

Memorandum

To: Technical Panel

From: Michael Lyle, Vice President, Legal Resources and Corporate Governance
Chair, Technical Panel

Date: October 5, 2023

Re: Follow-up to Market Rule Amendment MR-00448-R00 re: Uninsured Liability Risk

As a non-profit entity, absent insurance or mechanisms under the Market Rules, the IESO has limited sources of funding to address the risk of financial liability under the Market Rules. Accordingly, the IESO seeks to address its potential liability under the Market Rules with errors and omissions insurance (“E&O Insurance”). This is a specialized insurance product that is tailored to the specific risks arising from the IESO’s operations.

Historically, the IESO was liable under Section 13.1 of Chapter 1 of the Market Rules for errors and omissions arising from its negligence (i.e., ‘mere’ negligence), subject to applicable limitations on recoverable damages, and the IESO was able to procure E&O Insurance to address this liability. In September 2020, however, the IESO was informed that E&O Insurance would no longer be commercially available at the standard of ‘mere’ negligence – and thus, was no longer available to the IESO. This prompted the IESO to review its risk profile, with a view to aligning Section 13.1 of Chapter 1 of the Market Rules with the indemnity provided by most other North American ISOs and available insurance products. As part of this review, the IESO held stakeholder sessions to discuss options to address its then-existing uninsured liability risk. Materials from these sessions (including presentations and stakeholder feedback) are available on the [Options to Address Uninsured Liability Risk webpage](#).

The IESO received one written submission in response to the call for stakeholder comment. A

stakeholder suggested in its submission that the IESO should continue to monitor the insurance market and reassess the amendment if appropriate E&O Insurance becomes available in the future.

As a result of the review and stakeholdering process, the IESO proposed to amend Section 13.1 of Chapter 1 of the Market Rules to limit its future liability to acts of gross negligence. Such amendment was recommended unanimously by the Technical Panel in MR-00448-R00, and the making of the amendment permitted the IESO to obtain a new E&O Insurance policy at the gross negligence standard.

Stakeholder feedback – follow-up

In connection with the passage of amendment MR-00448-R00, and further to the comment received during stakeholdering, the IESO agreed to conduct periodic reviews of the insurance market and to report back to stakeholders if the conditions of the market merited a reconsideration of this approach. The IESO undertook such a review of the domestic and international markets for E&O Insurance in Q2 2023, and was advised by its insurance broker that: a new E&O Insurance policy is available to the IESO at the 'mere' negligence standard; *however*, the commercial availability of that policy (and any other suitable E&O Insurance policy) remains contingent upon the IESO's liability under the Market Rules remaining limited to acts of gross negligence (i.e., consistent with the landscape that existed at the time MR-00448-R00 was made). Accordingly, while the IESO has obtained a new E&O Insurance policy at the 'mere' negligence standard, no changes to Section 13.1 of Chapter 1 of the Market Rules can reasonably be considered at this time. The IESO will continue to monitor the insurance market and report back to stakeholders if the conditions of the market merit a reconsideration of this approach.

For further background, see the [Options to Address Uninsured Liability Risk webpage](#).