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# Options to Address Uninsured Liability Risk

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# Webinar Participation via Microsoft Teams

- Registration Link
- To interact, use “Chat” function to submit a written question or click on “Raise Your Hand”, located in the Participants panel at the top right of the application window to indicate to the host you would like to speak
- Audio should be muted at all times. To unmute audio, click on the microphone icon in the meeting controls row found at the bottom of the application window
- This webinar is conducted according to the IESO Engagement Principles

# Agenda

- Background to IESO uninsured liability risk
  - IESO liability provisions
  - Jurisdictional scan
- Two options
- Questions for stakeholders / discussion
- Next steps

# Purpose

As a result of the IESO being unable to renew or obtain errors and omissions insurance coverage, the IESO intends to amend the market rules to address its uninsured risk. Two options are presented and the IESO is seeking stakeholder feedback.

# Background

- The IESO requires specialized errors and omissions (E&O) insurance due to the nature of IESO operations
  - E&O insurance is a type of insurance that helps mitigate risk of claims alleging negligent errors and omissions of the IESO
- The IESO worked with its insurance broker, Marsh Canada, to conduct an exhaustive search of Canadian and non-Canadian insurers
- The IESO was unable to renew or obtain new E&O insurance that matches the risk of claims alleging negligent errors and omissions

## Background (cont'd)

- Under the market rules, the IESO is liable to market participants for losses caused by negligent acts or omissions of the IESO, with some limitations. A limited number of non-Canadian insurers offered the IESO coverage for gross negligence
- 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

## Background (cont'd)

- Regardless of the manner in which the IESO's liability is addressed under the market rules, the IESO is subject to a comprehensive accountability and regulatory framework and remains obligated to comply with the market rules and is subject to compliance oversight by the Markets Assessment and Compliance Division
- The IESO is committed to transparent reporting and disclosure of significant market events. The IESO will continue to mitigate the risk of events and errors through the appropriate and robust application of internal checks and processes (e.g. monitoring for anomalous market events, internal audits, risk processes, DSO audits, settlements audits, etc.)

# Jurisdictional Scan

## Other Independent System Operators (ISOs):

- A majority of ISOs in the United States limit their liability to gross negligence (more detail in background material)
- The IESO has not been aligned with a majority of ISOs in the United States in accepting liability based on a negligence standard and has until recently been able to obtain insurance to match this risk

# IESO Liability Provisions

Chapter 1, Section 13.1 of the market rules requires IESO to indemnify a market participant for IESO wilful misconduct or negligent act or omission in the performance of powers or obligations under the market rules with some limitations such as:

- acts / omissions effected in compliance with the market rules are deemed not to be willful misconduct or a negligent act or omission
- IESO is not liable to indemnify a market participant for:
  - indirect / consequential loss or incidental or special damages
  - loss of profit, loss of contract, loss of opportunity or loss of goodwill

# Options

## **Option 1 (IESO preferred): Change IESO indemnity**

- Amend the market rules to change the IESO indemnity from negligence to gross negligence

## **Option 2: Establish a compensation mechanism**

- Retain the existing IESO indemnity in the market rules for negligence, and establish a compensation mechanism under the market rules for losses
- Compensation would be recovered if insurance unavailable for the loss
- Compensation could be recovered from either loads (similar to uplift) or all market participants (similar to default levy)

## Options (cont'd)

- Both options are intended to address the inability to obtain E&O insurance that matches the IESO's current liability risk:
  - Option 1 matches IESO risk with available insurance and aligns IESO with most ISOs in the United States
  - Option 2 maintains current liability and provides for recovery of uninsured losses (previously this risk was mitigated with insurance)
  - The IESO prefers option 1 as it most closely aligns with available insurance and liability of other ISOs

## Questions for Stakeholders / Discussion

- Which of the two options do you prefer?
- Is there anything we should be aware of before implementing one of the two options?
- If the compensation option were pursued, should recovery be from loads or all market participants?
- Is there anything else you need to know to provide feedback on the two options?

# Next Steps

Timing	Engagement Activity
December 16, 2020	Webinar
January 19, 2021	Stakeholder feedback due
February Engagement Days, 2021 (date TBC)	Webinar: Discuss feedback from stakeholders
Q1 - Q2	Technical Panel

# Stakeholder Feedback

- Stakeholders are invited to provide feedback on the two options.
- Please use the feedback form that can be found under the December 16 entry on the [engagement webpage](#) and send to engagement@ieso.ca by January 19, 2021. If you provide feedback using a different template, please ensure it meets AODA requirements.

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# Thank You

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