in paragraph G.3.3.1 would apply; and 2. take reasonable measures to mitigate any Liabilities to which the (b)indemnity in paragraph G.3.3.1 would apply; and 3. except as required by Applicable Law, make no admissions to third (c)parties regarding the culpability of any Exchange Member without first providing such Exchange Member with an opportunity to provide information or evidence in its defence.   G.3.3.3 Where a breach of these SEMOpx Rules by an Exchange Member results in a Contracted Quantity submitted under paragraph F.2.2.1 of the Trading and Settlement Code being invalid under clause G.2.10 of that Code, for the purposes of the indemnity in paragraph G.3.3.1, the relevant Reassigned Amount (within the meaning of that Code) shall continue to be regarded as a loss incurred by SEMOpx. | | | |
| Consultation Activities | | | |
| The rationale and the proposed legal wording were provided in the [NEMO BLG held on the 26th Jan 2018](http://www.sem-o.com/ISEM/General/NEMO_BLG%20Presentation%2026%20January%202018.pdf)  Comments were received from Exchange Members, as provided [here](http://www.sem-o.com/ISEM/General/MCF_03%20Comments%20and%20Responses.xls).  A further update was provided in the NEMO BLG held on the 14th March 2018 regard the view that this modification could be withdrawn. | | | |
| Exchange Committee views  Comments received from Exchange Members are provided [here](http://www.sem-o.com/ISEM/General/MCF_03%20Comments%20and%20Responses.xls). | SEMOpx Views  Response to Exchange Member comments are provided [here](http://www.sem-o.com/ISEM/General/MCF_03%20Comments%20and%20Responses.xls).  Taking considering of Exchange Member comments received and given:   1. the assumption that “MCF\_01 No Trading when not Authorised under TSC” will be approved - meaning that Exchange Members will have breached the SEMOpx Rules if invalid Contracted Quantities occur, and; 2. that SEMOpx’s service provider will be balance responsibility and therefore incur costs as a result of the breach of the SEMOpx Rules by the Exchange Member.   This will mean that all cases related to the Invalid Contracted Quantities (as defined in C.2.4.3) will be considered breaches of the SEMOpx Rules and the indemnity provisions under G.3.3.1 are sufficient to cover these invalid Contracted Quantity costs. ***So no additional clause G.3.3.3 is required.*** | | Final Decision  (Rules only RAs, Operating Procedures only SEMOpx)  **WITHDRAWN** |
|  |  | |  |