

**DECISION OF THE INDEPENDENT PANEL - Exemption Application No. 01-1236**

**Exemption Application:** Application No. 01-1236 made by the National Research Council Canada ("NRC").

**Panel Hearing the Application:** Glenna Carr and John Grant

**Date Application Heard:** January 15, 2003

**Market Rules from which Exemption is Requested:** Market Rules, Baseline 7.0, section 5.2.1 of Chapter 2

**Decision:** An exemption from section 5.2.1 is granted with conditions.

**Effective Date of the Exemption:** March 22, 2002, the date the exemption application was received.

**Conditions of the Exemption:** The exemption is granted on the condition that:

- (a) NRC continue to comply with the conditions of exemption No. 01-1087; and
- (b) The pre-payment amount posted by NRC with the IMO pursuant to exemption No. 01-1087 shall be in lieu of NRC's prudential support obligation and for the purposes of the market rules, including the IMO's right to make a claim upon prudential support, shall be deemed as prudential support.

**Term of the Exemption:** The exemption shall expire on the earlier of:

- (a) The date NRC ceases to participate in the IMO-administered markets;
- (b) The termination of exemption No. 01-1087; or
- (c) The transfer of NRC's facility to a market participant that is not subject to the same federal regulatory restrictions regarding the posting of prudential support.

**Reconsideration of Exemption:** The exemption should be reconsidered upon any changes to the federal regulatory restrictions regarding NRC's ability to post prudential support.

## Reasons of the Panel

In rendering our decision, we have considered NRC's Exemption Application, the IMO Staff Recommendation, the applicable Market Rules and the Exemption Application and Assessment Procedure.

NRC seeks an exemption from section 5.2.1 of Chapter 2 of the Market Rules on the basis that it is a departmental corporation of the federal government and is governed by the *Appropriations Act*. NRC therefore receives its funding pursuant to an appropriations budget voted on by Parliament. NRC says that its appropriations budget does not authorize it to pay prudential support.


NRC earlier applied under Exemption No. 01-1087 for an exemption from the obligations to maintain a settlement bank account and pay invoices within two business days. The Panel granted NRC an exemption from the requirement to maintain a settlement bank account on the condition that it pre-pay an amount to be determined by the IMO finance department which amount would be used to pay invoices within two business days and which would be replenished by NRC's subsequent late payment of its monthly invoices. Pursuant to the Panel's decision in Exemption No. 01-1087, NRC posted \$800,000 with the IMO which is approximately double its estimated monthly invoice amount.

IMO Staff recommends that this exemption be granted on the condition that NRC continue to comply with the terms of Exemption No. 01-1087 by maintaining the required pre-payment balance. IMO Staff states that this is adequate security for NRC's prudential support obligation. The pre-payment is more than the amount of prudential support that NRC would have been required to post.

We have decided to grant the exemption on the conditions stated herein. In reaching our decision we considered the criteria set out in the Exemption Application and Assessment Procedure and we are satisfied that granting the exemption will not materially impact the ability of the IMO to operate the IMO-administered markets in an efficient, competitive and reliable manner. Nor are we of the view that granting the exemption will confer an undue preference on NRC given that it has made the agreed-upon pre-payment in lieu of its obligation to post prudential support.

Lastly, while we are not imposing this as a condition of the exemption, we would suggest that IMO Staff consult with NRC as to whether it would be possible for NRC to have allocated in future budgets an amount for prudential support.

 20 Jan. 2003  
Glenna Carr Date

 17 Jan. 2003  
John Grant Date