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**VIA ELECTRONIC FILING PORTAL
AND EMAIL**

To: Ontario Securities Commission
20 Queen Street West
Suite 1903, P.O. Box 55
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

**Re: Independent Electricity System Operator (the “Applicant” or the “IESO”)
Application for an Exemption from Recognition as a Clearing Agency**

A. Introduction

We are counsel to the Applicant. This application (the “**Application**”) is being made pursuant to section 147 of the *Securities Act* (Ontario) (the “**OSA**”) and National Instrument 24-102 *Clearing Agency Requirements* (“**NI 24-102**”), for an order exempting the Applicant from recognition as a clearing agency under section 21.2(0.1) of the OSA in respect of the virtual transactions in the newly developed day-ahead market in Ontario (the “**Clearing Agency Exemption**”).

The Applicant has separately requested relief from certain requirements of OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (“**OSC Rule 91-507**”) and National Instrument 93-101 *Derivatives: Business Conduct*.

As discussed in further detail in this Application, the Applicant has designed and is implementing a market renewal program, which is designed to enhance Ontario’s current electricity market, including addressing certain inefficiencies in the electricity market, and facilitate Ontario’s continued transition to new and diverse resources (the “**Market Renewal Program**”). As part of the Market Renewal Program, the Applicant is developing a market which will provide for both physical transactions (“**DAM Physical Transactions**”) and virtual transactions (“**DAM Virtual Transactions**”).

The Applicant is filing this Application for the Clearing Agency Exemption as: (i) it may be considered to be captured in the definition of “clearing agency - derivatives” pursuant to the OSA in that it will be (i) arranging or providing, on a multilateral basis, the settlement or netting of obligations resulting from DAM Virtual Transactions, and (ii) providing a clearing service or arrangement that mutualises or transfers among participants the credit risk arising from DAM Virtual Transactions; and (ii) DAM Virtual Transactions may be considered to be derivatives as defined under the OSA. While any entity that meets the registration and

prudential security requirements may register to participate in DAM Virtual Transactions, the IESO anticipates virtual trader participation from existing participants in the Energy Market (as defined herein), energy traders that currently trade with neighbouring jurisdictions, and financial institutions.

B. Background

1. The Applicant is a non-profit corporation without share capital created pursuant to Part II of the *Electricity Act, 1998* (Ontario) (the “**Electricity Act**”). The Applicant is regulated by the Ontario Energy Board (the “**OEB**”) and the Ontario government appoints its directors. The IESO is required to apply to the OEB to have its annual revenue requirement, as well as any other fees it proposes to charge, approved by the OEB. The IESO’s OEB-approved revenue requirement and fees are collected through rates charged to and collected from Ontario electricity ratepayers.
2. The Applicant is statutorily mandated (the “**Statutory Mandate**”) to meet the following objectives as set out in subsection 6(1) of the *Electricity Act*:
 - a. to exercise the powers and perform the duties assigned to it under the *Electricity Act*, the regulations, directions issued by the Minister of Energy and Electrification (the “**Minister**”), the market rules for the Ontario’s electricity market, and its OEB Licence (as defined herein);
 - b. to enter into agreements with transmitters giving the Applicant authority to direct the operation of their transmission systems;
 - c. to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of the *Electricity Act*;
 - d. to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system;
 - e. to establish and enforce criteria and standards relating to the reliability of the integrated power system;
 - f. to work with the responsible authorities outside of Ontario to co-ordinate the IESO’s activities with the activities of those authorities;
 - g. to operate the IESO administered markets (the “**IESO-Administered Markets**”) to promote the purposes of the *Electricity Act*;
 - h. to engage in activities related to contracting for the procurement of electricity supply, electricity capacity, electricity storage, transmission systems or any part of such systems and conservation resources;
 - i. to engage in activities related to settlements, payments under a contract entered into under the authority of the *Electricity Act* and payments provided for under the *Electricity Act* or the *Ontario Energy Board Act, 1998* (the “**OEB Act**”);
 - j. to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;

- k. to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term;
 - l. to conduct independent planning for electricity generation, demand management, conservation and transmission;
 - m. to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;
 - n. to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources;
 - o. to engage in activities that facilitate load management;
 - p. to engage in activities that promote electricity conservation and the efficient use of electricity;
 - q. to assist the OEB by facilitating stability in rates for certain types of consumers;
 - r. to exercise the powers and rights and to perform the duties and obligations assigned to it under the *Ontario Fair Hydro Plan Act, 2017* and to engage in activities to facilitate the implementation of the *Ontario Fair Hydro Plan Act, 2017*, including:
 - i. entering into agreements or arrangements with any person for the purposes of the *Ontario Fair Hydro Plan Act, 2017*; and
 - ii. engaging in activities related to making payments to and receiving payments as contemplated under the *Ontario Fair Hydro Plan Act, 2017* and related settlement activities.
 - s. to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and
 - t. to engage in such other objects as may be prescribed by the regulations.
3. Summarized, the Statutory Mandate creates three fundamental roles for the Applicant: (i) ensuring the reliability of the integrated power system (the “**Power System**”); (ii) overseeing and running the IESO-Administered Markets; and (iii) planning the provincial electricity system and, as necessary, procuring electricity resources.
4. The IESO-Administered Markets include both physical markets, specifically, the real time energy market (the “**Energy Market**”), and financial markets, specifically, the transmission rights market (the “**TR Market**”), that together comprise the IESO-Administered Markets.
5. In carrying out the Statutory Mandate, the Applicant has developed a codified set of rules to govern the provincial electricity grid and the IESO-Administered Markets in Ontario (collectively, the “**Market Rules**”). Section 32 of the Electricity Act authorizes the IESO to make the Market Rules.
6. To improve and modernize Ontario’s electricity markets, the Applicant has designed and is implementing the Market Renewal Program, which is designed to enhance Ontario’s current

electricity market, including addressing certain inefficiencies in the electricity market, and facilitate Ontario's continued transition to new and diverse resources. The Market Rules required to implement the Market Renewal Program went into effect on November 8, 2024, and the IESO anticipates that the renewed market will begin operating May 1, 2025.

7. As part of the Market Renewal Program, the Applicant is developing a day-ahead market (the "**DAM**") which will replace its current day-ahead commitment process (the "**DACP**") under the Energy Market. The DAM will provide for both DAM Physical Transactions and DAM Virtual Transactions.
8. The DAM, inclusive of DAM Physical Transactions and DAM Virtual Transactions, will be part of the Energy Market.

C. Regulatory Oversight and Framework

9. The Applicant operates pursuant to the license granted to it by the OEB (the "**OEB Licence**") under the OEB Act.
10. The OEB is the provincial regulatory authority of the natural gas and electricity sectors under the OEB Act and the Electricity Act. The OEB has the powers of oversight in connection with the business of the IESO, including its operation of the IESO-Administered Markets.
11. Specifically, the Applicant and the Authorized Market Participants (as defined in paragraph 109) in the IESO-Administered Markets are subject to the following oversight, among other things, of the OEB: (i) all market design changes, which are implemented through amendments to the Market Rules, and are subject to review and approval by the OEB; (ii) the IESO orders and decisions, which are subject to appeal to the OEB, including compliance and enforcement decisions by the IESO's Market Assessment and Compliance Division ("**MACD**") and arbitration decisions pursuant to the Market Rules dispute resolution process for addressing disputes between the IESO and Authorized Market Participants; (iii) market participants, which are subject to compliance and enforcement authority by the OEB; (iv) the IESO-Administered Markets, including the TR Market (as defined herein), are subject to monitoring and oversight by the OEB's Market Surveillance Panel (the "**MSP**"); and (v) licensing, whereby certain market participants and the Applicant must be licenced by the OEB and any failure to abide by licence conditions, the OEB Act or the Electricity Act can result in compliance and enforcement action by the OEB, including the imposition of a fine by the OEB, or the suspension or the revocation of the licence.
12. Pursuant to the Electricity Reporting and Record Keeping Requirements of the OEB, the Applicant is required to provide the OEB with quarterly financial statements for all market accounts showing quarter end financial position and quarterly and year to date results of operations. In addition, pursuant to Section 25.3(1) of the Electricity Act, the Applicant is required, within 90 days after the end of every fiscal year, to submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the IESO Board (as defined herein). This report must also be submitted to the OEB pursuant to the OEB Licence.
13. The Applicant and the market participants' licences contain conditions that require them to comply with applicable provisions of the Electricity Act, regulations made thereunder, and the Market Rules, including Chapter 9 of the Market Rules which prescribes the monthly settlement process governing the IESO-Administered Markets.

14. The Applicant is also bound to make certain reports to the Minister pursuant to the Electricity Act and to the OEB pursuant to the OEB Licence, and from time to time, the Minister issues directives and letters to the Applicant articulating government policy.
15. The MSP monitors, investigates and reports on activities and behaviour in the IESO-Administered Markets and Ontario's electricity sector, and is specifically enabled to carry out investigations and inspections, including by compelling the production of documents and testimony, and to report to and make recommendations to the OEB. The Applicant and the OEB have entered into a protocol pursuant to which the Applicant's market assessment unit provides assistance and support to the MSP in relation to matters involving monitoring, analysing, evaluating, investigating, reviewing and reporting on the IESO-Administered Markets (the "**Protocol**"). The Protocol is currently in force.
16. The Applicant's board of directors (the "**IESO Board**") consists of the IESO chief executive officer ("**CEO**") and between 8-10 independent directors. The IESO Board oversees the Applicant's business and affairs, and approves amendments to the Market Rules. The IESO Board has established three committees: (i) Audit Committee; (ii) Human Resources and Governance Committee; and (iii) Markets Committee. In accordance with the Audit Committee's mandate, all members must be independent.
17. Section 32 of the Electricity Act permits the Applicant to make rules establishing and governing markets related to electricity and ancillary services. Therefore, the Applicant, through the IESO Board, has authority to make the Market Rules, and the IESO and Authorized Market Participants are required to comply with the Market Rules.
18. Section 32(6) of the Electricity Act provides that before making the Market Rules, the Applicant is required to give the OEB an assessment of the impact of the proposed rule amendment on the interests of consumers with respect to prices and the reliability and quality of electricity service, and the OEB may revoke the rule amendment.
19. Sections 33 to 35 of the Electricity Act authorize applications to the OEB to review the Market Rules and gives the OEB authority to set aside the Market Rules that are inconsistent with the purposes of the Electricity Act or that are unjustly discriminatory against an Authorized Market Participant or a class of Authorized Market Participants. Specifically, Section 33(2) of the Electricity Act requires the Applicant to publish any amendment to the Market Rules at least 22 days before the amendment comes into force. The OEB may, not later than 15 days after the amendment is published and without holding a hearing, revoke the amendment on a date specified by the OEB and refer the amendment back to the Applicant for further consideration in accordance with Section 33(3) of the Electricity Act. As well, pursuant to Section 33(4) of the Electricity Act, any person may apply to the OEB for review of an amendment to the Market Rules by filing an application with the OEB within 21 days after the amendment is published.
20. Section 36 of the Electricity Act authorizes appeals to the OEB by persons who are subject to orders under the Market Rules that: (i) require them to pay a financial penalty or amount of money that exceeds \$10,000; (ii) suspends or terminates their participation in the IESO-Administered Markets; or (iii) refuse their authorization to participate in the IESO-Administered Markets.
21. All transactions concluded within the IESO-Administered Markets must conform to the Market Rules, and all Authorized Market Participants must receive transaction confirmations from the Applicant in accordance with the provisions thereof.
22. The Applicant is exempt from the requirement to be recognized as an exchange under section 21 of the OSA by the Ontario Securities Commission (the "**Commission**") order issued pursuant to

Section 147 of the OSA and is exempt from the operation of National Instrument 21-101 by Director order issued under Section 15.1 of NI 21-101, each dated March 6, 2002 (the “**Exchange Order**”).

23. The Applicant is exempt from the requirements to file forms and fees in connection with trades which are exempt from prospectus and registration requirements with the Commission pursuant to Part 7 of Commission Rule 45-501 by Commission order issued pursuant to Section 147 of the OSA, dated March 28, 2002 (the “**Exempt Distribution Order**”).
24. The Applicant and Authorized Market Participants are exempt from the reporting requirements in connection with executing transactions in Transmission Rights Contracts (as defined in the order) and the transactions in the TR Market are exempt from the reporting requirements under Part 3 of OSC Rule 91-507 by Director order issued pursuant to section 42 of OSC Rule 91-507, dated October 30, 2014 (the “**Exempt Reporting Order**”, and collectively with the Exchange Order and the Exempt Distribution Order, the “**Previous Orders**”).

D. The Power System and the IESO-Administered Markets

The Power System

25. The IESO, as set out in its Statutory Mandate (as discussed in Section B), is responsible for maintaining the reliability of the Ontario’s Power System and operating and administering the Energy Market, which includes the DACP. The Powers System, the Energy Market and the DACP are briefly described below.
26. The Power System is made up of a high-voltage transmission network that transmits electricity from suppliers (generators) to consumers (loads).
27. The Applicant is responsible for ensuring the reliability of the Power System, including ensuring compliance with reliability standards set by standards authorities, specifically the North American Reliability Council and the Northeast Power Coordinating Council. In addition, the Applicant provides input to both of these organizations to ensure that appropriate reliability standards are set.
28. The Applicant gathers real-time information on voltage levels, power flows, and equipment status. The IESO staff monitor this real-time information and manage the security and adequacy of the Power System twenty-four hours a day, seven days a week.

The Energy Market

29. The Energy Market serves as a platform for matching the supply and demand of electricity in Ontario. It facilitates the real-time scheduling and dispatch of the Power System, to ensure load and generation are balanced, flows on the transmission system are within appropriate limits and voltage and frequency are maintained.
30. Dispatchable generators (i.e., power plants that can adjust their output) and dispatchable loads (i.e., consumers of electricity that can adjust their usage) submit their offers to sell electricity and bids to buy electricity to the Energy Market. Based on these offers and bids (and forecast information for non-dispatchable generators (i.e., electricity from power sources that cannot easily adjust their output)) and loads (i.e., consumers who cannot easily adjust their usage), the Applicant determines the quantity of energy and operating reserve to be transacted and the market clearing price for each interval, which determines the actual delivery, use, and market clearing price of electricity. The Applicant schedules and dispatches resources accordingly.

31. The Applicant settles the Energy Market monthly by invoicing and collecting payments from loads for their monthly electricity withdrawals and remitting payment to generators for their monthly injections.

The DACP

32. The Applicant also currently provides the DACP, which improves the efficiency of the electricity market through the advanced scheduling and commitment of resources to meet electricity demand on a daily basis, while ensuring reliability.
33. DACP participants submit day-ahead bids and offers (by 10:00 am EST on the pre-dispatch day), which provides a more certain outlook of the next day's supply and demand for energy and make economic based scheduling and commitment decisions. However, the Applicant intends to replace DACP with the DAM for the reasons addressed below.

E. Market Renewal Initiative – The DAM

34. A day-ahead market for electricity is a standard component of many electricity markets in North America. It allows Authorized Market Participants to submit bids and offers a day in advance of operations in order to secure schedules and prices for the following day. In these markets, most of the supply is scheduled in the day-ahead market and the real-time market is used to balance any deviations that occur between day-ahead and real-time.
35. The DAM will replace the existing DACP and will provide a number of benefits, including:
- greater financial security to Authorized Market Participants which allows them to better manage their risks;
 - greater operational certainty to the IESO which helps to maintain reliable electricity supply;
 - increased competition among Authorized Market Participants, ensuring lowest cost resources by committing only the resources needed to maintain reliability; and
 - better alignment of schedules and prices, enabled by the single market design.
36. The DAM is one of the key features of the Applicant's future energy market.
37. Following the introduction of the DAM, the Energy Market, together with the DAM, will constitute an enhanced wholesale electricity market (the "**Enhanced Energy Market**").
38. The Market Renewal Program and the DAM will not materially impact the TR Market. The TR Market will continue to operate as it has since it opened in 2002 (continuing to rely on the above noted Previous Orders issued by the Commission).

DAM Physical Transactions

39. Authorized Market Participants will offer or bid price-quantity pairs into the DAM and, if economic, will receive a schedule in the DAM. Authorized Market Participants whose physical offers/bids are scheduled in the DAM must deliver/consume electricity in real-time, or "buy/sell-back" (i.e. pay or be paid the applicable real-time price for deviations from day ahead schedules) in the Energy

Market. Authorized Market Participants are incentivized to meet their DAM schedules as long as it remains economic to do so in real-time based on real-time prices.

DAM Virtual Transactions

40. DAM Virtual Transactions will be energy offers and bids in the DAM that are not backed by physical supply or demand. They will be evaluated just like physical offers and bids in that they can receive a DAM schedule and are subject to the two-settlement process; however, because they do not represent a physical resource, their actual real-time quantity is zero, which means their balancing settlement will always be for the full megawatt quantity of the DAM schedule. DAM Virtual Transactions, which will have no delivery or consumption obligations in real-time, are scheduled based on their DAM schedule and prices.
41. Including virtual transactions in the DAM increases the pool of DAM participants, which increases price convergence between day-ahead and real-time. Price convergence encourages day-ahead participation by physical generators and loads. DAM Virtual Transactions will also provide physical generators and loads with an ability to hedge their exposure to real-time prices. While any entity that meets the registration and prudential security requirements may register to participate in DAM Virtual Transactions, the IESO anticipates virtual trader participation from existing participants in the Energy Market, energy traders that currently trade with neighbouring jurisdictions, and financial institutions.
42. A virtual supply transaction participant profits when the price it is obligated to pay in the real-time market (for megawatts that are not physically supplied) is less than the DAM price it has paid for its DAM schedule. Conversely, a virtual demand transaction participant profits when the DAM price it pays is less than the real-time market price it is paid (for megawatts that are not physically consumed).
43. The DAM rules will provide (and the dispatch algorithm will be programmed to provide) for the IESO to schedule DAM Physical Transactions out of economic merit order and thereby displace otherwise economic DAM Virtual Transactions, if necessary, to ensure that sufficient physical resources clear in the DAM (i.e. “reliability pass”).
44. Given the features of DAM Virtual Transactions described above, they may be considered to be derivatives as defined under the OSA.

F. Criteria for Exemption from Recognition as a Clearing Agency

Section 2.1 of NI 24-102 requires an applicant to provide the following information in its application for exemption from recognition as a clearing agency:

- (a) *its most recently completed PFMI Disclosure Framework Document;*
 - (b) *sufficient information to demonstrate that it is in compliance with provincial and territorial securities legislation, or the regulatory regime of a foreign jurisdiction in which its head office or principal place of business is located; and*
 - (c) *any additional relevant information sufficient to demonstrate that it is in the public interest for the securities regulatory authority to recognize or exempt the applicant, as the case may be.*
45. The Applicant is not required to provide a PFMI Disclosure Framework Document, given that the PFMI Principles described in Part 3 of NI 24-102 are not applicable to the Applicant given that PFMI

Principles are international standards for financial market infrastructures, such as payment systems, central securities depositories, securities settlement systems, central counterparties and trade repositories. Please refer to Section C of the Application for a detailed overview of the regulatory oversight and framework which the IESO is subject to.

G. Requirements Set out in Part 4 of NI 24-102

Each requirement in Part 4 of NI 24-102 is set out below in italics, followed by a description of how the requirement is met by the Applicant's compliance with the Electricity Act, oversight by the OEB, and compliance with the Market Rules, as applicable.

Division 1 – Governance

Board of Directors (section 4.1 of NI 24-102)

- (a) A recognized clearing agency must have a board of directors.*
- (b) The board of directors must include appropriate representation by individuals who are
 - (i) independent of the clearing agency, and*
 - (ii) not employees or executive officers of a participant or their immediate family members.**
- (c) For the purposes of paragraph (2)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.*
- (d) For the purposes of subsection (3), a "material relationship" is a relationship that could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.*

Satisfaction by Regulation

- 46. Pursuant to Section 10 of the Electricity Act:
 - a. the IESO's board of directors shall manage and supervise the management of the IESO's business and affairs;
 - b. the IESO's board of directors shall be composed of the chief executive officer of the IESO and at least eight and not more than 10 additional individuals appointed by the Minister (provided further that no person who is a member of a class of persons prescribed by the regulations may hold office as a director of the IESO); and
 - c. each director shall hold office as an independent director and not as a representative of any class of persons.
- 47. Pursuant to Section 12 of the Electricity Act, every director of the IESO shall, in exercising and performing his or her powers and duties as a director, act honestly and in good faith in the best interests of the IESO, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

48. Pursuant to O. Reg. 610/980 under the Electricity Act, directors, officers, employees, or persons who hold a material interest in an Authorized Market Participant and/or entities regulated by the OEB, among others, are prohibited from holding office as a director of the IESO.
49. Pursuant to the Governance and Structure By-Law of the IESO (the “**IESO By-Law**”), no employee of the Government of Ontario (which does not include employees of the IESO), shall be a director of the IESO.
50. The IESO By-Law requires directors to disclose to the IESO Board any circumstances that are or would likely be perceived to be incompatible with the director’s independence as contemplated under the Electricity Act or that the director otherwise believes could reasonably be perceived to be in a conflict of interest with the IESO.

Compliance by the IESO

51. The IESO Board consists of the CEO of the IESO and at least 8, and not more than 10, independent members appointed by the Minister. There are currently 9 independent directors, one of whom serves as the chair.
52. The IESO Board oversees the IESO’s business and affairs, and approves Market Rule amendments.
53. The IESO Board’s mandate pursuant to its Board Charter and Code of Conduct is to manage and supervise the IESO’s business and affairs and provide insight, input into and oversight of the development of the IESO’s strategic direction. More specifically, the IESO Board’s mandate includes:
 - a. reviewing with management: the strategic environment; the emergence of new risks and opportunities and the implications of such risks and opportunities for the IESO’s strategic direction;
 - b. approving strategic plans that take into account the IESO’s legislative objects, major risks and opportunities and overseeing the management of those risks;
 - c. appointing, monitoring and assessing the performance of the CEO;
 - d. charging the CEO with the general management and direction of the business and affairs of the IESO;
 - e. overseeing the appointment and training and monitoring the performance of, and succession planning for, senior management;
 - f. monitoring the integrity of the IESO’s internal control and management information systems; and
 - g. approving the annual business plan, including budgets, of the IESO and monitoring its financial performance to seek to ensure the financial viability of the IESO and the efficient and effective use of its resources.
54. As a member of the IESO Board, each director must:

- a. through the exercise of due diligence, fulfill the legal requirements and obligations of a director set out in the Electricity Act, namely: a) to act honestly and in good faith in the best interests of the IESO; and b) to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
 - b. through the exercise of due diligence, act in accordance with the approved the IESO Board policies;
 - c. ensure that the director and the IESO Board as a whole act in the best interests of the IESO rather than in the interests of an individual director or any other interests;
 - d. devote the time necessary for the diligent involvement in the IESO Board affairs;
 - e. seek to assist the IESO in the achievement of corporate strategic objectives;
 - f. monitor their continued ability to meet these expectations; and
 - g. comply with certain provisions of the IESO Code of Conduct for employees (the “**IESO Code of Conduct**”) related to fair and respectful treatment of others, integrity and acting in the IESO’s best interests, and outside activities.
55. In addition, each director must, among other things: (i) maintain independence and objectivity; (ii) conduct themselves honestly, fairly, ethically and with integrity; (iii) conduct themselves in accordance with the Fair and Respectful Treatment of Others provisions of the IESO Code of Conduct; (iv) act consistently with the statutory and contractual obligations of the IESO; (v) monitor potential conflicts of interest, including those that may arise under the conflict of interest provisions of the IESO Code of Conduct; (vi) declare any circumstances which could reasonably be perceived to place the director in a conflict of interest position, including those that may arise under the conflict of interest provisions of the IESO Code of Conduct; and (vii) abstain from discussion and voting on any related matter pending the IESO Board’s determination of what, if any, safeguards are appropriate in the circumstances, and comply with such safeguards.

Documented procedures regarding risk spill-overs (section 4.2 of NI 24-102)

The board of directors and management of a recognized clearing agency must have documented procedures to manage possible risk spill over where the clearing agency provides services with a different risk profile than its depository, clearing and settlement services.

Satisfaction by Regulation

56. The IESO is required to adhere to the North American Electricity Reliability Corporation’s (“**NERC’s**”) applicable reliability standards pursuant to the Market Rules and the IESO’s OEB Licence.
57. NERC reliability standard EOP-011-2 Emergency Preparedness and Operations requires the IESO to develop, maintain, and implement one or more reliability coordinator-reviewed operating plans (“**Operating Plan**”) to mitigate operating emergencies in its area. The operating plan shall include the following, as applicable: Violation Risk Factor, Time Horizon, Real-Time Operations, Operations Planning, Long-term Planning (as defined therein).
58. In addition, EOP-011-2 requires the IESO to maintain evidence that its Operating Plan has been reviewed, including evidence such as a review or revision history to indicate that the Operating

Plans have been maintained, operator logs or other operating documentation, voice recordings or other communication documentation to show that the Operating Plan was implemented during times when an emergency occurred.

Compliance by the IESO

59. The Applicant does not provide any service with a different risk profile than its depository, clearing and settlement services, and accordingly section 4.2 of NI 24-102 is not applicable.
60. However, the Applicant does maintain comprehensive policies and procedures which address the governance and risk management requirements contemplated by NERC reliability standards and contained in the Market Rules and under the IESO's licence.

Chief Risk Officer and Chief Compliance Officer (section 4.3 of NI 24-102)

- (a) *A recognized clearing agency must designate a chief risk officer and a chief compliance officer, who must report directly to the board of directors or, if determined by the board of directors, to the chief executive officer of the clearing agency.*
- (b) *The chief risk officer must*
- (i) *have full responsibility and authority to maintain, implement and enforce the risk management framework established by the clearing agency,*
 - (ii) *make recommendations to the clearing agency's board of directors regarding the clearing agency's risk management framework,*
 - (iii) *monitor the effectiveness of the clearing agency's risk management framework, and*
 - (iv) *report to the clearing agency's board of directors on a timely basis upon becoming aware of any significant deficiency with the risk management framework.*
- (c) *The chief compliance officer must*
- (i) *establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and ensure that the clearing agency complies with securities legislation,*
 - (ii) *monitor compliance with the policies and procedures described in paragraph (a),*
 - (iii) *report to the board of directors of the clearing agency as soon as practicable upon becoming aware of any circumstance indicating that the clearing agency, or any individual acting on its behalf, is not in compliance with securities legislation and one or more of the following apply:*
 - (A) *the non-compliance creates a risk of harm to a participant,*
 - (B) *the non-compliance creates a risk of harm to the broader financial system,*
 - (C) *the non-compliance is part of a pattern of non-compliance, or*

- (D) *the non-compliance may have an impact on the ability of the clearing agency to carry on business in compliance with securities legislation,*
- (iv) *prepare and certify an annual report assessing compliance by the clearing agency, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors,*
- (v) *report to the clearing agency's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a participant or to the capital markets, and*
- (vi) *concurrently with submitting a report under paragraphs (c), (d) or (e), file a copy of such report with the securities regulatory authority.*

Compliance by the IESO

61. As discussed previously, the IESO By-Law requires directors to disclose to the IESO Board any circumstances that are or would likely be perceived to be incompatible with the director's independence as contemplated under the Electricity Act or that the director otherwise believes could reasonably be perceived to be in a conflict of interest with the IESO.
62. The role of Director, Risk Performance Resilience and Internal Audit, at the IESO is analogous to the role of Chief Risk Officer and reports directly to the Chief Financial Officer of the IESO. The Director, Risk Performance Resilience and Internal Audit provides the strategic leadership for the establishment, implementation and ongoing activities that support integration of the IESO's strategic, operational and project risk management program to ensure a sound governance structure is in place. The key to achieving this is identifying, monitoring, reporting and controlling all material and emerging risks in order to mitigate the IESO's exposure to these risks and ensure the successful execution of the IESO's strategy and business plan. The Director, Risk Performance Resilience and Internal Audit leads the development and implementation of an Enterprise Risk Management framework, corporate enterprise risk policy, guidelines, operational risk management taxonomy and procedures to support the Board of Directors, Audit Committee and Executive Leadership Team in executing risk-informed strategic decision making.
63. The Director, Risk Performance Resilience and Internal Audit reports directly to the Audit Committee of the IESO Board, with a dotted line reporting relationship to Chief Financial Officer for Internal Audit administrative matters, and acts as the Chief Audit Executive for the IESO. They manage the operations of a business group authorized by an Internal Audit charter to provide independent and objective assessments to management and the Audit Committee of the IESO Board that effective corporate governance, risk management and controls are maintained throughout the organization.
64. The role of Director, Regulatory Affairs and Market Rules, at the IESO is analogous to the role of Chief Compliance Officer and reports directly to the General Counsel of the IESO. The Director, Regulatory Affairs and Market Rules develops and leads the implementation of the IESO's Regulatory Affairs strategy to ensure the IESO meets its regulatory obligations and effectively participates in proceedings before the OEB. They oversee all aspects of the strategic and tactical direction and support for the IESO's participation in, and monitoring of, regulatory proceedings in Ontario, Canada and other jurisdictions including US Federal Energy Regulatory Commission (FERC), Canada Energy Regulator. They also develop and implement processes for regulatory compliance and reporting by the IESO and take the lead in developing and maintaining the IESO's strategic relationship with the MSP and the MACD ensuring that the IESO's perspectives are

appropriately represented and that the IESO understands and respects the perspective of the MSP and the MACD.

Board or Advisory Committees (section 4.4 of NI 24-102)

- (a) *The board of directors of a recognized clearing agency must, at a minimum, establish and maintain committees on risk management, finance and audit.*
- (b) *If a committee is a board committee, it must be chaired by a sufficiently knowledgeable individual who is independent of the clearing agency.*
- (c) *Subject to subsection (d), a committee must have an appropriate representation by individuals who are independent of the clearing agency.*
- (d) *An audit or risk committee must have an appropriate representation by individuals who are*
 - (i) *independent of the clearing agency, and*
 - (ii) *not employees or executive officers of a participant or their immediate family members*

Satisfaction by Regulation

- 65. Section 15 of the Electricity Act states that the board of directors may, in accordance with the IESO By-Law, delegate any of its powers or duties to a committee of the board or a panel established by the board or to one or more directors; and delegate any of its powers to manage the business and affairs of the IESO to one or more officers of the IESO.
- 66. Section 10 of the Electricity Act states that each director shall hold office as an independent director and not as a representative of any class of persons.

Compliance by the IESO

- 67. The IESO Board consists of three committees: (i) Audit Committee, whose mandate includes risk management, finance and audit; (ii) Human Resources and Governance Committee; and (iii) Markets Committee.
- 68. Please refer to the discussion on the board of directors under Division 1 – Board of Directors. Each committee of the IESO's board is chaired by an independent director.

Division 3 – Operational Risk

Systems Requirements (section 4.6 of NI 24-102)

For each system operated by or on behalf of a recognized clearing agency that supports the clearing agency's clearing, settlement and depository functions, the clearing agency must

- (a) *develop and maintain*
 - (i) *an adequate system of internal controls over that system, and*

- (ii) adequate information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support,*
 - (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually
 - (i) make reasonable current and future capacity estimates, and*
 - (ii) conduct capacity stress tests to determine the ability of that system to process transactions in an accurate, timely and efficient manner, and*
 - (c) promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates to the regulator or, in Québec, the securities regulatory authority on
 - (i) any change in the status of the incident,*
 - (ii) the resumption of service, if applicable, and*
 - (iii) the results of any internal review, by the clearing agency, of the security incident, and*
 - (d) keep a record of any systems failure, malfunction, delay or security incident and whether or not it is material.

Satisfaction by Regulation

- 69. With respect to internal control requirements, Chapter 9 of the Market Rules, and Series 5 of the Market Manuals for the IESO's obligations regarding settlements, addresses the internal control requirements analogous to section 4.6 of NI 24-102.
- 70. With respect to the cyber resilience and information technology general controls requirement, the IESO and Authorized Market Participants are required to adhere to applicable NERC reliability standards pursuant to the Market Rules and the IESO's OEB Licence. NERC is the Electric Reliability Organization (ERO) for North America, responsible for establishing reliability standards governing interconnected North American bulk electricity systems. Compliance with applicable NERC reliability standards by the IESO and Authorized Market Participants is mandated by the Market Rules, which provide that NERC reliability standards that have not been stayed or revoked or returned back to NERC for further consideration by the OEB shall be declared in force in Ontario: Market Rules Chapter 5, sections 1.2.6 and 1.2.7.
- 71. NERC reliability standards include NERC Critical Infrastructure Protection ("**CIP**") standards. NERC CIP standards address: bulk electricity system ("**BES**") cyber system categorization; cyber security management controls; cyber security personnel & training; cyber security electronic security perimeters; physical security of BES cyber systems; cyber security system security management; incident reporting and response planning; recovery plans for BES cyber systems; configuration change management and vulnerability assessments; information protection; supply chain risk management; and physical security.
- 72. The IESO is also required, as a term of its OEB Licence to:

- (i) provide consolidated and easily understood information about, and analyses of, potential cyber security risks and events that may impact the electricity sector;
- (ii) establish metrics to assess effectiveness of delivery of information;
- (iii) develop and maintain a centralized mechanism for sharing cyber security best practices;
- (iv) establish metrics to assess the improvement in sector understanding of cyber security risks and solutions; and
- (v) notify the OEB of any material change in circumstances that adversely affects or is likely to adversely affect the IESO's ability to comply with its licence, its financial integrity, or its ability to carry out its responsibilities under the Electricity Act. The OEB must be notified as soon as practicable after the occurrence of any such change, but in any event within fifteen days of the date upon which such change becomes known to the IESO.

Auxiliary Systems (section 4.6.1 of NI 24-102)

In this section, "auxiliary system" means a system, other than a system referred to in section 4.6, operated by or on behalf of a recognized clearing agency that, if breached, poses a security threat to another system operated by or on behalf of the recognized clearing agency that supports the recognized clearing agency's clearing, settlement or depository functions.

For each auxiliary system, a recognized clearing agency must

- (a) *develop and maintain adequate information security controls that address the security threats posed by the auxiliary system to the system that supports the clearing, settlement or depository functions,*
- (b) *promptly notify the regulator or, in Québec, the securities regulatory authority of any security incident that is material and provide timely updates to the regulator or, in Québec, the securities regulatory authority on*
 - (i) *any change in the status of the incident,*
 - (ii) *the resumption of service, if applicable, and*
 - (iii) *the results of any internal review, by the clearing agency, of the security incident, and*
- (c) *keep a record of any security incident and whether or not it is material.*

Satisfaction by Regulation

73. IESO is required, as a term of its OEB licence to:

- a. Provide consolidated and easily understood information about, and analyses of, potential cyber security risks and events that may impact the electricity sector;
- b. Establish metrics to assess effectiveness of delivery of information;

- c. Develop and maintain a centralized mechanism for sharing cyber security best practices; and
- d. Establish metrics to assess the improvement in sector understanding of cyber security risks and solutions

Systems Reviews (section 4.7 of NI 24-102)

A recognized clearing agency must annually engage a qualified party to conduct an independent systems review and vulnerability assessment and prepare a report in accordance with established audit standards and best industry practices to ensure that the clearing agency is in compliance with paragraph 4.6(a) and section 4.9.

The clearing agency must provide the report resulting from the review conducted under subsection (1) to

- (a) its board of directors, or audit committee, promptly upon the report's completion, and*
- (b) the regulator or, in Québec, the securities regulatory authority, by the earlier of the 30th day after providing the report to its board of directors or the audit committee or the 60th day after the calendar year end.*

Satisfaction by Regulation

- 74. The Northeast Power Coordinating Council (“**NPCC**”), on behalf of NERC, audits the IESO’s compliance with NERC standards. Further details on NPCC’s compliance monitoring processes are available on the NPCC’s Compliance Monitoring website. Refer to section 4 of Appendix 4C to the NERC Rules of Procedure for further details on the compliance monitoring process.
- 75. Chapter 5, section 11.4.6 of the Market Rules, requires the IESO to review its emergency preparedness plan, the Ontario electricity emergency plan and the Ontario power system restoration plan at least annually, or as required. When directed by the Minister, the IESO must have an independent audit conducted of these plans. The independent audit may be conducted by, without limitation, the IESO’s internal auditors or before a peer review team having diverse membership or industry emergency preparedness expertise.
- 76. Chapter 9, section 6.19 of the Market Rules, requires the IESO to procure an external auditing firm every two years to direct a comprehensive audit on its settlement processes and procedures to examine and evaluate compliance with management control objectives and operational effectiveness of those processes and procedures. The audit must include the following tasks: (1) gauging the performance of the settlement process in meeting the objectives of the Market Rules; (2) reviewing the accuracy and timeliness of the production of settlement statements, including settlement calculations and financial allocations; (3) reviewing the accuracy and timeliness of the production of invoices and supporting market and system information; (4) reviewing the reliability and integrity of the market and system operational data used in the settlement processes and procedures; (5) reviewing the reliability and security of the information technology system infrastructure used to measure, validate, classify, compute and report settlement information; (6) reviewing the adequacy of settlement processes and procedures to safeguard confidential information; and (7) reviewing the adequacy and effectiveness of risk management controls of the settlement processes and tools, including the effectiveness of the disaster recovery plan. The IESO must also provide the OEB with a copy of the results of all biennial audit reviews of settlements performed in accordance with CSAE 3416, as soon as they are available, pursuant to section 7.1.2 of the OEB’s Electricity Reporting & Record Keeping Requirements.

Clearing Agency Technology Requirements and Testing Facilities (section 4.8 of NI 24-102)

A recognized clearing agency must make available to participants, in their final form, all technology requirements regarding interfacing with or accessing the clearing agency

- (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and*
- (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.*

After complying with subsection (1), the clearing agency must make available testing facilities for interfacing with or accessing the clearing agency

- (a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and*
- (b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.*

The clearing agency must not begin operations before

- (a) it has complied with paragraphs (1)(a) and (2)(a), and*
- (b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that all information technology systems used by the clearing agency have been tested according to prudent business practices and are operating as designed.*

The clearing agency must not implement a material change to the systems referred to in section 4.6 before

- (a) it has complied with paragraphs (1)(b) and (2)(b), and*
- (b) the chief information officer of the clearing agency, or an individual performing a similar function, has certified in writing to the regulator or, in Québec, the securities regulatory authority, that the change has been tested according to prudent business practices and is operating as designed.*

Subsection (4) does not apply to the clearing agency if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment and if

- (a) the clearing agency immediately notifies the regulator or, in Québec, the securities regulatory authority, of its intention to make the change, and*
- (b) the clearing agency discloses to its participants the changed technology requirements as soon as practicable.*

Compliance by the IESO

77. The requirements of Section 4.8 are fulfilled through the Market Rules, including Chapter 5, section 12 and Chapter 2 Appendix 2.2, Market Manual 1.5: Market Registration Procedures, and Market Manual 6.0: Participant Technical Reference Manual.
78. Chapter 5, section 12 of the Market Rules prescribes the communication methods between the IESO and Authorized Market Participants and includes requirements with respect to voice communication, electronic data, and voice links and other communications. Chapter 2 Appendix 2.2 sets out the technical requirements for voice communications, monitoring and control, workstations and re-classification of Authorized Market Participant facilities. Market Manual 1.5: Market Registration Procedures sets out the requirements for authorizing as an Authorized Market Participant and registering electricity generation and storage facilities. It also includes participation workstation testing, dispatch workstation testing, and data monitor testing requirements. Market Manual 6.0 sets out the technical requirements for Authorized Market Participant workstations; internet networks, private networks, and shared networks; account and identity credentials; access to the IESO's dispatch service; voice communications; operational metering equipment; access to market application systems information; fund transfers.
79. With respect to the material change described above, Chapter 3, section 4, Rule Amendments and Section C of this application discuss the OEB's oversight of the Applicant. Changes to Market Manuals are shared publicly in advance of those changes taking effect, but are not subject to the same governance process as Market Rule amendments.

Testing of Business Continuity Plans (section 4.9 of NI 24-102)

A recognized clearing agency must

- (a) *develop and maintain reasonable business continuity plans, including disaster recovery plans, and*
- (b) *test its business continuity plans, including its disaster recovery plans, according to prudent business*

Compliance by the IESO

80. Chapter 5, section 11.2 of the Market Rules requires the IESO to develop and maintain, in consultation with all relevant Authorized Market Participants, an Ontario electricity emergency plan describing the responsibilities of, and coordinating the actions of, Authorized Market Participants and the IESO for the purpose of alleviating the effects of an emergency on the electricity system. This plan must be filed with the Minister.
81. Chapter 5, section 11.3 of the Market Rules requires the IESO to develop and maintain, in consultation with all relevant Authorized Market Participants, an Ontario power system restoration plan for restoring the security of the IESO-controlled grid following a major contingency event or emergency as required by all applicable reliability standards and considered prudent by the IESO for Ontario. The Ontario power system restoration plan includes, but is not limited to: (i) plans for managing major disturbances on the IESO-controlled grid that blackout all or a portion of the IESO-controlled grid; (ii) plans for the testing and verification of emergency preparedness facilities and procedures; and descriptions of the roles of the IESO and various restoration participants in the Ontario power system restoration plan. This plan must be filed with the Minister.

82. Chapter 5, section 11.7.2 of the Market Rules requires the IESO to develop, schedule, implement and conduct such tests as are provided for in the Ontario electricity emergency plan and the Ontario power system restoration plan.
83. Chapter 7, section 7.7 of the Market Rules provides the IESO with additional powers when an emergency operating state or a high-risk operating state has been declared. These powers include: (1) modifying security limits as necessary to manage conditions on the IESO-controlled grid, and to take such other action or refrain from taking such other action consistent with good utility practice as may be required to restore the IESO-controlled grid to a normal operating state and with as little disruption to electric service or adverse impact on the operation of the IESO-administered markets as is reasonably practicable in the circumstances; (2) acquiring emergency energy in accordance with all applicable reliability standards and any applicable interconnection agreement in order to maintain the reliability of the IESO-controlled grid; and (3) issuing directions to Authorized Market Participants to reduce demand.
84. In addition to the above, section 39(1) of the Electricity Act obligates the Minister to require the IESO to prepare and file with the Minister such emergency plans as the Minister considers necessary.

Outsourcing (section 4.10 of NI 24-102)

If a recognized clearing agency outsources a critical service or system to a service provider, including to an affiliated entity of the clearing agency, the clearing agency must do all of the following:

- (a) establish, implement, maintain and enforce written policies and procedures to conduct suitable due diligence for selecting service providers to which a critical service and system may be outsourced and for the evaluation and approval of those outsourcing arrangements;*
- (b) identify any conflicts of interest between the clearing agency and the service provider to which a critical service and system is outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest;*
- (c) enter into a written contract with the service provider to which a critical service or system is outsourced that*
 - (i) is appropriate for the materiality and nature of the outsourced activities,*
 - (ii) includes service level provisions, and*
 - (iii) provides for adequate termination procedures;*
- (d) maintain access to the books and records of the service provider relating to the outsourced activities;*
- (e) ensure that the securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the clearing agency that it would have absent the outsourcing arrangements;*
- (f) ensure that all persons conducting audits or independent reviews of the clearing agency under this Instrument have appropriate access to all data, information and systems*

maintained by the service provider on behalf of the clearing agency that such persons would have absent the outsourcing arrangements;

- (g) take appropriate measures to determine that the service provider to which a critical service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan;*
- (h) take appropriate measures to ensure that the service provider protects the clearing agency's proprietary information and participants' confidential information, including taking measures to protect information from loss, thefts, vulnerabilities, threats, unauthorized access, copying, use and modification, and discloses it only in circumstances where legislation or an order of a court or tribunal of competent jurisdiction requires the disclosure of such information;*
- (i) establish, implement, maintain and enforce written policies and procedures to monitor the ongoing performance of the service provider's contractual obligations under the outsourcing arrangements.*

Satisfaction by Regulation

- 85. Although there are no outsourcing restrictions directly in the IESO's regulatory framework, the IESO is subject to the Broader Public Sector Procurement Directive (the "**BPS Directive**") and to parts of the Ontario Public Service Procurement Directive (the "**OPS Directive**"), which include broadly similar obligations to the Outsourcing requirements found in Section 4.10 of NI 24-102.
- 86. With respect to Section 4.10(a):
 - a. Section 8.6 of the OPS Directive requires the IESO to include a procurement approval authority framework in its procurement policy. For goods and non-consulting services, the procurement approval authority framework must reflect the procurement method and procurement value and assign authority to the most appropriate accountable authority in the agency as determined by the IESO Board. For consulting services, the procurement approval authorities are set out the OPS Directive. For non-competitive consulting services procurements valued at \$1M or more, the IESO's business case must be submitted by the oversight Ministry to the Treasury Board / Management Board of Cabinet;
 - b. Appendix B of the OPS Directive requires the IESO to use existing government Vendor of Record arrangements whenever possible and appropriate; and
 - c. Sections 7.2.9 to 7.2.12 of the BPS Directive set out the requirements for evaluation of IESO procurements. Section 7.2.9 requires the IESO to develop, review and approve evaluation criteria prior to the commencement of a competitive procurement process. Competitive procurement documents must clearly outline mandatory, rated, and other criteria that will be used to evaluate submissions, including weight of each criterion. Section 7.2.10 requires that competitive procurement documents fully disclose the evaluation methodology and process to be used in assessing submissions. Section 7.2.12 requires that evaluation team members complete an evaluation matrix rating each of the submissions.
- 87. With respect to Section 4.10(b):

- a. Section 3 of the OPS Directive includes requires to avoid conflicts of interest, both real and perceived, during the procurement process and the ensuing contract;
 - b. Section 8 of the OPS Directive requires the IESO to establish conflict of interest rules for procurements that reflect the spirit of O. Reg. 381/07 of the *Public Service of Ontario Act, 2006*; and
 - c. Section 7.2.2.24 of the BPS Directive requires the IESO to monitor any conflicts of interest that may arise as part of the procurement process and to take appropriate mitigating action if a conflict of interest is declared.
88. With respect to Section 4.10(c):
- a. Section 8.11 of the OPS Directive requires the IESO to obtain approvals in accordance with their Management Board of Cabinet approved governance structure for procurement controllership;
 - b. Section 7.2.15 of the BPS Directive requires the IESO to enter into a formal written contract with suppliers; and
 - c. Section 7.2.17 of the BPS Directive requires the IESO to include appropriate cancellation or termination clauses in its procurement contracts, including, as appropriate, the use of contract clauses that permit cancellation or termination at critical project life-cycle stages for complex procurements.
89. Although there are no regulatory obligations on the IESO directly similar to Sections 4.10(d), 4.10(e), and 4.10(f), section 25.4(1) of the Electricity Act requires the IESO to provide such information and reports as the Minister may require and section 25.5(1) requires the IESO to provide such information to the OEB and the MSP as they may each require.
90. With respect to Section 4.10(h), Chapter 3, section 5.3.2 of the Market Rules requires the IESO to use all reasonable endeavours, including the execution of a confidentiality agreement, to ensure that confidential information disclosed to IESO consultants and service providers is kept confidential and not used for any purposes other than those permitted by the Market Rules.
91. With respect to Section 4.10(i):
- a. Section 3 of the OPS directive requires the IESO to manage procurements through appropriate organizational structures, systems, policies, processes, and procedures; and
 - b. Section 7.2.22 of the BPS Directive requires the IESO to manage and document supplier performance and to address any performance issues.

Division 4 – Participation Requirements

Access requirements and due process (section 4.11 of NI 24-102)

- (a) *A recognized clearing agency must not*
 - (i) *unreasonably prohibit, condition or limit access by a person or company to the services offered by the clearing agency,*

- (ii) *unreasonably discriminate among its participants or indirect participants,*
 - (iii) *impose any burden on competition that is not reasonably necessary and appropriate,*
 - (iv) *unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency's services offered by it, and*
 - (v) *impose fees or other material costs on its participants that are unfairly or inequitably allocated among the participants.*
- (b) *For any decision made by the clearing agency that terminates, suspends or restricts a participant's membership in the clearing agency or that declines entry to membership to an applicant that applies to become a participant, the clearing agency must ensure that*
 - (i) *the participant or applicant is given an opportunity to be heard or make representations, and*
 - (ii) *it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting access or for denying or limiting access to the applicant, as the case may be.*
- (c) *Nothing in subsection (2) limits or prevents the clearing agency from taking timely action in accordance with its rules and procedures to manage the default of one or more participants or in connection with the clearing agency's recovery or orderly wind-down, whether or not such action adversely affects a participant.*

Compliance by the IESO

- 92. The MSP is a panel of the OEB.
- 93. The MSP monitors, investigates and reports on activities and behaviour in the IESO-Administered Markets and Ontario's electricity sector, and is specifically authorized by the Electricity Act to carry out investigations and inspections, including by compelling the production of documents and testimony, and to report to and make recommendations to the OEB.
- 94. This also includes the ability to monitor, investigate and to make findings and report to the OEB on the design and functioning of the IESO-Administered Markets and inappropriate conduct by Authorized Market Participants. The OEB or the IESO's MACD may take enforcement action as the result of MSP reports. The OEB is authorized by the OEB Act to investigate and enforce compliance with "enforceable provisions", which include the Electricity Act and OEB Act (and regulations thereunder) and OEB license conditions.
- 95. MACD is an independent ring-fenced division of the IESO mandated to investigate and enforce compliance with the Market Rules and other the IESO market manuals and documents.
- 96. The MSP's authority over the IESO-Administered Markets will include the DAM and the conduct of Authorized Market Participants engaging in virtual transactions in the DAM.
- 97. The MSP's principal market oversight responsibility is to monitor the performance of the IESO-Administered Markets, including the conduct of Authorized Market Participants. The MSP, with assistance from the MACD, monitors the market on a daily basis in order to identify inappropriate

or anomalous conduct by Authorized Market Participants, or other activities having an adverse impact on market efficiency or effective competition.

98. The MSP's investigative authority is broad and includes the authority to compel production of documents, compel testimony, enter premises, conduct inspections and execute search warrants.
99. The MSP does not itself have enforcement authority, but the MSP issues reports which may, as noted herein, lead to IESO or OEB compliance and enforcement proceedings.
100. The OEB, among other things, is authorized to investigate and enforce compliance with enforceable provisions by making compliance orders, suspending or revoking OEB licenses and imposing administrative monetary penalties.
101. MACD, among other things, is authorized to investigate and financially sanction, suspend disconnect or terminate Authorized Market Participants for breaches of the Market Rules and other the IESO documents.
102. MACD's authority to investigate and enforce compliance with the Market Rules will extend to enforcing compliance with the Market Rules applicable to the DAM, including virtual transactions.
103. MACD's authority to sanction Authorized Market Participants, including imposing financial penalties or suspending or terminating Authorized Market Participants, is subject to the Market Rules Dispute Resolution Process, which provides Authorized Market Participants with the opportunity to make representations to MACD and, as necessary to commence arbitration proceedings, before any sanction is imposed. Authorized Market Participants also have the right under Section 36 of the Electricity Act to appeal financial penalties above a prescribed amount and suspension or termination orders to the OEB.

H. The IESO Defined as a Clearing Agency

104. The DAM Virtual Transactions described above are considered a derivative as defined under the OSA.
105. Authorized Market Participants who are residents in Ontario may participate in DAM Virtual Transactions by satisfying eligibility requirements and signing a participant agreement. While any entity that meets the registration and prudential security requirements may register to participate in DAM Virtual Transactions and become an Authorized Market Participant, the IESO anticipates virtual trader participation from existing participants in the Energy Market, energy traders that currently trade with neighbouring jurisdictions, and financial institutions. In the event that a defaulting Authorized Market Participant's prudential support is insufficient to satisfy its outstanding payment obligations, the IESO will continue to be authorized to socialize any payment deficiency by issuing a default levy to other Authorized Market Participants.
106. The OSA defines a "clearing agency", with respect to derivatives, as a person or company that provides centralized facilities for the clearing and settlement of trades in derivatives that, with respect to a contract, instrument or transaction, (i) enables each party to the contract, instrument or transaction to substitute, through novation or otherwise, the credit of the clearing agency for the credit of the parties, (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such contracts, instruments or transactions executed by participants in the clearing agency, and (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the clearing agency the credit risk arising from such contracts, instruments or transactions executed by the participants.

107. The Applicant may be considered to be captured in the definition of “clearing agency - derivatives” pursuant to the OSA in that it will be (i) arranging or providing, on a multilateral basis, the settlement or netting of obligations resulting from DAM Virtual Transactions, and (ii) providing a clearing service or arrangement that mutualises or transfers among participants the credit risk arising from DAM Virtual Transactions.

I. Market Rules

108. The Market Rules, which are being amended to address the introduction of the DAM, govern the IESO and all Authorized Market Participants participating in the IESO-Administered Markets. The provisions of the Market Rules are complete codes, covering the form and content of all the transactions in the IESO-Administered Markets.
109. Participation in the IESO-Administered Markets is limited to those participants who have, among other things, been approved in advance by the Applicant, satisfy the requisite prudential support requirements, meet the financial thresholds that are equivalent, where applicable, to those to be applied under OSC Rule 93-101 *Derivatives: Business Conduct* dealing with “eligible derivatives parties” in the context of the DAM Virtual Transactions, and have been issued a licence by the OEB pursuant to Part V of the OEB Act (other than transmission rights participants, virtual traders, capacity auction participants or capacity market participants using solely demand response resources who do not require a licence by the OEB pursuant to Part V of the OEB Act, for that class of participation), subject in all respects to the Market Rules (“**Authorized Market Participants**”).
110. As a pre-requisite to participating in the IESO-Administered Markets, every Authorized Market Participant must agree to be bound by the Market Rules by executing a participation agreement (“**Participation Agreement**”). Authorized Market Participants who wish to participate in the DAM will be required to enter into the same Participation Agreement and agree to be bound by the Market Rules. Authorized Market Participants are not otherwise required to enter into contracts amongst one another to participate in the IESO-Administered Markets, including the DAM.
111. The Market Renewal Program and the DAM, as part of the Enhanced Energy Market, will not change in any material way the manner in which Authorized Market Participants payment obligations are secured, nor the manner in which payment defaults are treated under the Market Rules.
112. The Market Renewal Program’s “Final Alignment” batch of Market Rules, as of the date hereof, can be found at the following link: <https://www.ieso.ca/Market-Renewal/Background/Final-Alignment-Documents>. The Final Alignment batch integrates all of the draft Market Rules and Market Manuals related to the Market Renewal Program that have received provisional approval from the IESO Board and contains all of the Market Rules and Market Manuals that will be changed through the Market Renewal Program.
113. The IESO Board approved the Final Alignment batch of Market Rule amendments on October 18, 2024.

J. Publication of the IESO’s Application Letter

114. The Applicant acknowledges that the OSC may publish this application letter for a 30-day public comment period.

K. Submissions in Support of the Clearing Agency Exemption and Additional Information to Demonstrate that it is in the Public Interest for the OSC to Exempt the Applicant

115. The Applicant was created pursuant to the Electricity Act and has a statutory obligation to abide by the mandate given to it pursuant to the Electricity Act. The Market Renewal Program, the creation of the DAM and DAM Virtual Transactions:
- a. accord with the Applicant's Statutory Mandate;
 - b. are in the bests interest of the Ontario electricity market participants and are in the public interest;
 - c. will allow the Applicant to deliver market leading and cost-effective services; and
 - d. reduce risk for market participants.
116. The Applicant is subject to an effective oversight and framework structure, which includes:
- a. being subject to the Electricity Act;
 - b. being regulated by the OEB;
 - c. abiding by directives issued by the Ministry;
 - d. being subject to and abiding by Canadian securities laws as they relate to the IESO-Administered Markets; and
 - e. having the IESO Board consist of (i) eight independent directors appointed by the Government of Ontario and (ii) an Audit Committee, Human Resources and Governance Committee and a Markets Committee.
117. The initial set of the Market Rules was promulgated by the provincial government and since then, all Market Rule changes are subject to approval by the IESO Board and review by the OEB pursuant to the Electricity Act. The Market Rules operate effectively as a complete code, covering the form and content of all the transactions that take place in the IESO-Administered Markets.
118. The Applicant has effective monitoring systems in place, which include monitoring and oversight by the OEB's MSP and the Protocol, as well as real-time information and security monitoring by the IESO staff twenty-four hours a day, seven days a week.
119. The settlement services to be provided by DAM Virtual Transactions designed to minimize systemic risk, promote market efficiencies, and to bring the Enhanced Energy Market in line with other advanced energy markets across North America and around the world.

Previous OSC Decisions Granting Exemptive Relief

120. The OSC has in the past granted to the Applicant the Previous Orders as noted above relating to exemptive relief.

L. Fees and Support for Application

A copy of a verification statement, executed on behalf of the Applicant, confirming the truth and accuracy of the facts and representations contained herein and our authority to file this Application is attached as **Appendix A**.

Applicable filing fees payable to (a) the OSC has been paid through the Commission's electronic filing portal, and (b) the non-principal regulators will be paid in due course.

If you have any questions or require further information with respect to this matter, please do not hesitate to contact me (at the number noted above).

Thank you for your attention to this matter.

Yours truly,

(Signed) *Ramandeep Grewal*

Ramandeep Grewal
Encls.

APPENDIX A

VERIFICATION STATEMENT

TO: Ontario Securities Commission

The undersigned, being an authorized representative of the Independent Electricity System Operator (the "**IESO**"), hereby authorizes the making and filing by Stikeman Elliott LLP of the accompanying application dated the date hereof, on behalf of the IESO, and confirms the truth and accuracy of the facts and representations contained therein.

DATED this 22nd day of January, 2025.

Independent Electricity System Operator

By: (Signed) "*Cary Ferguson*"

Name: Cary Ferguson

Title: Senior Legal Counsel