

Compliance Enforcement & Dispute Resolution

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Outline

- Investigation triggers
- Interactions following identification of a potential breach of a reliability standard
- Actions on finding a breach
- Appeals

What Triggers an Investigation?

MACD can initiate an investigation for many reasons, e.g.,:

- MACD through their own monitoring
- Market participant self-reports
- Market participant identifies potential breach by another market participant or the IESO
- IESO self-reports
- IESO identifies potential breach by a market participant e.g.,
 - Control room operations log
 - IRCP flags potential reliability standard violations through its monitoring and review of incident reports

We'll focus on this trigger as we consider an example investigation of potential non-compliance

Initiating an Investigation



Possible Outcomes

MACD	NPCC
No Breach	No Breach
Breach	No Breach
No Breach	Breach
Breach	Breach

- Appeal process is separate, just as decision to investigate and outcomes are independent
- MACD can find a breach against market participants/IESO
- NPCC can only find a breach against the IESO

MACD Finds a Breach

Market Participant

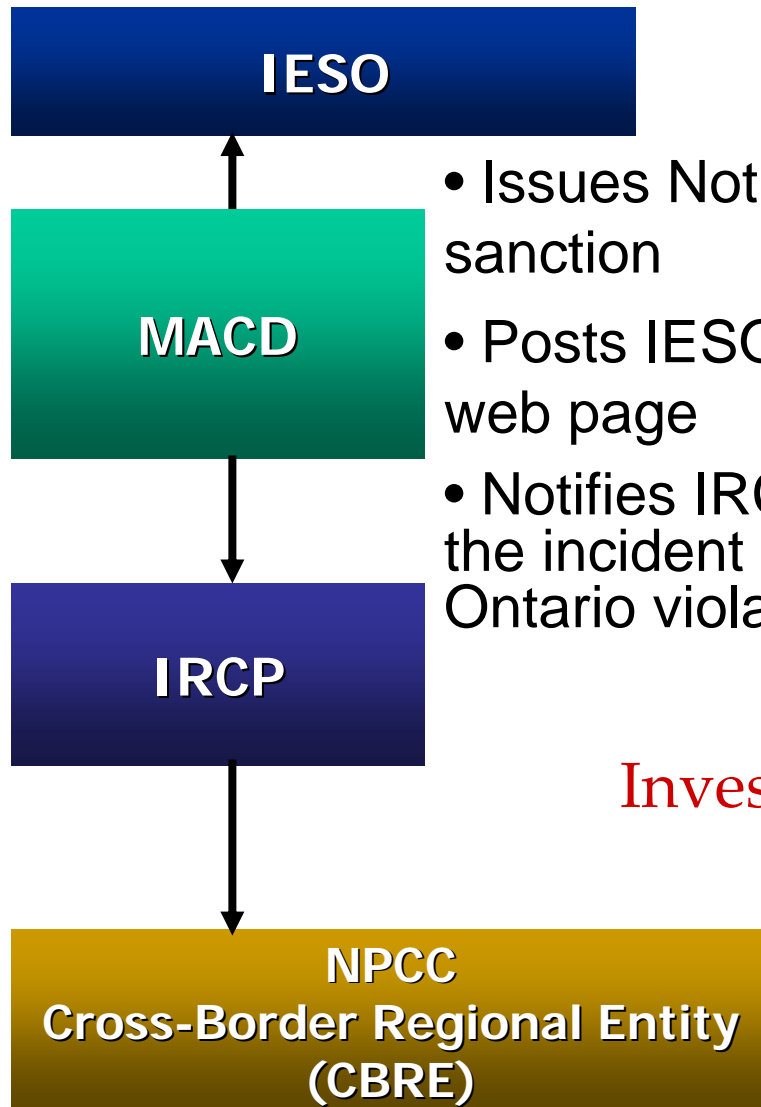
MACD

IRCP

NPCC
Cross-Border Regional Entity
(CBRE)

- Issues Notice of Non-Compliance and/or applicable financial penalty
- Posts participant name on IESO compliance web page
- Provides participant name to IRCP for submission to NPCC; prior to this the incident is only communicated as a potential Ontario violation

What About IESO Breaches?



- Issues Notice of Non-Compliance and applicable sanction
- Posts IESO non-compliance on IESO compliance web page
- Notifies IRCP for submission to NPCC; prior to this the incident is only communicated as a potential Ontario violation

Investigation process is identical

Financial Penalty: Range Criteria

Fixing of financial penalty within a range is based on:

- Circumstances & severity
- Self reporting & restitution attempts
- Cause was inadvertent/negligence/deliberate
- Impact on other participants & the IESO-administered markets
- Gain by the market participant
- History, frequency & duration of breach
- Standards authority implications
- Other factors deemed appropriate

Penalties in Excess Levels

MACD has authority to levy penalties in excess of non-compliance levels where:

- Breach occurred during a declared emergency or high risk operating state
- Breach occurred during a declared market suspension
- IESO Board determined the impact of the breach on the IESO-administered markets is particularly severe
- Frequency of past breaches or duration of a breach warrants a higher penalty
- Breach affects reliability (new)

NPCC Finds a Breach

NPCC Cross-Border Regional Entity (CBRE)

- Posts 'Ontario' violation on NPCC website; IESO is held accountable
- Will disclose responsible participant's name only if and when MACD has found them to be in breach
- Process with IESO and OEB set out in MOUs with NPCC/NERC

Appealing an MACD Breach Finding: The Dispute Resolution Process



Dispute Resolution Process

- Used to provide timely and cost-effective resolutions for disputes that arise under the market rules, including MACD findings of breach
- To foster the development of a consistent approach and body of precedence to the interpretation and application of the market rules
- Cost of dispute resolution process are paid by the parties to the dispute unless arbitrator deems otherwise

Dispute Resolution Panel

- Consists of 10 qualified persons, experienced in mediation and arbitration, appointed by the IESO Board for a 5-year term
- Panel members are independent of the IESO and have no material interest in, or are a director, employee or officer of any market participant
- The Secretary, selected from the 10 panel members, is appointed by the IESO Board
- The process for selecting and appointing panel members is set out in the IESO Governance and Structure By-law

The Process

Good Faith Negotiations



Filing a Notice of Dispute



Mediation



Arbitration

Good Faith Negotiations

- The first, informal attempt to settle the matter in dispute
- Allows parties to become more familiar with details of dispute and the other party's position
- Opportunity for “fact finding”
- A party must submit to the Panel Secretary a “Termination of Negotiations” before initiating a dispute formally

Notice of Dispute

- The initiating document required to be filed
- Must include the nature and basis for complaint, summary of facts underlying the dispute, the relief sought, and documentation the disputant intends to rely on
- The Respondent files a Response to a Notice of Dispute
- Response must include similar information as required in the Notice of Dispute
- Disputes are confidential at this initial stage

Mediation

- Secretary assigns a mediator to hear the dispute
- Disputes remain confidential at mediation stage
- Parties may agree to dispense with mediation and proceed to arbitration

Arbitration

- Parties provide written submissions
- Arbitration hearings are public
- Decisions are final and binding, except as permitted by law
- Arbitration decisions are posted on the IESO web site

Appeal of Arbitration Finding

- Either party can appeal an arbitration decision to the OEB for financial penalties of \$10,000 or greater
- Appeals of MACD findings must go through Dispute Resolution Process prior to the OEB

Appealing an NPCC Breach Finding



Appealing an NPCC Breach Finding

IESO will pursue any appeal on behalf of Ontario

1. Appeals heard at NPCC Board
2. Hearing at ERO
3. Last recourse is an appeal to the OEB (future)