

SEM Agreed Procedure

Title	Agreed Procedure 14: Disputes
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TABLE OF CONTENTS

1. INTRODUCTION	4
1.1. BACKGROUND & PURPOSE.....	4
1.2. SCOPE OF AGREED PROCEDURE	4
1.3. DEFINITIONS	4
1.4. COMPLIANCE WITH AGREED PROCEDURE	4
2. PROCEDURAL STEPS.....	5
2.1. RAISING A DISPUTE	5
2.2. DISPUTE RESOLUTION BOARD – COMPOSITION – BILATERAL DISPUTES	8
2.3. DISPUTE RESOLUTION BOARD – COMPOSITION – MULTILATERAL DISPUTES.....	10
2.4. DISPUTE RESOLUTION BOARD – DECISION	12
APPENDIX 1 – DEFINITIONS AND ABBREVIATIONS	15
DEFINITIONS.....	15
ABBREVIATIONS.....	15
APPENDIX 2 – FORMS	16
STANDARD NOTICE OF DISPUTE TO A COUNTERPARTY	16
REFERRAL NOTICE TO MARKET OPERATOR / CHAIRPERSON	17
DISPUTE RESOLUTION FORM.....	18

DOCUMENT HISTORY

VERSION	DATE	AUTHOR	COMMENT
2.0	20/11/2006	Regulatory Authorities	Alignment with participant comments and legal review of the Code. Please note that the Code and this procedure is still silent on how decisions of the DRB may be binding, if at all, on non-disputing parties. This needs further work.
2.1	28/02/2007	Regulatory Authorities	Updated with comments from review of Terminology across all APs and Code
2.2	28/03/2007	Regulatory Authorities	Updated for consistency and governance
2.3	13/04/2007	Regulatory Authorities	Updated against v1.3 of the Code
2.4	4/05/2007	Regulatory Authorities – legal advisors	Further update against v1.3 of the Code
3.0	12/05/2007	Regulatory Authorities	Final Pre JCCP Version
3.0a	17/05/2007	Regulatory Authorities	Consultation Version

RELATED DOCUMENTS

DOCUMENT TITLE	VERSION	DATE	BY
Trading and Settlement Code (Code) Appendix O – Dispute Resolution Agreement	V1.3	30/03/2007	Regulatory Authorities
To be completed after consultation			

1. INTRODUCTION

1.1. BACKGROUND & PURPOSE

This Agreed Procedure describes the specific procedures for the raising and resolution of Disputes with which Parties to the Code must comply.

1.2. SCOPE OF AGREED PROCEDURE

This Agreed Procedure sets out in step form the process requirements for communication of information and associated timescales for the resolution of Disputes between Parties to the Code.

The procedure describes the process of raising a Dispute, the appointment of the Dispute Resolution Board to make a decision on a Dispute, the timescales/procedure associated with a decision of the Dispute Resolution Board and the timelines to commence court proceedings if Parties are dissatisfied with the decision taken by the Dispute Resolution Board.

The procedure does not include the setting up of the Panel from which members of the Dispute Resolution Board is drawn. The procedure does not make any statement regarding court proceedings once they have begun.

This Agreed Procedure forms an annex to, and is governed by, the Code. This document is a statement of process and procedure to be followed, having regard to Parties' rights and obligations as established under the main body of the Code.

The provisions set out in this Dispute Resolution Process shall not prejudice or restrict the Market Operator's entitlement to seek interim or interlocutory relief directly from the appropriate Court or Courts.

1.3. DEFINITIONS

Save as expressly defined, words and expressions defined in the Code shall have the same meanings when used in this Agreed Procedure.

References to particular sections relate internally to this Agreed Procedure unless specifically noted.

1.4. COMPLIANCE WITH AGREED PROCEDURE

Compliance with this Agreed Procedure is required under the terms of the Code as set out in paragraph 1.7 of the Code.

2. PROCEDURAL STEPS

2.1. RAISING A DISPUTE

#	Procedural Step	Timing	Method	From/By	To
1a	<p>Dispute not arising from a Settlement Query or Data Query</p> <p>Notify Dispute Counterparty or Dispute Counterparties of the Dispute by sending a Notice of Dispute (Appendix 2). The Notice of Dispute shall include the nature of the Dispute and the issues involved.</p>	Within 28 days of Disputing Party being aware of the Disputed Event and within 2 years year of the Disputed Event	Fax/post	Raising Dispute Party	Dispute Counterparties
1b	<p>Dispute arising from a Settlement Query or Data Query</p> <p>Notify Market Operator, as the Dispute Counterparty, of the Dispute by completing and sending a Notice of Dispute (Appendix 2). The Notice of Dispute shall include the nature of the Dispute and the issues involved.</p>	Within 5 Working Days of receipt of the Market Operator's determination in respect of a Settlement Query, subject to any applicable limitations in paragraphs 6.63 and 6.64 in the Code.	Fax/post	Raising Dispute Party	Market Operator
1c	<p>Dispute automatically arising from failure by Market Operator to issue a determination in respect of a Settlement Query or Data Query. No requirement for Notice of Dispute. Proceed to step 3.</p>	Dispute arises on the date on which the Market Operator was required to issue its determination in relation to the Data/Settlement Query under the Code.	n/a	n/a	n/a
2	Send a copy of the Notice of Dispute to the Market Operator. If the Market Operator is a Dispute Counterparty then a copy of the Notice of Dispute must also be sent to the Regulatory Authorities.	At the same time as Notice of Dispute is sent to the Dispute Counterparties.	Fax/post	Raising Dispute Party	Market Operator or Regulatory Authorities as appropriate
3	If Dispute automatically arises under step 1c above, notify the Dispute Counterparty and the Regulatory Authorities that Dispute has arisen.	Within 5 WDs of dispute being deemed to arise	Fax/post	Market Operator	Dispute Counterparty and Regulatory Authorities

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#	Procedural Step	Timing	Method	From/By	To
4	Market Operator identifies other potentially impacted Participants or Parties, and notifies them of the Dispute using high-level information on Notice of Dispute	Within 5 Working Days	Fax/post	Market Operator	Potentially impacted Parties
5	Hold a meeting and attempt to resolve the Dispute	Within 10 Working Days of the date of receipt of the Notice of Dispute, or of the date of the Dispute arising under 1c above	Meeting	All Disputing Parties	n/a
6	In the event that any of the Disputing Parties wishes to extend the timescales for negotiating a resolution to the Dispute then the relevant Disputing Party shall issue a notice to the other Disputing Parties that details the period for which the Disputing Party wishes to extend the Negotiation Period. Proceed to step 7. If no-one requests extension, proceed to step 9.	Within 10 WDs of meeting to resolve Dispute	Fax/post	Disputing Party	Market Operator Regulatory Authorities) Dispute Counterparty or Dispute Counterparties
7	Disputing Parties meet (in person or by telephone) to determine whether Negotiation Period should be extended.	Within 2 WDs of request to extend or prior to expiry of the Negotiation Period, whichever is earlier of request under step 6.	n/a	Disputing Parties	n/a
8	If all Dispute Counterparties agree to extend the Negotiation Period, send a notice to the Market Operator or, if the Market Operator is a Disputing Party, the Regulatory Authorities, requesting consent to the agreed extension of the negotiation period. If the Market Operator or the Regulatory Authorities, as appropriate, agree the extension, extend the negotiation period. Go to step 9.	On receipt of the confirmation from the Disputing Parties to extend the Dispute negotiating period	Fax/post	Raising Dispute Party or, if agreed any other Disputing Party	Market Operator Regulatory Authorities

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#	Procedural Step	Timing	Method	From/By	To
9	If the attempt to resolve the Dispute has been successful during the Negotiation Period then notify the Market Operator, or, if the Market Operator is a Disputing Party, the Regulatory Authorities utilising the Dispute Resolution Form (Appendix 2), signed by all Disputing Parties. Send a copy to the Dispute Counterparty.	Within 5 WDs of resolution by negotiation	Fax/post	Raising Dispute Party	Market Operator (Regulatory Authorities) Dispute Counterparty or Dispute Counterparties
10	If the Dispute resolution agreed between the Disputing Parties requires a financial resettlement, go to Agreed Procedure 15 "Invoicing".	On Dispute Resolution Form	n/a	n/a	n/a
11	If the Dispute resolution agreed between the Disputing Parties requires a financial resettlement and this affects a impacted Party, inform the impacted Party of the outcome of the Dispute.	Within 5 WDs of resolution by negotiation	Fax/post	Market Operator	Impacted Parties
12	If the attempt to resolve the Dispute by negotiation has been unsuccessful within the Negotiation Period, any Disputing Party may send a Referral Notice to the other Disputing Parties stating the: <ul style="list-style-type: none"> o Section of the Code under which the Referral Notice is given o Dispute identifier o Dispute is being referred to the Dispute Resolution Board 	Within 20 WDs of expiry of the Negotiation Period.	Fax/post	Any Disputing Party	Disputing Parties
13	Send a copy of the Referral Notice to the Market Operator, (or Regulatory Authorities where the Market Operator is a Disputing Party)	At same time that Referral Notice is sent to the Dispute Counterparties	Fax/post	Either the Raising Disputing Party or the Dispute Counterparty	Market Operator (Regulatory Authorities)
14	If no Referral Notice is sent by any Disputing Party within 20 WDs of expiry of the Negotiation Period then process ends here.	n/a	n/a	n/a	n/a

2.2. DISPUTE RESOLUTION BOARD – COMPOSITION – BILATERAL DISPUTES

#	Procedural Step	Timing	Method	From/By	To	Linkage
1	Hold a meeting to decide the composition of the Dispute Resolution Board.	Within 10 Working Days of receipt of the Referral Notice	n/a	Disputing Parties	n/a	n/a
2	If agreement on the form of the DRB is reached, go to step 3. If not, notify the Chairperson and go to step 6	Within 1 WD of step 1.	n/a	Disputing Parties	n/a	n/a
3	Arrange a meeting to agree the identity of the sole member, or if it has been agreed to appoint a 3 member DRB, each Disputing party must nominate one member of the DRB. If the identity of the sole member is agreed, or in the case of a 3 member DRB, if two members are nominated, go to step 4. If agreement is not reached regarding the identity of the sole member DRB or if a Disputing Party fails to nominate a member for a 3 member DRB, go to step 6	Within 5WD of agreement under step 1.	Fax/post	All Disputing Parties	n/a	n/a
4	Notify the sole member or the 2 nominated DRB members, as appropriate, of their selection and copy Market Operator, or if the Market Operator is a Disputing Party, the Regulatory Authorities. If sole member DRB, go to Step 10.	Within 1 WD of decision to appoint	Fax/post	Disputing Parties	DRB	n/a
5	If a 3 member DRB has been agreed, the two DRB members meet to select a third member and notify selection to the third DRB member, the Disputing Parties and the Market Operator, and, if the Market Operator is a Disputing Party, the Regulatory Authorities. Go to Step 10.	As soon as possible following receipt by first 2 members of notice of their nomination	Fax/post	DRB	Chairperson, Disputing Parties, third DRB member and the Market Operator or Regulatory Authorities	

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#	Procedural Step	Timing	Method	From/By	To	Linkage
6.	Disputing Parties request Chairperson to determine form of DRB/identity of sole member of DRB or to nominate a member for a 3 member DRB, as appropriate. Go to step 7, 8 or 9 as appropriate to nature of request.	Within 1 WD of expiry of 10WD period for Parties to determine form of DRB	Fax/Post	Disputing Parties	Chairperson	
77	Chairperson determines form of DRB and notifies Disputing Parties and Market Operator, or if the Market Operator is a Disputing Party, the Regulatory Authorities. Go to step 10.	Within 10 WDs of receipt of request from Disputing Parties	Fax/post	Chairperson	Disputing Parties	n/a
8	Chairperson determines identity of sole member DRB and notifies the sole member, the Disputing Parties and Market Operator, or if the Market Operator is a Disputing Party, the Regulatory Authorities. Go to step 10.	Within 10 WDs of receipt of request from Disputing Parties	Fax/post	Chairperson	Disputing Parties, sole member and Market Operator or Regulatory Authorities	n/a
9	Chairperson nominates a member for the three member DRB and notifies the existing DRB member, the new DRB member, the Disputing Parties and Market Operator, or if the Market Operator is a Disputing Party, the Regulatory Authorities. Go to step 5.	Within 10 WDs of receipt of request from Disputing Parties	Fax/Post	Chairperson	DRB, Disputing Parties and Market Operator or Regulatory Authorities	n/a
10	Meet to finalise and sign Dispute Resolution Agreement	Within 15 WDs of appointment of DRB	n/a	DRB and Disputing Parties	n/a	Appendix O of the Code
11	If at any stage any member of DRB declines or is unable to act for reasons set out in the Code, that member must notify the Disputing Parties and the Chairperson immediately. Go to step 12.	As soon as possible following nomination, or if subsequent event arises, following the event	Fax/Post	DRB member	Chairperson and Disputing parties	n/a

#	Procedural Step	Timing	Method	From/By	To	Linkage
12	Chairperson shall nominate and notify a replacement member and proceed with process in accordance with steps 1-10, or, if Dispute Resolution Agreement already signed, arrange for new member to sign in place of outgoing member.	Within 5 WDs of notification under step 11	Fax Post	Chairperson	New DRB member and Disputing Parties	Appendix O of the Code

2.3. DISPUTE RESOLUTION BOARD – COMPOSITION – MULTILATERAL DISPUTES

#	Procedural Step	Timing	Method	From/By	To	Linkage
1	Arrange and hold a meeting to decide the composition and membership of the Dispute Resolution Board. If composition and membership agreed, proceed to step 4. If not proceed to step 2.	Within 10 Working Days of receipt of the Referral Notice	n/a	All Disputing Parties	n/a	n/a
2	Notify Chairperson that the parties have not agreed the composition and/or identity of the DRB	Within 1WD of expiry of period in step 1.	Fax/Post	Disputing Parties	Chairperson	n/a
3.	Chairperson determines composition of DRB and identity of DRB members and notifies Disputing Parties	Within 10WD of receipt of request from Disputing Parties	Fax/Post	Chairperson	Disputing Parties, DRB members, Market Operator or Regulatory Authorities	n/a
4	Meet to finalise and sign Dispute Resolution Agreement	Within 15 WDs of appointment of DRB	n/a	DRB and Disputing Parties	n/a	Appendix O of the Code
5	If at any stage any member of DRB declines or is unable to act for reasons set out in the Code, that member must notify the Disputing Parties and the Chairperson immediately. Go to step 6	As soon as possible following nomination, or if subsequent event arises, following the event	Fax/Post	DRB member	Chairperson and Disputing parties	n/a

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#	Procedural Step	Timing	Method	From/By	To	Linkage
6	Chairperson shall nominate and notify a replacement member and proceed with process in accordance with steps 1-4, or, if Dispute Resolution Agreement already signed, arrange for new member to sign in place of outgoing member.	Within 5 WDs of notification under step 5	Fax/post	Chairperson	New DRB member and Disputing P	Appendix O of the Code

2.4. DISPUTE RESOLUTION BOARD – DECISION

#	Procedural Step	Timing	Method	From/By	To	Linkage
1	Provide the Dispute Resolution Board with all available information necessary to enable the DRB to make an informed decision.	ASAP following the appointment of DRB	Fax/post	Disputing Parties	DRB	n/a
2	In the event that further information is required from the Disputing Parties to enable the DRB to make its decision request this information from the Disputing Parties	Within the timescale constraints within which the DRB must make its decision	Fax/post	DRB	Disputing Parties	n/a
3	Provide the required information to the Dispute Resolution Board	Within the DRB's specified timescales	Fax/post	Disputing Parties	DRB	n/a
4	If necessary, request the Disputing Parties in writing for additional time to make the decision on the Dispute.	As soon as possible but within 30WDs of appointment of the DRB for bilateral disputes and within 45 WDs of the appointment of the DRB for multilateral disputes.	Fax/post	DRB	Disputing Parties	n/a
5	Disputing Parties determine whether or not they agree to extension of period and notify the DRB of decision (with copy to the Market Operator, or if the Market Operator is a Disputing Party, to the Regulatory Authorities).	Within 2 WD of request from DRB or prior to expiry of the period referred to in step 4 whichever is earlier.	Fax	Disputing Parties	DRB, Market Operator or Regulatory Authorities	n/a

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Last Updated: 18 May 2007

#	Procedural Step	Timing	Method	From/By	To	Linkage
6	DRB makes its decision having due regard to the objectives of the Disputes Procedure and notifies Disputing Parties of its decision.	<p>For bilateral disputes: within 30 WDs of appointment of DRB or such longer period as agreed by DRB and the Disputing Parties under step 4.</p> <p>For multilateral disputes: within 40 WDs of appointment of DRB</p>	Fax/Post	DRB	Disputing Parties, Market Operator or Regulatory Authorities	n/a
7	<p>Receive determination from the DRB or there is no decision from the DRB within the applicable time limit:</p> <ul style="list-style-type: none"> • If any Disputing Party is dissatisfied with the decision/no decision of the DRB give notice to the other Disputing Parties that it is dissatisfied with the decision/no decision, giving reasons. Go to Step 8 • If all Parties satisfied with the decision of the Dispute Resolution Board, complete a Dispute Resolution Form (Appendix 2) and go to Step 10. 	Within 15WDs of receipt of decision or there being no decision from the DRB	n/a	Either Disputing Party	n/a	n/a
8	Attempt to settle the dispute amicably. If the Dispute has been settled amicably go to step 10.	Within 21WDs of notice of dissatisfaction or other agreed time	n/a	Disputing Parties	n/a	n/a

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#	Procedural Step	Timing	Method	From/By	To	Linkage
9.	If the Dispute has not been settled amicably under step 8, and the dissatisfied Party has issued a notice of dissatisfaction to all other Disputing Parties under step 7, then the Dispute may be settled through court proceedings.	21 WDs (or such longer period as agreed by all Disputing Parties) after notice of dissatisfaction received	n/a	Disputing Parties	Disputing Parties	
10	If following resolution of the Dispute a Party believes that the other Party has not complied with the decision of the DRB they may refer the matter to court proceedings.	Once decision of DRB has become final and binding in accordance with the Code.	n/a	Any Disputing Party	n/a	n/a

APPENDIX 1 – DEFINITIONS AND ABBREVIATIONS

DEFINITIONS

Dispute Counterparty	means the Disputing Parties other than the Raising Disputing Party
Dispute Resolution Form	means the form completed on successful resolution of a Dispute
Chairperson	Means the chairperson for the time being of the Panel who is appointed by the Regulatory Authorities in accordance with the Code. .
Negotiation Period	means an initial period of 10 WDs following the first meeting of the Disputing Parties to attempt to resolve a Dispute (which meeting must take place within 10 WDs of receipt of Notice of Dispute), or such longer negotiation period agreed by the parties in accordance with the Code.
Raising Disputing Party	means the Disputing Party who issues the Notice of Dispute
Vice-Chairperson	means the vice-chairperson of the Panel appointed in accordance with the Code.

ABBREVIATIONS

DRB	Dispute Resolution Board
WD	Working Day

APPENDIX 2 – FORMS

STANDARD NOTICE OF DISPUTE TO A COUNTERPARTY

DISPUTE		
DISPUTE NOTICE		
Dispute submitted by: <i>Please identify Party (and Participant if required) to Code</i>	Date of Submission of this Notice:	Dispute Notice Number: <i>(to be assigned by Market Operator)</i>
Contact Details for Party raising the Dispute		
Name:		Telephone number:
Address:		
e-mail address:		
Brief Description of Dispute <i>This should be brief and high-level enough so as to inform other potentially impacted Parties of the Dispute)</i>		
Please list all counterparties to the dispute: <i>Please identify all Parties (and Participants) as appropriate who are subject to this Dispute</i>		
Detail of the Dispute <i>Clearly state the full nature of the dispute, identifying the paragraphs of the Code where the Raising Disputing Party and corrective actions</i>		
Proposed Negotiation Timeframe <i>Please state you availability for resolution of this dispute</i>		
<p><i>Please send this form to the Counterparties to the Dispute, the Market Operator (if not already a Counterparty), and the Regulatory Authorities (if the Market Operator is a Counterparty to the Dispute.) Contact details available from the MO Website.</i></p>		

REFERRAL NOTICE TO MARKET OPERATOR / CHAIRPERSON

DISPUTE		
<p>REFERRAL NOTICE</p> <p>The Dispute has, in accordance with paragraph 2.254 of the Code been referred to the Dispute Resolution Board.</p>		
<p>Referral submitted by: <i>Please identify Party (and Participant if required) to Code</i></p>	<p>Date of Submission of this Notice:</p>	<p>Dispute Notice Number: <i>(assigned by Market Operator to the Dispute Notice)</i></p>
Contact Details for Party Referring the Dispute		
Name:		Telephone number:
Address:		
e-mail address:		
Brief Description of Dispute		
<p>Please list all counterparties to the dispute: <i>Please identify all Parties (and Participants) as appropriate who are subject to this Dispute</i></p>		
<p>Detail of attempts to resolve the Dispute through negotiation <i>Clearly state the full nature of the dispute, identifying the paragraphs of the Code where the Raising Disputing Party and corrective actions</i></p>		
<p>Proposed Negotiation Timeframe <i>Please state your availability for a meeting of all Counterparties of the dispute to determine the form of the DRB</i></p>		
<p><i>Please send this form to the Counterparties to the Dispute, the Market Operator (if not already a Counterparty), and the Regulatory Authorities (if the Market Operator is a Counterparty to the Dispute). Contact details available from the MO Website</i></p>		

DISPUTE RESOLUTION FORM

DISPUTE		
DISPUTE RESOLUTION FORM		
Dispute Resolution Form submitted by: <i>Please identify Party (and Participant if required) to Code</i>	Date of Submission of this Notice:	Dispute Notice Number: <i>(assigned by Market Operator to the Dispute Notice)</i>
Contact Details for Party submitting the Dispute Resolution Form		
Name:	Telephone number:	
Address:		
e-mail address:		
Brief Description of Dispute		
Please list all counterparties to the dispute: <i>Please identify all Parties (and Participants) as appropriate who are subject to this Dispute</i>		
Detail of Resolution of the Dispute <i>Clearly state the full nature of the dispute, identifying the paragraphs of the Code where the Raising Disputing Party and corrective actions</i>		
Signatures/Authorisation of all parties to the Dispute		
<i>Please send this form to the Counterparties to the Dispute, the Market Operator (if not already a Counterparty), and the Regulatory Authorities (if the Market Operator is a Counterparty to the Dispute). Contact details available from the MO Website</i>		