



---

# **Exemption Application and Assessment**

---

**3.0**

*This document sets out the procedure established by the independent directors of the IMO Board by which exemption applicants may apply for an exemption from the application of standards and obligations*

## Disclaimer

*The posting of documents on this web site is done for the convenience of market participants and other interested visitors to the IMO Web site. Please be advised that, while the IMO attempts to have all posted documents conform to the original, changes can result from the original, including changes resulting from the programs used to format the documents for posting on the web site as well as from the programs used by the viewer to download and read the documents. The IMO makes no representation or warranty, express or implied, that the documents on this web site are exact reproductions of the original documents listed. In addition, the documents and information posted on this web site are subject to change. The IMO may revise, withdraw or make final these materials at any time at its sole discretion without further notice. It is solely your responsibility to ensure that you are using up-to-date documents and information.*

*This document may contain a summary of a particular rule. Where provided, the summary has been used because of the length of the market rule itself. The reader should be aware, however, that where a market rule is applicable, the obligation that needs to be met is as stated in the market rules. To the extent of any discrepancy or inconsistency between the provisions of a particular market rule and the summary, the provision of the market rule shall govern.*

<b>Document ID</b>	IMO_PRO_0019
<b>Document Name</b>	Exemption Application and Assessment
<b>Issue</b>	Issue 3.0
<b>Reason for Issue</b>	Revised - for Third Release
<b>Effective Date</b>	March 22, 2004

## Document Change History

Issue	Reason for Issue	Date
1.0	Revised – Ad Hoc Stakeholdering Meeting	Sept. 27, 2001
2.0	Revised for Second Release	October 10, 2002
3.0	Revised for Third Release	March 22, 2004

## Related Documents

Document ID	Document Title



# Table of Contents

---

<b>Table of Contents</b> .....	<b>i</b>
<b>Table of Changes</b> .....	<b>iii</b>
<b>Definitions and Acronyms</b> .....	<b>1</b>
<b>1. Introduction - Exemptions</b> .....	<b>3</b>
1.1 Purpose .....	3
1.2 Scope .....	3
1.3 Overview.....	3
1.3.1 Initial Exemption Application .....	4
1.3.2 The Panel.....	4
1.4 Application for Exemption- General .....	5
1.4.1 Introduction.....	5
1.4.2 Criteria for Exemption.....	5
1.5 Application for Exemptions for Facilities and Equipment prior to Market Opening .....	6
1.5.1 Introduction.....	6
1.5.2 Criteria for Exemption.....	6
1.6 Exemption Application Process .....	7
1.6.1 Introduction.....	7
1.6.2 Interlocutory Interim Exemptions.....	7
1.6.3. Commencement of Process and Testing .....	8
1.6.4 Confidential Information .....	10
1.6.5 The Draft Recommendation .....	11
1.6.6 Third Party Submissions .....	11
1.6.7 IMO Staff Recommendations .....	12
1.6.8 Notification.....	12
1.6.9 Review of the Exemption Application by the Panel .....	13
1.6.10 The Exemption Application Decision.....	14
1.7 Conditions for Exemptions.....	14
1.8 Effect of Exemptions and Monitoring .....	14
1.9 Reconsideration/Removal of Exemptions .....	15
1.9.1 Introduction.....	15
1.9.2 Criteria for Reconsideration/Removal of Exemptions.....	15
1.9.3 Process for Reconsideration/Removal of Exemptions .....	15
1.10 Transfer of Exemptions.....	17
1.10.1 Introduction.....	17
1.10.2 Criteria for Transfer .....	17
1.10.3 Process for Transfer of Exemptions .....	18

---

1.11	Extensions .....	19
1.12	Costs.....	19
1.12.1	Introduction .....	19
1.12.2	Processing Costs .....	19
1.12.3	Incremental Exemption Costs .....	20
1.12.4	Withholding/Repayment of Settlement Amounts.....	20
1.12.5	Costs Arising from Reconsideration or Removal of Exemption.....	20
1.13	Appeal.....	21
1.14	Need for Market Rule Amendment.....	21
<b>Appendix A: Forms .....</b>		<b>A-1</b>
<b>Appendix B: Supporting Documentation for <i>Exemption Application</i>.....</b>		<b>B-1</b>
<b>Appendix C: Confidentiality Criteria.....</b>		<b>C-1</b>
<b>References.....</b>		<b>1</b>

# Table of Changes

---

<b>Reference (Section and Paragraph)</b>	<b>Description of Change</b>



# Definitions and Acronyms

---

A list of terms and acronyms used in this procedure is found in Chapter 11 of the *market rules*. Unless otherwise defined in this procedure, terms and acronyms used in this procedure shown in italics have the meanings ascribed thereto in Chapter 11 of the *market rules*.

**– End of Section –**



# 1. Introduction - Exemptions

---

## 1.1 Purpose

This procedure provides *exemption applicants*<sup>1</sup> with the rules, steps and interfaces among *exemption applicants*, the *IMO*, *independent directors* and other parties relating to the submission and processing of *exemption applications* and other *exemption*-related matters.

## 1.2 Scope

An *exemption applicant* may apply for an *exemption* with respect to any obligation or standard which is, or may be, imposed upon the *exemption applicant* or in respect of the *exemption applicant's facilities* or equipment pursuant to the *market rules* or to any standard, policy or procedure established by the *IMO* pursuant to the *market rules*.

Where the *exemption applicant* intends to become compliant with a *market rule* or any such standard policy or procedure and the *exemption applicant* requires only a relatively short period of time to become so compliant, then the *exemption applicant* should consider discussing the matter with the Market Assessment and Compliance Division of the *IMO* to determine if a satisfactory arrangement can be agreed to thereby negating the need for an *exemption*.

## 1.3 Overview

This procedure addresses applications for *exemptions* pursuant to section 36.1 of the *Electricity Act, 1998*. As set out in section 36.1, an application for *exemption* shall be determined by a panel of *independent directors* of the *IMO Board* (the "Panel"). This procedure, adopted by the *independent directors* of the *IMO Board*, establishes the process whereby decisions on *exemption applications* will be determined. This procedure may be amended or restated by the *independent directors* of the *IMO Board* at any time and from time to time. Except where an amendment is considered urgent, the *independent directors* shall give 10 *business days* notice to stakeholders of any proposed changes to this "Exemption Application and Assessment Procedure" before such changes come into effect.

An *exemption applicant* does not have to be a *market participant* at the time of filing an *exemption application*. Prospective *market participants* are able to apply for *exemptions* prior to being authorized as *market participants*. The *IMO* may itself be an *exemption applicant*.

---

<sup>1</sup> Certain of the provisions of this document apply to events that take place before an *exemption application* has been submitted and after an *exemption* has been granted. The term "*exemption applicant*" should accordingly be interpreted, where applicable, as also referring to a prospective *exemption applicant* and the holder of an *exemption* at the relevant time.

### 1.3.1 Initial Exemption Application

Because the *Electricity Act, 1998* calls for transparency in the *exemption* process, review and assessment of *exemption applications* will take some time to complete. *Exemptions* which are granted will be effective as of the date the *exemption application* is submitted to the *IMO* staff unless the Panel determines otherwise.

The *exemption* process is intended to provide a framework for permitting *exemptions* to the application of specified standards and obligations in appropriate cases. This framework facilitates the timely commencement of operation of the *IMO-administered markets*, while providing non-discriminatory access to the *IMO-controlled grid* and efficiency in the operation of the *IMO-administered markets*. *Exemptions* may be requested both for *facilities* existing at the commencement of operation of the *IMO-administered markets* and for *facilities* that will be constructed after the commencement of operation of the *IMO-administered markets*. Criteria used will not impose unnecessary costs for *facilities* that have been operating in a reliable manner prior to commencement of the operation of the *IMO-administered markets* but do not meet current industry standards reflected in the *market rules*.

The purpose of the *exemption* assessment process is to:

- determine the acceptability of an *exemption*, including the *exemption* plan referred to below; and
- establish the term and conditions of the *exemption*.

### 1.3.2 The Panel

Wherever reference is made in this procedure to the Chair of the *IMO Board* such reference shall extend to the Chair's designee. After receipt of the *exemption application*, the Chair of the *IMO Board* will assign the *exemption application* to a Panel. The Panel shall consist of no fewer than two *independent directors*. Depending upon the complexity and importance of the *exemption application*, Panels may be formed at the discretion of the Chair of the *IMO Board* with more than two *independent directors*. Decisions made by the Panel must be made by a two-thirds majority. Where the Panel consists of two *independent directors*, the decision must be unanimous. Where a Panel does not obtain a two-thirds majority, the Chair of the *IMO Board* has the discretion to refer the *exemption application* to a new Panel. This new Panel will use the record of material prepared in accordance with section 1.6.8 in considering the *exemption application*.

In order to efficiently address the anticipated workload on start-up of the *exemption application* process, one or more *IMO* staff members who are not involved in evaluation or assessment of *exemption applications* will be assigned to assist the Panel. *IMO* management has put in place a guideline providing that an *exemption application* should not be discussed between the staff members assisting the Panel and *IMO* staff who have been involved in the *IMO's* evaluation or assessment of that *exemption application*. This guideline will apply while the initial backlog of *exemption applications* is addressed and may be extended if experience dictates. The guideline is posted on the *IMO* Web site.

## 1.4 Application for Exemption- General

### 1.4.1 Introduction

This section outlines the criteria and process for *exemption applications* submitted:

- i) after the *market commencement date*; or
- ii) prior to the *market commencement date* but which do not qualify under section 1.5.1

### 1.4.2 Criteria for Exemption

The criteria to be used by the Panel to assess *exemption applications* submitted under section 1.4.1 include:

- whether the *exemption* that is the subject-matter of the *exemption application* would, if granted, materially:
  - impact the ability of the *IMO* to direct the operations and maintain the *reliability* of the *IMO-controlled grid*;
  - impact the ability of the *IMO* to ensure non-discriminatory access to the *IMO-controlled grid*;
  - affect the ability of the *IMO* to operate the *IMO-administered markets* in an efficient, competitive and reliable manner;
  - increase costs of *market participants*; or
  - increase costs of the *IMO*;
- whether the *exemption* that is the subject matter of the *exemption application* would, if granted, give the *exemption applicant* an undue preference in the *IMO-administered markets*;
- whether the cost or delay to the *exemption applicant* of complying with the obligation or standard to which the *exemption application* relates is reasonable, having regard to the nature of the obligation or standard, the nature of the *exemption application* and the anticipated impact of non-compliance by the *exemption applicant* in terms of the elements referred to above;
- the adequacy of the *exemption* plan submitted by the *exemption applicant*;
- where the *exemption applicant* is the *IMO*, identification of the benefit to *market participants* of compliance with the obligation or standard relative to the financial and other resources required to achieve compliance within such deadlines as may be applicable;
- where the *exemption applicant* is the *IMO*, the manner in which it proposes to operate in the *IMO-administered markets* or direct the operations and maintain the *reliability* of the *IMO-controlled grid* during the period in which the *exemption* would be in effect;
- whether the *facility* or equipment that is the subject-matter of the *exemption application*:
  - was in service or was returned to service on the date on which the obligation or standard to which the *exemption application* relates came into force;
  - was ordered by the *exemption applicant* on or prior to the date on which the obligation or standard to which the *exemption application* relates came into force; or
  - was in the process of construction on or prior to the date on which the obligation or standard to which the *exemption application* relates came into force; and
- the capability of the owner of the *facility* or equipment to operate the *facility* or equipment consistent with the terms of the proposed *exemption*.

## 1.5 Application for Exemptions for Facilities and Equipment prior to Market Opening

### 1.5.1 Introduction

As Ontario evolves from a regime which is based more on an integrated operation into one which is more market driven, it is recognized that the power system currently or has historically met overall *reliability standards* and goals, even though the capabilities of individual existing components are not all the same and may not meet new standards established by the *market rules*. As a consequence, the capabilities of existing *facilities* may be suitable as the basis for granting *exemptions*.

Those *exemption applications* that are filed prior to the *market commencement date* in respect of a *facility* or equipment that:

- i) was or was part of a *facility* that was in existence on, and in respect of which a licence has been issued prior to, or on, the date of coming into force of Chapter 4 of the *market rules* (April 17, 2000); or  
was in service on the date of coming into force of Chapter 4 of the *market rules* (April 17, 2000); and
- ii) relate to any of the following standards or obligations:
  - a. the technical requirements set out in Appendix 2.2 of Chapter 2 of the *market rules* relating to voice communication, monitoring and control but not those relating to the *participant workstation* or the *dispatch workstation*;
  - b. the technical requirements set out in Section 12 of Chapter 5 of the *market rules* relating to communications; and
  - c. the grid connection and data monitoring requirements set out in Chapter 4 of the *market rules* other than the requirements set forth in sections 6.1.5 to 6.1.21 of that Chapter;

shall be assessed by the Panel based on the criteria outlined in section 1.5.2.

Where the *exemption application* is filed prior to the *market commencement date* in respect of the *facilities* or equipment and standards or obligations referred to in this section 1.5.1, this must be noted on the *Exemption Application* form (see Appendix A).

### 1.5.2 Criteria for Exemption

The Panel will assess *exemption applications* referenced in section 1.5.1 on criteria, which include:

- whether the *exemption* that is the subject-matter of the *exemption application* would if granted materially;
  - impact the ability of the *IMO* to direct the operations and maintain the *reliability* of the *IMO-controlled grid*;
  - affect the ability of the *IMO* to operate the *IMO-administered markets* in an efficient, competitive and reliable manner; or
- whether the cost or delay to the *exemption applicant* of complying with the obligation or standard to which the *exemption application* relates is reasonable, having regard to the nature of the obligation or

standard, the nature of the *exemption application* and the anticipated impact of non-compliance by the *exemption applicant* in terms of the elements referred to above.

## 1.6 Exemption Application Process

### 1.6.1 Introduction

With the exception of the different *exemption* criteria outlined above, the application process is the same for *exemption applications* qualifying under sections 1.4.1 and 1.5.1.

### 1.6.2 Interlocutory Interim Exemptions

The filing of an *exemption application* does not automatically stay an *exemption applicant's* obligation to comply with the section(s) of the *market rules* from which the *exemption* is sought. *Exemption applicants* may therefore apply to the Panel for an interim *exemption* to stay the *exemption applicant's* obligation to comply with the *market rules* pending the Panel's final decision. Before doing so, the *exemption applicant* shall speak with the staff of the *IMO's* Market Assessment and Compliance Division to determine what compliance and enforcement measures the *IMO* intends to take pending the hearing of the *exemption* as in some cases it may not be necessary for the *exemption applicant* to seek an interim *exemption*.

An *exemption applicant* that wishes to apply for an interim *exemption* in order to stay its obligation to comply with the relevant *market rules* shall complete and submit to the *IMO* an *Exemption Application* form including that portion of the form that addresses the *exemption applicant's* request for an interim *exemption*. Upon receipt of a completed *Exemption Application* form that includes a request for an interim *exemption*, *IMO* staff shall immediately forward the *Exemption Application* form to the Panel and post it on the exemption page of the *IMO's* Web site. The posting on the *IMO's* Web site shall invite written submissions from third parties and shall advise third parties that any written submissions received more than 2 *business days* after posting of the *Exemption Application* form on the *IMO's* Web site may not be considered by the Panel prior to making its decision. *IMO* staff shall have 2 *business days* from receipt of the *Exemption Application* form, or such longer period of time as may be agreed to between *IMO* staff and the *exemption applicant*, to prepare and submit to the Panel a written response to the *exemption applicant's* request for an interim *exemption*. *IMO* staff shall immediately forward to the Panel any third party submissions that are received.

Following receipt of *IMO* staff's response, or expiry of the time within which *IMO* staff is required to submit its response, whichever comes first, the Panel shall within 5 *business days* (or such longer period of time as is either agreeable to the *exemption applicant* or considered necessary by the Panel under the circumstances of the *exemption application*), consider the written materials submitted by the *exemption applicant*, *IMO* staff and third parties, if any, and render a decision. The Panel may, in addition to considering the written materials, invite the *exemption applicant*, *IMO* staff and third parties to make oral submissions.

The Panel shall consider the following factors in deciding whether to grant an interim *exemption*:

- (a) the public interest;

- (b) the merits of the *exemption application*;
- (c) the type and degree of harm the *exemption applicant* may suffer if an interim *exemption* is not granted; and
- (d) the balance of convenience.

The Panel may grant an interim *exemption* for any period of time and on such conditions as it deems appropriate. The Panel is not required to give reasons for a decision refusing or granting an interim *exemption*.

Where the Panel grants an interim *exemption*, notice of the Panel's decision and copies of the *exemption applicant's Exemption Application* form and *IMO* staff's response, shall be posted on the *exemption* page of the *IMO* Web site and third parties shall be invited to make written submissions on the interim *exemption*. Any written submissions received from third parties shall be forwarded to the Panel for its consideration.

The Panel may at any stage of an *exemption* proceeding, on its own initiative or at the instance of *IMO* staff or the *exemption applicant*, vary, extend or revoke an interim *exemption*.

### 1.6.3 Commencement of Process and Testing

While not mandatory, it is strongly recommended that the *exemption applicant* meet with *IMO* staff in order to discuss the need for an *exemption application* prior to submitting it. Through these discussions, *IMO* staff and the *exemption applicant* will be able to determine if an *exemption application* or rule amendment is the proper course to resolve the issue. If the *IMO* staff determines that the subject of the *exemption application* warrants addressing through consideration of a rule amendment, then the matter will be referred to the *Market Rules Group*. If the *exemption applicant* still wishes to submit an *exemption application*, assessment of the *exemption application* will be stayed pending resolution of the rule amendment.

Where an issue arises between *IMO* staff and the *exemption applicant* as to the interpretation of the requirement that prompted the *exemption application*, the dispute resolution mechanism under the *market rules* shall be available to resolve the interpretation. However, referral of the matter to the dispute resolution process will not create an automatic stay of compliance actions. *IMO* staff will consider the individual circumstances of the situation in making the determination to implement compliance actions. Once the *exemption application* is presented to the Panel, any rule interpretation arising in the Panel's deliberations will be decided by the Panel.

If an *exemption* is required, *IMO* staff will be able to discuss with the *exemption applicant* what type of material will be required in support of the *exemption application*. If the *exemption application* has already been submitted before the initial meeting, the discussion with *IMO* staff may still take place and could result in a revised *exemption application* being submitted by the *exemption applicant*.

Once it is decided that an *exemption application* is to be submitted, the *exemption applicant*, in order to initiate the general *exemption application* and assessment process, must complete the *Exemption Application* form, which may be found on the *IMO* Web site.

The *exemption applicant* will then sign and submit to the *IMO* staff for processing,

- the *Exemption Application* form (see Appendix A);

- the *exemption* plan, which must detail:
  - the manner in which the *exemption applicant* proposes to operate or modify its equipment or *facilities* or otherwise conduct its operations, or in the case of the *IMO*, to operate the *IMO-administered markets* or direct the operations and maintain the *reliability* of the *IMO-controlled grid*, during the period of time for which the *exemption* would be in effect so as to operate in a manner that achieves, as closely as possible, the objectives of the obligation or standard to which the *exemption application* relates;
  - the *exemption applicant's* estimate of any costs that may be imposed on the *IMO* or on other *market participants* if the *exemption* to which the *exemption application* relates was granted and the *exemption* plan was implemented;
- the manner and time within which the *exemption applicant* will become compliant with the obligation or standard to which the *exemption application* relates; and
- appropriate supporting documentation, as described in Appendix B.

*IMO* staff will then:

- i) contact the Market Assessment Compliance Division to determine whether the subject matter of the *exemption application* is or is anticipated to be the subject of a compliance investigation, whether the Compliance Division intends to commence or continue an investigation pending the decision of the Panel on the *exemption application* and whether the Compliance Division would recommend or not oppose the granting of the *exemption application* on a retroactive basis;
- ii) confirm with the *Market Rules* Group that a rule amendment is not pending which would eliminate the need for or otherwise affect the *exemption application*; and
- iii) confirm with the *secretary* of the *dispute resolution panel* whether there is an ongoing dispute resolution process involving the subject matter of the *exemption application*.

The Panel may issue an interim order deferring the assessment or evaluation of the *exemption application* until such alternative process in any of subparagraphs (i), (ii) or (iii) above has been completed.

The *IMO* will notify the *exemption applicant* of the *exemption application* identification number that has been assigned to it. This number is to be referenced in all subsequent steps in the *exemption application* and assessment process, and to any associated *exemption* granted to the *exemption applicant*.

The *IMO* staff will conduct all the necessary testing, make the necessary inquiries and work with the *exemption applicant* in order to ensure that the *exemption application* is complete. *IMO* staff may request in writing at any time during the *exemption* process that the *exemption applicant* provide additional information in support of the *exemption application*. The *exemption applicant* shall have up to 15 *business days*, or such longer period as may be agreed to by *IMO* staff given the nature of the information requested, from receipt of such request to provide the additional information. Where the *exemption applicant* and *IMO* staff are not able to agree on a longer period of time for the provision of the additional information, or where the *exemption applicant* has not provided the additional information before the end of the relevant time period, the *exemption applicant* may request that at least one *Independent Director*, in the Chair's discretion as to number and identity, determine the applicable time period or extension to the applicable time period for delivery of the additional information. The *Independent Director(s)* may discuss the matter with any or all of the *exemption applicant*, *IMO* staff or third parties and may select the time period or extension to the time period, as the case may be, suggested by *IMO* staff, requested by the *exemption applicant* or some other time period altogether. Where such request is denied or no such request is made, *IMO* staff shall process the *exemption application* without the benefit of such additional information. During the review of the *exemption application* under section 1.6.9, the Panel may suspend the review to allow the *exemption applicant* further time in which to provide any additional information.

## 1.6.4 Confidential Information

The provisions of this sub-section shall govern, as applicable and with any necessary modifications, the processes for Reconsideration/Removal, Transfer and Extension set out in sections 1.9, 1.10 and 1.11 herein.

The *exemption applicant* will be advised at the time of the initial meeting with *IMO* staff or at the time when the *exemption applicant* submits its *exemption application*, and a third party will be advised at the time of submitting material under section 1.6.5 that the *exemption application* or third party submission, and any subsequent reply submissions as the case may be, will normally be posted in their entirety on the *IMO* Web site.

Pursuant to the *market rules*, any material provided to the *IMO* staff must be categorized pursuant to the *Information Confidentiality Catalogue*. If the *exemption applicant* and the *IMO* staff disagree on the categorization of the material, the categorization issue will be resolved pursuant to the dispute resolution process established for this purpose under the *market rules*. In making its determination as to confidentiality for purposes of publication on the *IMO* Web site, the Panel shall take into account and may accept as determinative, the determination made as to the categorization of the information for the *Information Confidentiality Catalogue*.

The *IMO* staff will review with the *exemption applicant* whether the specific material over which the *exemption applicant* claims confidentiality is required to support the *exemption application*, and if required, whether a summary of the information would suffice while still meeting the confidentiality concerns of the *exemption applicant*. If *IMO* staff and the *exemption applicant* are unable to agree on a summary of information to be posted, the *exemption application* will be posted without the information the *exemption applicant* deems confidential, but with a notice from *IMO* staff stating that additional information has been provided over which the *exemption applicant* claims confidentiality.

If there are third party submissions received within the deadline established for such submissions and which state that access to the *confidential information* is required, then the issue will be brought before the Panel. The Panel will consider the third party submissions on why the information should be disclosed, the *IMO* staff's position on whether the information should be disclosed and, in response, the *exemption applicant's* position. Once the Panel has made a determination in respect of the *confidential information* (see Appendix C for criteria), that decision will be published on the *IMO* Web site and the following may occur:

- i) the Panel may order production of a portion of or all of the *confidential information* to one or more of the third party group. The Panel may impose conditions on production of such *confidential information* including, but not limited to, a requirement that the third parties to whom it will be released sign a confidentiality agreement. The Panel may also order that third parties to the *exemption application* be given an additional amount of time to make third party submissions on the *exemption application* once the *confidential information* has been produced;
- ii) if the Panel orders production of the *confidential information* and the *exemption applicant* is unwilling to do so, the *exemption applicant* can withdraw its application; or
- iii) the Panel may order that the *confidential information* not be produced. In that instance, the *exemption application* process will continue.

### 1.6.5 IMO Draft Recommendation and Response

After verifying that the *exemption application* is ready for review and all information provided by the *exemption applicant* in respect of the *exemption application* has been considered, *IMO* staff will prepare their draft recommendation on the *exemption application* based on the applicable criteria. Where the *IMO* staff support the granting of the *exemption* their recommendation will include proposed terms and conditions, including their position on any cost order.

*IMO* staff will arrange for internal review, finalization and sign-off of the draft staff recommendation by the applicable departments within the *IMO*.

The *exemption application* and *IMO* staff recommendation will then be posted on the *IMO* Web site. *IMO* staff's recommendation will be communicated to the *exemption applicant* at this point and, if subsequently changed, throughout the process so that the *exemption applicant* is kept updated on the *IMO* staff position.

The *exemption applicant* will have the opportunity to respond in writing to the initial *IMO* staff recommendation. *IMO* staff will determine the deadline for delivery of such response based on *IMO* staff's determination of the complexity and importance of the issues contained in the *exemption application*. The deadline for delivery of the response will be no less than 10 *business days* from the day of posting of the *IMO* staff recommendation, unless a shorter time period is agreed to by the *exemption applicant*.

Except where information contained therein has been determined to be *confidential information*, *IMO* draft recommendations and responses to *IMO* draft recommendations will be classified as "public" for the purposes of the *Information Confidentiality Catalogue* and posted on the *IMO* Web site. *Confidential information* will be removed from the material that is posted.

### 1.6.6 Third Party Submissions and Response

At the time of the posting of the *exemption application* and *IMO* staff recommendation, third party submissions will be invited. *IMO* staff will determine the deadline for these submissions based on *IMO* staff's determination of the complexity and importance of the issues being considered in the *exemption application*. The deadline for third party submissions to be received by the *IMO* will be specified in the material posted and will be no less than 10 *business days* from the day of posting. Unless the Panel determines otherwise, there will be no opportunity for oral or written questioning of the *exemption applicant* or the *IMO* in respect of the *exemption application*. Only those third parties who submit their submissions within the deadline for submissions shall form part of the third party group entitled to participate further in the *exemption application* process.

Third parties who only wish to make written submissions and have no further involvement in the *exemption application* process may so indicate in their submissions. Those third parties will then not participate further unless the Panel requests otherwise. Members of the third party group shall forward any submissions they make on an *exemption application* to the *exemption applicant* at the same time they are forwarded to the *IMO*.

Once *IMO* staff receive third party submissions, third party submissions will be posted on the *IMO* Web site for review except for any portion of a third party submission containing information which the third party has established is *confidential information* under section 1.6.4 or which was contained in the *exemption application* pertaining to which the third party is submitting comment and has been classified

by the *IMO* as confidential and which the Panel have determined was not appropriate for posting on the *IMO* Web site.

The *exemption applicant* and *IMO* staff will be given the opportunity to review and respond in writing to the points raised in the third party submissions. The scope of the responses will be limited to addressing the third party submissions and shall not restate original arguments. There will be a deadline established by the *IMO* staff of no less than 10 *business days* from the day of delivery of the third party submissions to the *exemption applicant* and the *IMO* staff for the *exemption applicant* and the *IMO* staff to provide responses to the third party submissions, unless a shorter time period is agreed to by the *IMO* staff and the *exemption applicant*.

Except where information contained therein has been determined to be *confidential information* in accordance with Section 1.6.4, third party submissions and responses to third party submissions will be classified as “public” for the purposes of the *Information Confidentiality Catalogue* and posted on the *IMO* Web site. *Confidential information* will be removed from the material that is posted.

### 1.6.7 Revised IMO Staff Recommendations and Response

*IMO* staff may in addition to responding to third party submissions make a revised recommendation as a result of considering the third party submissions, and shall arrange for internal review and *IMO* sign-off on the revised *IMO* staff recommendation. A revised *IMO* staff recommendation will be posted on the *IMO* Web site and the *exemption applicant* will be provided with an opportunity to review and respond in writing to the revised *IMO* staff recommendation. *IMO* staff will determine the deadline for delivery of such response based on *IMO* staff’s determination of the complexity and importance of the issues contained in the revised *exemption application*. The deadline for delivery of the response will be no less than 10 *business days* from the day of posting of the *IMO* staff recommendation, unless a shorter time period is agreed to by the *exemption applicant*.

Except where information contained therein has been determined to be *confidential information*, revised *IMO* recommendations and responses to *IMO* revised recommendations will be classified as “public” for the purposes of the *Information Confidentiality Catalogue* and posted on the *IMO* Web site. *Confidential information* will be removed from the material that is posted.

### 1.6.8 Notification

Once an *exemption application* is determined by the *IMO* staff to be ready for consideration, the *IMO* will update the *exemption* status report on the *IMO* Web site with a reference as to where the applicable *exemption application* materials are posted, the *exemption application* identification number assigned by the *IMO* to the *exemption application*, and other relevant information. The *exemption* status report will also indicate important deadlines and track the progress of the *exemption application*.

The *exemption applicant* and third party group will be notified of any decision of the Panel by e-mail.

An *exemption applicant* may withdraw an *exemption application* at any stage in the process by notifying the *IMO* in writing of its decision to withdraw its *exemption application*. An *exemption applicant* withdrawing an *exemption application* may be subject to an order of costs.

### 1.6.9 Review of the Exemption Application by the Panel

*IMO* staff assisting the Panel will assemble the record of material filed on the *exemption application*. The *IMO* staff assisting the Panel will not have had any prior dealings with the *exemption application*. A copy of the record of material will also be provided to the *exemption applicant* and members of the third group. Their copy of the record material will include:

- the *exemption application* (subject to any decisions made by the Panel on confidentiality under section 1.6.4);
- the *IMO* staff recommendation and revised recommendation, if any;
- third party submissions, if any; and
- responses to third party submissions from the *exemption applicant* and *IMO* staff and the response from the *exemption applicant* regarding the *IMO* staff recommendation or revised recommendation, if any.

Upon receipt of the record of material, the Panel can decide to refer the matter in whole or in part to mediation. The Panel shall appoint the mediator and set the terms and conditions of the mediation.

The Panel may decide to retain counsel and expert assistance. The Panel can also decide to hold an oral hearing. If the Panel determines that the *exemption application* will proceed by way of oral hearing, the *IMO* staff assisting the Panel will arrange the hearing.

The Panel may itself or through *IMO* staff assisting the Panel request additional information concerning the exemption from *IMO* staff, the *exemption applicant* or any member of the third party group. If the Panel requests additional information from *IMO* staff, and upon review of such information, the Panel determines that the information is material to the Panel's decision, the information will be disclosed and an opportunity (within a defined timeframe) will be provided for the *exemption applicant* and members of the third party group to make additional comments to the Panel. If the information is not material to the Panel's decision, then the information will not be disclosed and there will be no further opportunity for comment. Where the Panel requests information from the *exemption applicant* or any member of the third party group, the request will be disclosed to the *exemption applicant* and all members of the third party group and an opportunity for comment on the information so obtained will be provided.

The Panel may also ask the *exemption applicant* and *IMO* staff to have further discussions about the *exemption* in order that they reach an agreement on the term and conditions of the *exemption*. Where there is a third party group, the third party group shall be advised of any such agreement, and invited to provide comment within a defined timeframe. The terms and conditions agreed to by the *exemption applicant* and *IMO* staff would still be subject to review and approval by the Panel.

Additional information submitted by the *exemption applicant* or *IMO* staff after a submission deadline may be considered at the Panel's discretion, if in the Panel's opinion there is adequate time for other parties (*exemption applicant*, *IMO* staff, or members of the third party group as appropriate) to respond.

Where an *exemption application* or any portion thereof is denied by a Panel or is withdrawn by the *exemption applicant*, the *exemption applicant* shall not be entitled to submit a further *exemption application* on the same or substantially the same subject matter for a period of one year from the date of the denial.

### 1.6.10 The Exemption Application Decision

After reviewing relevant information and *exemption* criteria, the Panel will make its decision.

The Panel will complete a decision template. *IMO* staff assisting the Panel may be requested to assist with preparing the decision, based on the decision template. In every case, the Panel will finalize the decision. The Panel's decision will contain its reasons.

## 1.7 Conditions for Exemptions

When the Panel grants an *exemption*, it may impose such conditions as it determines appropriate. Typically, the term and conditions of an *exemption* will include the duration of the *exemption* and any standards or obligations that must be met or complied with by the *exemption applicant* during the life of the *exemption* in lieu of compliance with the *market rule* obligation or standard to which the *exemption* applies.

The conditions that the Panel may impose may include, but are not limited to, conditions relating to the transferability of the *exemption* (see section 1.10 below); the time(s), if any, at which the *exemption* will automatically come up for reconsideration (see section 1.9 below); the circumstances or timing in which the *exemption* will automatically expire; any costs that must be paid by the *exemption applicant* (see section 1.12 below); and the *settlement amounts* that may be withheld from or be required to be repaid by the *exemption applicant* (see section 1.12 below).

## 1.8 Effect of Exemptions and Monitoring

Once an *exemption* has been granted to an *exemption applicant*, the *exemption applicant* must comply with all of the conditions of the *exemption*. Failure to comply with any of the conditions of an *exemption* constitutes a breach of the *market rules* and may be sanctioned by the *IMO*. In appropriate cases, failure by the *exemption applicant* to comply with the conditions of its *exemption* may result in the removal of the *exemption* (see section 1.9).

The *IMO* may require information from the *exemption applicant* on an ongoing basis once an *exemption application* has been granted. An *exemption applicant* to whom an *exemption* has been granted shall provide to the *IMO* all information the *IMO* may request for the purposes of monitoring the *exemption applicant's* operations that are the subject matter of the *exemption* and shall advise the *IMO* of any material changes to the circumstances in so far as the *exemption* is concerned. The requested information may include information regarding the *exemption applicant's* compliance with the conditions of its *exemption* and/or information on the *exemption applicant's* progress in implementing its plan to become compliant with the exempted obligation. (The particulars of an *exemption* plan is referred to in section 1.6.4).

Approximately three months before the expiry of an *exemption*, *IMO* staff shall send a reminder to the *exemption applicant* that the *exemption applicant* is required to be in compliance with the *market rules* once the *exemption* has expired. The *exemption applicant* shall be requested to provide written confirmation to the *IMO* before the expiry of the *exemption* that it has satisfied all of requirements of the *market rules* in respect of which the *exemption* had been granted. Where such confirmation is not received and depending upon the significance of any continuing non-compliance, *IMO* staff may

investigate whether or not the *exemption applicant* has become compliant with the *market rules*. The *exemption applicant* shall pay the costs of any such investigation.

## 1.9 Reconsideration/Removal of Exemptions

### 1.9.1 Introduction

Circumstances may prompt the reconsideration of an *exemption*. Reconsideration of an *exemption* may extend to removal of the *exemption* as set out in Section 1.9.3. An *exemption* may provide that it is subject to reconsideration at the time(s) or in the circumstances stated in the *exemption*. In addition, even where the *exemption* itself does not provide for reconsideration, the Chair of the *IMO Board* may at any time name a Panel to reconsider an *exemption* where necessary in light of a change in circumstances relative to the circumstances that existed on the date on which the *exemption* was granted, for example, where a *connection applicant* has applied for a *connection assessment*. In addition, conditions on the *IMO-controlled grid* or applicable *reliability* standards may change and give rise to new or different concerns. An *exemption* may be removed for a variety of reasons including, but not limited to, the failure by an *exemption applicant* to comply with conditions of the *exemption*.

### 1.9.2 Criteria for Reconsideration/Removal of Exemptions

The Panel will use the criteria considered in the granting of the original *exemption* as the criteria to be used in the reconsideration of the *exemption*. In addition a Panel may consider additional relevant criteria in its reconsideration of an *exemption*, including but not limited to the manner in which the *exemption applicant* may have organized its affairs in reliance upon the *exemption*. In determining whether reconsideration of an *exemption* is warranted, a Panel shall also give reasonable weight to the interests of lenders to, customers of, investors and other persons dealing with the *exemption applicant* under financing and business arrangements where they have relied on the availability of the *exemption*.

### 1.9.3 Process for Reconsideration/Removal of Exemptions

Where *IMO* staff believe that there has been a breach of conditions of an *exemption* or that there has been a change in circumstances, including in respect of one or more of the criteria set out in sections 1.4.2 or 1.5.2, as the case may be, the *IMO* staff shall notify the *exemption applicant* giving their reasons for such belief and any proposed amendment to the conditions of the proposed amended *exemption*.

If the *exemption applicant* agrees with the proposed conditions on reconsideration of the *exemption*, which conditions are in the opinion of *IMO* staff acting reasonably not more favorable to the *exemption applicant*, the *exemption* shall be so amended and notice thereof posted on the *IMO* Web site.

If the *exemption applicant* disagrees with the proposed conditions of the reconsideration or the proposed conditions are in the opinion of *IMO* staff acting reasonably more favorable to the *exemption applicant*, then both the *IMO* staff and the *exemption applicant* shall make submissions to a Panel in respect of the alleged breach or change in circumstances. The Panel shall then consider whether or not the interests of any other party are affected by the outcome of a reconsideration of the *exemption* and, if so, the Panel will direct *IMO* staff to post a *Notice of Reconsideration* on the *IMO* Web site and invite third parties to make submissions. The *Notice of Reconsideration* shall set out the reasons for the reconsideration of the

*exemption* and will invite third party submissions in accordance with section 1.6.6. The process for reconsideration of an *exemption* as summarized below shall follow a similar process to that described in section 1.6.

Regardless of how the information is classified in the *Information Confidentiality Catalogue*, all information provided to the *IMO* pursuant to the *Notice of Reconsideration* will be published on the *IMO* Web site, unless the *exemption applicant* or a third party objects to material being posted on the grounds of confidentiality. If the *exemption applicant* or a third party claims confidentiality over its information, the procedure for determining confidentiality set out in section 1.6.4 under "Confidential Information" will apply.

*IMO* staff will then prepare their draft position on the reconsideration including their recommendation and proposed conditions, based on the criteria discussed in section 1.9.2 (and sections 1.4.2 and 1.5.2, as applicable). As with the process described in section 1.6.5, the *IMO* staff recommendation will be communicated to the *exemption applicant* at this point and, if changed, will be updated throughout the process so that the *exemption applicant* is kept updated on the *IMO* staff position.

*IMO* staff will arrange for internal *IMO* review and sign-off of the draft staff recommendation on the reconsideration by the applicable departments within the *IMO*. The *IMO* staff recommendation on the reconsideration will be posted on the *IMO* Web site.

The *exemption applicant* will have the opportunity to respond to the *IMO* staff recommendation on the reconsideration. Third party submissions may also be invited at the time of the posting of the *Notice of Reconsideration*. The *IMO* staff recommendation and third party submissions are received and reviewed by both the *exemption applicant* and the *IMO*, as described in section 1.6.6. Only third parties who make submissions within the time deadline specified will form part of the third party group and shall be entitled to participate in the *exemption application* process. *IMO* staff may make a revised recommendation as a result of the third party submissions, pursuant to the discussion under "Revised *IMO* Staff Recommendations and Response" (section 1.6.7).

The *IMO* staff assisting the Panel will assemble a record of material to go to the Panel. The *exemption applicant* and third party group will also receive a record. Their record will include:

- the *Notice of Reconsideration*;
- the *IMO* staff recommendation and revised recommendation, if any;
- third party submissions if any; and
- responses to third party submissions, from the *exemption applicant* and *IMO* staff and the response from the *exemption applicant* regarding the *IMO* staff recommendation or revised recommendation, if any.

The reconsideration process then follows the steps outlined under "Review of the Exemption Application by the Panel" and "The Exemption Application Decision" (sections 1.6.9 and 1.6.10, respectively).

After consideration of the applicable criteria (see section 1.9.2 and sections 1.4.2 and 1.5.2 as applicable), the reconsideration process may result in three possible outcomes, as determined by the Panel. In each of the following outcomes, the written reasons for the decision will be provided to the *exemption applicant*:

- i) the *exemption* may be removed with effect from a specified date, having regard to the time needed to bring the *facility* or equipment into compliance with the obligation or standard that was the subject matter of the *exemption*; and the removal may be subject to terms and conditions, including but not limited to any costs, as outlined in section 1.12;

- ii) the *exemption* may be amended with effect from a specified date, subject to terms and conditions, including but not limited to the expiry of the *exemption*, any costs, as outlined in section 1.12, and automatic reconsideration provisions; or
- iii) the *exemption* may be confirmed as originally granted.

The *exemption applicant* and the third party group will be notified of the decision of the Panel.

Reconsideration is not an option for *exemption applicants*. If an *exemption applicant* wishes to have the *IMO* reconsider an *exemption*, it must submit a new *exemption application*.

## 1.10 Transfer of Exemptions

### 1.10.1 Introduction

When granting an *exemption*, a Panel may set out the conditions upon which that *exemption* may be transferred. For the purposes of this section 1.10, “transfer” shall include: i) where the *exemption applicant* is a corporation a change in control of the *exemption applicant* within the meaning of the *Business Corporations Act* (Ontario); ii) where the *exemption applicant* is unincorporated, other than a limited partnership, if more than 50 per cent of the ownership interests, however designated, into which the *exemption applicant* is divided are transferred; and iii) where the *exemption applicant* is a limited partnership, if there is a change of control (within the meaning of subparagraphs (i) or (ii) as applicable) of the general partner of the limited partnership, and “transferee” shall include a person that acquires control of an *exemption applicant* through any of the foregoing alternatives. So long as *IMO* staff concludes that such conditions are met, *IMO* staff shall effect the transfer of that *exemption* to another *market participant* without following the process set out in section 1.10.3.

Where an *exemption* does not set out the conditions of transfer or where *IMO* staff concludes that those conditions have not been met and an *exemption applicant* intends to sell, assign, lease, transfer control or otherwise dispose of equipment or *facilities* that are the subject-matter of an *exemption*, then the *exemption applicant* may apply to the *IMO* under section 1.10.3 for approval of the transfer of the *exemption* to the proposed transferee.

### 1.10.2 Criteria for Transfer

Where an *exemption* does not set out the conditions of transfer or where *IMO* staff concludes that those conditions have not been met, *IMO* staff will consider an application to transfer an *exemption* based on a number of criteria. These criteria include whether:

- the transfer meets the applicable conditions set forth in the *exemption* (other than the conditions relating to transfer) and whether the transfer would affect the ability of the proposed transferee to comply with all of the conditions of the *exemption*;
- the proposed transferee is a *market participant* or undertakes in writing to the *IMO* to apply for authorization as a *market participant*;
- the *exemption applicant* and the proposed transferee undertake in writing to the *IMO* to provide such information and documentation as may be required by the *IMO* to reflect the transfer (such as information pertaining to the registration of the equipment or *facilities*);

- the extent to which the transfer of the *exemption* will impact the timely implementation of the plan to become compliant with the exempted obligation (such plan may be the *exemption* plan, modified as required by the Panel as part of the terms and conditions of the *exemption*); and
- the transfer of the *exemption* raises significant incremental concerns regarding:
  - the ability of the *IMO* to direct the operations and maintain the *reliability* of, or ensure non-discriminatory access to, the *IMO-controlled grid*;
  - the ability of the *IMO* to operate the *IMO-administered markets* in an efficient, competitive and reliable manner;
  - the capability of either the proposed transferee or party acquiring control of the *exemption applicant* to operate the *facility* or equipment that is the subject matter of the *exemption* consistent with the conditions of the *exemption*; or
  - the costs borne by the *IMO* or other *market participants* above and beyond those that exist in respect of the *exemption applicant* and that cannot be adequately addressed with an amendment to the conditions of the *exemption*.

### 1.10.3 Process for Transfer of Exemptions

The *exemption applicant* must submit to the *IMO* a completed copy of the *Request to Transfer Exemption* form together with all applicable supporting documentation. This form can be downloaded from the *IMO* Web site. The *IMO* will then review the *Request to Transfer Exemption* form and will notify the *exemption applicant* if the information provided is incomplete or requires clarification. The application will not be processed until it is determined by the *IMO* to be complete.

Regardless of how the information is classified in the *Information Confidentiality Catalogue*, all information provided to the *IMO* in the *Request to Transfer Exemption* form will be published on the *IMO* Web site, unless the *exemption applicant* objects to material being posted on the grounds of confidentiality. If the *exemption applicant* claims confidentiality over a portion of the information, the procedure for determining confidentiality set out in section 1.6.4 under "Confidential Information" will apply.

*IMO* staff will then prepare their draft position on the proposed transfer including their recommendation and proposed conditions, based on the criteria set out in section 1.10.2. As with the process described in section 1.6.5, the *IMO* staff recommendation on the proposed transfer will be communicated to the *exemption applicant*.

*IMO* staff will arrange for internal *IMO* review and sign-off on the draft staff recommendation on the transfer by the applicable departments within the *IMO*. Where the *IMO* staff determines that the criteria in section 1.10.2 have been met, the *IMO* staff shall grant the transfer. The *IMO* staff decision on the transfer will be communicated to the *exemption applicant*.

Where *IMO* staff determine that any or all of the criteria in section 1.10.2 have not been met the process for transfer of an *exemption*, as summarized below shall follow a similar process to that described in section 1.6. The *exemption applicant* will have the opportunity to respond to the *IMO* staff recommendation on the transfer. The opportunity shall also be given for third party submissions at the time of the posting of the *Request to Transfer Exemption* form and the *IMO* staff recommendation. Only third parties who make their submissions within the time deadline specified shall form part of the third party group entitled to participate in the *exemption application* process. Third party submissions are to be received and reviewed by both the *exemption applicant* and the *IMO*. *IMO* staff may make a revised

recommendation as a result of the third party submissions, pursuant to the discussion under "Revised *IMO* Staff Recommendations and Response" (section 1.6.7).

The *IMO* staff assisting the Panel will assemble a record of material to go to the Panel. The *exemption applicant* transferee and third party group will also receive a copy of the record. Their copy of the record will include:

- the request to transfer *exemption*;
- the *IMO* staff recommendation and revised recommendation, if any;
- third party submissions, if any; and
- responses to third party submissions from the *exemption applicant* and *IMO* staff and the response from the *exemption applicant* regarding the *IMO* staff recommendation or revised recommendation, if any.

The transfer process then follows the steps outlined under "Review of the Exemption Application by the Panel" and "The Exemption Application Decision" (sections 1.6.9 and 1.6.10, respectively).

Where the transferee is not a *market participant*, or where the *exemption applicant* and the proposed transferee have not provided the information and documentation required in respect of the transfer, the approval of the transfer may be conditional upon the satisfaction of these requirements.

The *exemption applicant* and third party group will be notified of the decision of the Panel.

## 1.11 Extensions

If an *exemption applicant* wishes to extend the duration of an *exemption* that has been granted by the Panel, it must apply for a new *exemption* using the processes set out in this procedure.

## 1.12 Costs

### 1.12.1 Introduction

If imposed by the Panel, an *exemption applicant*, other than the *IMO*, is responsible for paying all costs associated with any *exemption* granted to it, including the costs described in this section, the costs associated with compliance with the terms and conditions of its *exemption*, and the costs associated with the provision of any monitoring information required by the *IMO* (see section 1.8). These costs shall be considered to create an obligation under the *market rules* to pay the amount specified in the *exemption* at the time or times specified in the *exemption*.

### 1.12.2 Processing Costs

The *IMO* does not currently charge a fee for processing *exemption applications*. However, the *independent directors* may impose a fee on an *exemption applicant* to defray the costs associated with processing an *exemption application*. The *independent directors* will monitor these processing costs and review, on an ongoing basis, the decision not to charge such a fee. This procedure will be revised and re-

issued should the *independent directors* decide to introduce a fee for processing *exemption applications* at a later date.

### 1.12.3 Incremental Exemption Costs

In certain cases, the granting of an *exemption* to an *exemption applicant* may result in the *IMO* or other *market participants* bearing costs over and above the costs they would be required to bear if the *exemption* were not granted. This may be the case, for example, where the *IMO* incurs additional costs for automatically or manually processing an activity as a result of granting the *exemption*. In such cases, the Panel may impose, as a condition of the *exemption*, an obligation on the *exemption applicant* to pay such costs. The condition will indicate to whom such costs must be paid and by when. *The exemption applicant* shall not be responsible for paying the increased costs of *market participants* resulting from any *exemption* that was granted using the criteria set out in section 1.5.

### 1.12.4 Withholding/Repayment of Settlement Amounts

In addition to being addressed at the time of the granting of the *exemption*, such costs may, where applicable, also be assessed on the *exemption applicant* at the time at which the terms and conditions of an *exemption* are amended following the reconsideration or removal process, outlined in section 1.9.

Under the *market rules*, *market participants* are entitled to a number of *settlement* credits relating to their participation in the *IMO-administered markets*. In some cases, the nature of an *exemption* may render it inappropriate to allow the *exemption applicant* to have the benefit of a given *settlement* credit, such as the congestion management *settlement* credit provided for in Section 3.5 of Chapter 9 of the *market rules*. Where this is the case, the Panel may include, as a condition of the *exemption*, an obligation on the *exemption applicant* to forego or repay a given *settlement* credit that might otherwise be payable or have been paid to it.

As with the incremental *exemption* costs, described above, these *settlement* amounts may also be addressed at the time at which the conditions of an *exemption* are amended following the reconsideration process (see sections 1.9).

### 1.12.5 Costs Arising from Reconsideration or Removal of Exemption

By way of explanation only, where the Panel reconsiders or removes an *exemption* (see section 1.9) in respect of *facilities* or equipment satisfying the conditions set out in section 1.5.1 and determines that the *facilities* or equipment must operate at a capability that exceeds the level of capability specified in the conditions of an *exemption* granted pursuant to section 1.5, the *exemption applicant* may incur costs in order to do so. Unless the costs to be incurred by the *exemption applicant* to comply with the standard or obligation to which the *exemption* relates or with the amended conditions of the *exemption*, as the case may be, are recoverable by means of a process or procedure governed or mandated by the *OEB*, some or all *market participants* may be directed by the *OEB* or the *IMO* under the *market rules* (sections 14.5.2 and 14.5.3, Chapter 1) to remit to the *exemption applicant* an amount equal to the whole or part of such costs. These costs shall be calculated by subtracting from the costs to be incurred by the *exemption applicant* to comply with the standard or obligation to which the *exemption* relates or with the amended conditions of the *exemption*, as the case may be, the value of any benefit as accruing to the *exemption applicant* as a result of its compliance with such standard, obligation or such amended conditions. Both the costs of compliance and value of the benefit accruing to the *exemption applicant* shall be determined

by *IMO* staff. *IMO* staff will consult with the *exemption applicant* and any *market participant* affected in making this determination of costs.

No costs shall be awarded to an *exemption applicant* on the reconsideration or removal of an *exemption* in respect of *facilities* or equipment not referred to in section 1.5.1.

After the *market commencement date* an amendment to the *market rules* may result in an *exemption* granted prior to the commencement of the *IMO-administered markets* no longer being sufficient or may result in a *market participant's facilities* no longer being in compliance with the *market rules*. Subject to the provisions of the amendment to the *market rules*, or unless the Panel grants either a new *exemption* to the *exemption applicant* using the criteria that were considered in the granting of the original *exemption* or an *exemption* to the *market participant* using the criteria under section 1.4.2 then the *exemption applicant* or *market participant*, as the case may be, shall bear its own costs in upgrading its *facilities* so that they will again be in compliance with the *market rules*.

## 1.13 Appeal

Under the *Electricity Act, 1998* a person who is directly affected by the Panel's decision to refuse or grant an *exemption* and who has made written submissions to the Panel may appeal to the *OEB* within 14 days after publication of the notice of decision.

## 1.14 Need for Market Rule Amendment

A Panel may recommend to the *IMO Board* that the benefit of an *exemption* should be extended to all *market participants* or persons or to a class of *market participants* or persons by way of a *market rule* amendment.

If a Panel identifies the need for an amendment to the *market rules*, the Panel may recommend to the *IMO Board* that the *IMO Board* initiate the amendment process in section 4 of Chapter 3 with a view to amending the *market rules* accordingly.

– End of Section –



# Appendix A: Forms

**Note:** This form is subject to change. Refer to the IMO Web site for the most recent issue of the form.

**FOR IMO USE ONLY**

Exemption ID #: \_\_\_\_\_

Submit this form by e-mail to: *exemptions@theimo.com*

**Subject: Exemption Application**

All information submitted in this process will be used by the IMO solely in support of its obligations under the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the *Market Rules* and associated policies, standards and procedures and its license. All information submitted will be assigned the appropriate confidentiality level upon receipt.

## Part 1 – Exemption Applicant - General Information

Organization Name: _____	
Market Participant/Metering Service Provider No. (if applicable): _____	IMO Help Centre (IHC) Ticket No. (if applicable): _____
Address: _____	
City/Town: _____	Province/State: _____
Postal/Zip Code: _____	Country: _____
Fax No.: _____	
Email Address: _____	
<b>Main Contact</b>	
Name: _____	
Telephone No.: _____	
E-mail Address: _____	
Web Site (URL): _____	
<b>Alternative Contact</b>	
Name: _____	

## Part 1 – Exemption Applicant - General Information

Telephone No.: _____	Fax No.: _____
E-mail Address: _____	

## Part 2 – Information About the Exemption Application

1. Is this exemption application being submitted for existing facilities or equipment prior to market commencement date pursuant to Section 1.5.1 of the *Exemption Application and Assessment Procedure*?

Yes

No

2. Please specify the duration for which you would like the exemption granted in days, months or years:

\_\_\_\_\_

Please cite the Market Rules Section Number(s) to which this Exemption Application relates:

Please cite policy, standard or procedure to which this Exemption Application relates (including Section Number(s)):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Part 3 – Request for an Interlocutory Interim Exemption

The exemption applicant does not request an interim exemption pursuant to Section 1.6.2 of the *Exemption Application and Assessment Procedure*.

OR

The exemption applicant requests an interim exemption pursuant to Section 1.6.2 of the *Exemption Application and Assessment Procedure* staying the exemption applicant's obligation to comply with the following Market Rules Section Number(s) pending the Panel's final decision.

_____	_____
_____	_____
_____	_____
_____	_____

The IMO recommends that the exemption applicant contact the IMO's Market Assessment and Compliance Division regarding the compliance and enforcement measures the IMO intends to take pending the hearing of the exemption as in some cases it may not be necessary for the exemption applicant to seek an interim exemption.

### Part 4 – Submissions in Support of Exemption Application

**Attach an exemption applicant's plan detailing:**

- The manner and time within which the exemption applicant will become compliant;
- The manner in which the exemption applicant proposes to modify its equipment or facilities or otherwise conduct its operations during the period of time for which the exemption would be in effect; and
- The exemption applicant's estimate of any costs that may be imposed on the IMO or on other Market Participants, if the exemption were granted.

**The following submissions must be included, either below or as attachments:**

*(a) For exemption applications submitted prior to market opening for facilities/equipment in operation before or on April 17, 2000 and relating to the technical requirements of Market Rules contained in Appendix 2.2 (other than those for participant workstations or dispatch workstations), Chapter 4 (other than Sections 6.1.5 to 6.1.21), or the technical requirements set forth in Section 12 of Chapter 5:*

- The exemption applicant's assessment as to whether or not the exemption, if granted would materially:

## Part 4 – Submissions in Support of Exemption Application

- ◆ impact the ability of the IMO to direct the operations and maintain the reliability of the IMO-controlled grid;
- ◆ affect the ability of the IMO to operate the IMO-administered markets in an efficient, competitive and reliable manner.
- The exemption applicant's assessment of whether the cost or delay to the exemption applicant of complying with the obligation or standard to which the exemption application relates is reasonable, having regard to the nature of the obligation or standard, the nature of the exemption application and the anticipated impact of non-compliance by the exemption applicant in terms of the elements referred to above.

*(b) Additionally, for all other exemption applications:*

- The exemption applicant's assessment as to whether or not the exemption, if granted would materially:
  - ◆ impact the ability of the IMO to ensure non-discriminatory access to the IMO-controlled grid;
  - ◆ increase costs of market participants; or
  - ◆ increase costs of the IMO;
- An assessment of whether the exemption would, if granted, give the exemption applicant an undue preference in the IMO-administered markets;
- Where the exemption applicant is the IMO, identification of the benefit to Market Participants of compliance with the obligation or standard to which the exemption application relates relative to the financial and other resources required to achieve compliance within such deadlines as may be applicable;
- Where the exemption applicant is the IMO, the manner in which it proposes to operate the IMO-administered markets or direct the operations and maintain the reliability of the IMO-controlled grid during the period in which the exemption would be in effect;
- Identification as to whether the facility or equipment that is the subject-matter of the exemption application:
  - ◆ was in service or was returned to service on the date on which the obligation or standard to which the exemption application relates came into force;
  - ◆ was ordered by the exemption applicant on or prior to the date on which the obligation or standard to which the exemption application relates came into force; or
  - ◆ was in the process of construction on or prior to the date on which the obligation or standard to which the exemption application relates came into force, and;
- An assessment of the capability of the owner of the facility to operate the facility consistent with the terms of the proposed exemption.

*(c) Additionally, for exemption applications requesting an interlocutory interim exemption pursuant to Section 1.6.2 of the Exemption Application and Assessment Procedure:*

- The exemption applicant's reasons for requesting an interim exemption, including the exemption applicant's assessment regarding:
  - ◆ the type and degree of harm the exemption applicant will suffer if the interim exemption is not granted;

## Part 4 – Submissions in Support of Exemption Application

- ◆ how the interim exemption would impact the public interest.

## Part 5 – Supporting Documentation to be Attached by Exemption Applicant

Please list below all supporting documents attached to this exemption application.

1. Exemption Applicant's Plan (must be attached)
- 2.
- 3.
- 4.
- 5.

## Part 6 – Certification

The exemption applicant hereby declares that the information contained in and submitted in support of this document is, to the best of the exemption applicant's knowledge, complete and accurate.

\_\_\_\_\_

Name

\_\_\_\_\_

Title

## Part 7 – Confidentiality

The exemption applicant agrees that information on this application may be posted in its entirety on the *IMO* Web site in accordance with the provisions of the *Exemption Application and Assessment Procedure*

*OR*

The exemption applicant claims confidentiality over parts of the Exemption Application in accordance with Section 1.6.4 of the *Exemption Application and Assessment Procedure*. Parts of this Exemption Application over which confidentiality is claimed are highlighted. The balance of the information on this exemption application may be posted on the *IMO* Web site.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

– End of Section –

## Appendix B: Supporting Documentation for Exemption Application

The following is the minimum supporting documentation/information that must be submitted by an *exemption applicant* as part of its *exemption application*<sup>2</sup>.

- A. For *exemption applications* for existing *facilities* and equipment submitted prior to *market commencement date* pursuant to section 1.5.1;
- i) The *exemption applicant's* assessment as to whether the *exemption* that is the subject-matter of the *exemption application* would, if granted, materially:
    - impact the ability of the *IMO* to direct the operations and maintain the *reliability* of the *IMO-controlled grid*;
    - affect the ability of the *IMO* to operate the *IMO-administered markets* in an efficient, competitive and reliable manner.
  - ii) If required by the *IMO* staff, an assessment of the cost or delay to the *exemption applicant* of complying with the obligation or standard to which the *exemption application* relates.
  - iii) Identification as to whether the *facility* or equipment that is the subject-matter of the *exemption application*:
    - was in service or was returned to service on the date on which the obligation or standard to which the *exemption application* relates came into force;
    - was ordered by the *exemption applicant* on or prior to the date on which the obligation or standard to which the *exemption application* relates came into force; or
    - was in the process of construction on or prior to the date on which the obligation or standard to which the *exemption application* relates came into force.
  - iv) The *exemption plan* referred to in section 1.6.3;
- B. For *exemption applications* for *exemptions* which qualify under section 1.4.1;
- i) The assessment applicant's assessment as to or not and the extent to which the *exemption* if granted would:
    - impact the ability of the *IMO* to direct the operations and maintain the reliability of the *IMO-controlled grid*;
    - impact the ability of the *IMO* to ensure non-discriminatory access to the *IMO-controlled grid*;
    - unless the *exemption applicant* is the *IMO*, affect the ability of the *IMO* to operate the *IMO-administered markets* in an efficient, competitive and reliable manner and provide the *exemption applicant* with an undue preference within the *IMO-administered markets*.
  - ii) An assessment of the cost or delay to the *exemption applicant* of complying with the obligation or standard to which the *exemption application* relates.
  - iii) Where the *exemption applicant* is the *IMO*, identification of the benefit to *market participants* of compliance with the obligation or standard to which the *exemption*

<sup>2</sup> The majority of the information set out will be identified within the *exemption application* form. However, *exemption applicants* will be able to submit additional material, in addition to the completed application form, to address the topics identified in this appendix.

*application* relates relative to the financial and other resources required to achieve compliance within such deadlines as may be applicable.

- iv) the *exemption* plan referred to in section 1.6.3.
- C. In addition to the supporting documentation/information outlined in parts A and B above, for *exemption applications* requesting interim *exemption* pursuant to section 1.6.2;
- i) The *exemption applicant's* reasons for requesting an interim *exemption*, including the *exemption applicant's* assessment regarding:
- the type and degree of harm the *exemption applicant* will suffer if the interim *exemption* is not granted; and
  - how the interim *exemption* would impact the public interest.

– End of Section –

## Appendix C: Confidentiality Criteria

---

Where the information is not public, the criteria to be considered by the Panel under section 1.6.4 shall include:

1. Whether disclosure of the material could reasonably be expected to prejudice the competitive position of any party significantly; impede or diminish the capacity of a party to fulfill existing contractual obligations; or interfere significantly with negotiations being carried out by a party.
2. Whether disclosure of the material could reasonably be expected to reveal information supplied to, or the report of, a conciliation officer, mediator, labor relations officer, or other person appointed to resolve a labor relations dispute or a commercial dispute.
3. Whether disclosure of the record is likely to produce the loss or gain to any person, group, agency, or committee.
4. Whether the Panel is able to discharge its responsibilities under the *Electricity Act, 1998* without public disclosure of the record.
5. Whether the material is public or generally available elsewhere either before or after the confidentiality of the record is challenged.
6. Whether it has been determined in a process outside the ambit of the Panel that the material cannot be disclosed and such prior declaration is made known to the Panel. (Note: The Panel is not bound by such decisions.)
7. Whether an assessment of the confidentiality of the record under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) has commenced.
8. Whether matters involving public security may be disclosed.
9. Whether intimate financial, commercial or personal matters or other matters may be disclosed, having regard to the circumstances, and whether the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that information be made public.

(Derived from Appendix 2 (“Considerations in Assessing Confidentiality”) of the *OEB* document entitled “*Guidelines for the Treatment of Filings made in Confidence*”, Phase I, effective March 19, 2001 and Rule 47.01 of the *OEB Rules of Practice and Procedure*.)



# .References

---

<b>Document ID</b>	<b>Document Title</b>
MDP_RUL_002	Market Rules

– End of Document –