



## **Consultation Document 01/2013**

# **Proposed Amendments to the Integrated Text of the Electricity Market Rules**

## **- Abolition of the Internal Appeal Board -**

## 1. Foreword

A decree of the Ministry of Productive Activities of 19 Dec. 2003 (published in the “Supplemento ordinario, Serie Generale, Gazzetta Ufficiale” no. 301 of 30 Dec. 2003) approved the Integrated Text of the Electricity Market Rules (hereafter: Rules), as subsequently amended and supplemented.

Article 3, para. 3.4 of the Rules provides that: *GME may propose amendments to these Market Rules and notify them to all parties concerned by posting them on its website or by other suitable means, allowing at least fifteen days for the submission of comments, if any. Taking into account the comments received, GME shall then submit the proposed amendments (and the reasons therefor) to the approval of the Minister of Economic Development, who shall decide after hearing the opinion of AEEG.*

GME has prepared this consultation document on proposed amendments to the Rules (elimination of the Internal Appeal Board), with a view to gathering comments and inputs from interested parties.

Interested parties should send in their comments in writing to the “**Unità Legale e Regolazione**” (Legal & Regulatory Office) of GME by **23 February 2013** at the latest (end date of the consultation) in one of the following ways:

by e-mail to: **info@mercatoelettrico.org**

by fax to: **+39-06-80124524**

by mail to: **Gestore dei mercati energetici S.p.A.  
Largo Giuseppe Tartini, 3-4  
00198 – Rome - Italy**

If you want us to keep all or part of your comments confidential, please specify which parts of your comments are to be kept confidential.

## 2. Content of the proposal

The proposed amendments to the Rules are aimed at eliminating the Internal Appeal Board (Title VII) from the Rules.

As is known, the Internal Appeal Board (“Collegio dei Probiviri”) is one of the systems that the Rules identify for settling disputes arising between GME and participants over denial of admission to the market, penalties inflicted in case of breaches to the Rules and any other dispute over the interpretation and application thereof.

The proposed abolition of the Internal Appeal Board is based, among others, on the following main grounds:

- the need for harmonising the dispute settlement procedures in the Electricity and Green Certificates Markets with those applicable in all the other Markets/Platforms organised and managed by GME and not including the Internal Appeal Board;
- the maturity reached by the Electricity and Green Certificates Markets and the dissemination of knowledge about their operation no longer justify the need for such a specialist board, which has practically remained unused so far.

On these grounds - and taking also into account that the Rules provide for other remedies for dispute settlement (arbitration procedures) - GME has prepared this consultation document under art. 3, para. 3.4 of the Rules. The document specifies the amendments that are proposed to be made to the Rules in order to abolish the Internal Appeal Board.

The following table facilitates the assessment of the proposed amendments, by indicating the current version of the Rules (left column) vs. the text resulting from the proposed amendments (right column).

TITLE V

GUARANTEE SYSTEMS, SETTLEMENT OF PAYMENTS AND DEFAULT IN THE ENERGY MARKETS

SECTION I

GUARANTEE SYSTEMS

**Article 79: “Financial Guarantees of Market Participants”**

The text of Article 79, para. 79.9 has been amended as follows:

| <b>Current text</b>   | <b>New text</b>   |
|---|---|
| <p><i>(omissis)</i></p> <p>79.9 The Market Participant may dispute the results of the verification carried out by the bank in charge of treasury services by filing a complaint with GME. The complaint shall be referred to the Internal Appeal Board as set forth in Article 133 below.</p> | <p><i>(omissis)</i></p> <p>79.9 The Market Participant may dispute the results of the verification carried out by the bank in charge of treasury services by <b>filing an appeal with the Court of Arbitration referred to in Article 134 below.</b> <del>complaint with GME. The complaint shall be referred to the Internal Appeal Board as set forth in Article 133 below.</del></p> |
| <p><i>(omissis)</i></p>   | <p><i>(omissis)</i></p>   |

TITLE VII

PENALTIES, COMPLAINTS AND DISPUTES IN THE MARKET

SECTION I

BREACHES AND PENALTIES

**Article 115: “Publication of Penalties”**

The text of Article 115, para. 115.1 has been amended as follows:

| <b>Current text</b>  | <b>New text</b>  |
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| <p>115.1 After imposing the penalties referred to in Article 112, para. 112.1 b), c), d) and e) above, GME shall publish the same on its website ten days after serving the relevant notice to the Market Participant concerned, unless the case has been referred to the Internal Appeal Board. In this case, GME shall disclose the penalty, together with the decision of the Internal Appeal Board that has confirmed such penalty, after receiving notice of such decision.</p> | <p>115.1 After imposing the penalties referred to in Article 112, para. 112.1 b), c), d) and e) above, GME shall publish the same on its website ten days after serving the relevant notice to the Market Participant concerned, unless the case <b>has been brought before the Court of Arbitration</b> <del>referred to the Internal Appeal Board.</del> In this case, GME shall disclose the penalty, together with <b>the award of the Court of Arbitration</b> <del>decision of the Internal Appeal Board</del> that has confirmed such penalty, after receiving notice of <b>such award</b> <del>decision</del>.</p> |

**Article 116: “Challenging Denial of Admission to the ME and Penalties”**

The text of Article 116, para. 116.1 has been amended as follows:

| <b>Current text</b>   | <b>New text</b>   |
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| 116.1 Notwithstanding Article 135 below, within ten days from the notice of denial of admission to the market or a penalty imposed under Article 112, para. 112.1 above, the applicant or Market Participant may file an appeal with the Internal Appeal Board. | 116.1 Notwithstanding Article 135 below, <b>after receiving</b> <del>within ten days from</del> the notice of denial of admission to the market or <b>of</b> a penalty imposed under Article 112, para. 112.1 above, the applicant or Market Participant may file an appeal with the <b>Court of Arbitration</b> <del>the Internal Appeal Board</del> . <b>The arbitration procedure shall - under penalty of lapse – be initiated within thirty days from the relevant notice.</b> |

**SECTION II**

**COMPLAINTS PERTAINING TO THE MARKET**

**SUBSECTION I**

**COMPLAINTS PERTAINING TO THE MPE**

**Article 122: “Complaint Resolution”**

The text of Article 122, para. 122.5 has been amended as follows:

| <b>Current text</b>   | <b>New text</b>  |
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| <p><b>(omissis)</b></p> <p>122.5 The limits specified in paras. 122.2 and 122.3 above shall apply not only to the complaints indicated therein and to any dispute arising therefrom, but also to the decisions of the Internal Appeal Board referred to in Article 131 below and to those resulting from the arbitration procedures referred to in Articles 134 and 135, para. 135.2 below.</p> <p><b>(omissis)</b></p> | <p><b>(omissis)</b></p> <p>122.5 The limits specified in paras. 122.2 and 122.3 above shall apply not only to the complaints indicated therein and to any dispute arising therefrom, but also to the decisions <del>of the Internal Appeal Board referred to in Article 131 below and to those</del> resulting from the arbitration procedures referred to in Articles 134 and 135, para. 135.2 below.</p> <p><b>(omissis)</b></p> |

## SUBSECTION II

### COMPLAINTS PERTAINING TO THE MTE

#### **Article 128: "Complaint Resolution"**

The text of Article 128, para. 128.4 has been amended as follows:

| <b>Current text</b>   | <b>New text</b>   |
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| <p><b>(omissis)</b></p> <p>128.4 The limit specified in para. 128.2 shall apply not only to the complaints indicated therein and to any dispute arising therefrom, but also to the decisions by the Internal Appeal Board referred to in Article 131 below and to those resulting from the arbitration procedures referred to in Section III below.</p> <p><b>(omissis)</b></p> | <p><b>(omissis)</b></p> <p>128.4 The limit specified in para. 128.2 shall apply not only to the complaints indicated therein and to any dispute arising therefrom, but also to the decisions by the Internal Appeal Board referred to in Article 131 below and to those resulting from the arbitration procedures referred to in Section III below.</p> <p><b>(omissis)</b></p> |

## SECTION III

### DISPUTES IN THE MARKET

#### **Article 131: "Internal Appeal Board"**

The text of Article 131 has been repealed:

| <b>Current text</b>  | <b>New text</b>   |
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| <p>131.1 The Internal Appeal Board shall be appointed by GME's Board of Directors.</p> <p>131.2 The Internal Appeal Board shall be based at GME's registered office and be composed of three permanent members, one of whom shall act as Chairperson, and of one other supplementary member.</p> <p>131.3 The members of the Internal Appeal Board shall be chosen for their high standards of ethical conduct and professional and technical expertise. They shall serve for a three-year term and may not be re-appointed. When a member does not appear, without justifiable reason, for three consecutive sittings, he/she shall be dismissed from office.</p> <p>131.4 The resolution of GME's Board of Directors appointing the initial members of the Internal Appeal Board shall also set out criteria for the management of the activities of the Internal Appeal Board.</p> <p>131.5 GME's Board of Directors may, after conducting appropriate enquiries, remove from</p> | <p><del>131.1 The Internal Appeal Board shall be appointed by GME's Board of Directors.</del></p> <p><del>131.2 The Internal Appeal Board shall be based at GME's registered office and be composed of three permanent members, one of whom shall act as Chairperson, and of one other supplementary member.</del></p> <p><del>131.3 The members of the Internal Appeal Board shall be chosen for their high standards of ethical conduct and professional and technical expertise. They shall serve for a three-year term and may not be re-appointed. When a member does not appear, without justifiable reason, for three consecutive sittings, he/she shall be dismissed from office.</del></p> <p><del>131.4 The resolution of GME's Board of Directors appointing the initial members of the Internal Appeal Board shall also set out criteria for the management of the activities of the Internal Appeal Board.</del></p> <p><del>131.5 GME's Board of Directors may, after conducting appropriate enquiries, remove from</del></p> |

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| <p>office one or more members of the Internal Appeal Board, where the Chairperson of the Internal Appeal Board communicates difficulties in the running of the same Board arising from the conduct of one or more of its members or if GME receives evidence of the bad functioning of the Board.</p> <p>131.6 The decisions of the Internal Appeal Board shall be taken, in accordance with the applicable laws and after hearing the views of the disputing parties, within forty-five days from the date of referral of the case to the same Board. Such decisions shall be timely notified to the disputing parties.</p> <p>131.7 Any member of the Internal Appeal Board having any direct or indirect, professional or personal interest in the dispute shall abstain from the decisions of the same Board. In this case, such member shall immediately notify the Chairperson of the Internal Appeal Board of his/her conflict of interest and the Chairperson shall replace such member with the supplementary member of the same Board. Where a member does not disclose his/her conflict of interest and abstain, he/she shall be removed from office.</p> <p>131.8 The office of each member of the Internal Appeal Board shall cease when the related term of office expires and, apart from the cases of dismissal referred to in para. 131.3 and removal in paras. 131.5 and 131.7 above, with a written letter of resignation submitted to the Chairperson and accepted by the Internal Appeal Board, which may reject the resignation only once.</p> <p>131.9 In case of supervening incompatibility, dismissal, removal or resignation of one or more members of the Internal Appeal Board, GME's Board of Directors shall appoint one or more new members.</p> | <p><del>office one or more members of the Internal Appeal Board, where the Chairperson of the Internal Appeal Board communicates difficulties in the running of the same Board arising from the conduct of one or more of its members or if GME receives evidence of the bad functioning of the Board.</del></p> <p><del>131.6 The decisions of the Internal Appeal Board shall be taken, in accordance with the applicable laws and after hearing the views of the disputing parties, within forty five days from the date of referral of the case to the same Board. Such decisions shall be timely notified to the disputing parties.</del></p> <p><del>131.7 Any member of the Internal Appeal Board having any direct or indirect, professional or personal interest in the dispute shall abstain from the decisions of the same Board. In this case, such member shall immediately notify the Chairperson of the Internal Appeal Board of his/her conflict of interest and the Chairperson shall replace such member with the supplementary member of the same Board. Where a member does not disclose his/her conflict of interest and abstain, he/she shall be removed from office.</del></p> <p><del>131.8 The office of each member of the Internal Appeal Board shall cease when the related term of office expires and, apart from the cases of dismissal referred to in para. 131.3 and removal in paras. 131.5 and 131.7 above, with a written letter of resignation submitted to the Chairperson and accepted by the Internal Appeal Board, which may reject the resignation only once.</del></p> <p><del>131.9 In case of supervening incompatibility, dismissal, removal or resignation of one or more members of the Internal Appeal Board, GME's Board of Directors shall appoint one or more new members.</del></p> |
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**Article 132: "Appeals to the Internal Appeal Board"**

The text of Article 132 has been repealed:

| <b>Current text</b>  | <b>New text</b>  |
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| <p>132.1 If the Market Participant does not accept the result of the complaint examination referred to in Articles 122, 128 and 130 above, it may appeal to the Internal Appeal Board.</p> <p>132.2 Apart from what is specified in Articles 116</p> | <p><del>132.1 If the Market Participant does not accept the result of the complaint examination referred to in Articles 122, 128 and 130 above, it may appeal to the Internal Appeal Board.</del></p> <p><del>132.2 Apart from what is specified in Articles 116</del></p> |

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| <p>and 132.1 above, the Internal Appeal Board shall also have jurisdiction over any other dispute arising between GME and Market Participants over the interpretation and application of the Rules and the Technical Rules, except as provided in Article 135, para. 135.1 below.</p> <p>132.3 Appeals to the Internal Appeal Board shall, under penalty of inadmissibility, be delivered to GME’s registered office or sent by registered letter with acknowledgement of receipt within ten calendar days from:</p> <p>a) notification of denial of admission to the market, or<br/> b) notification of a penalty, or<br/> c) notification of complaint examination, or<br/> d) publication or notification of the decision against which the appeal is being lodged.</p> <p>132.4 The appeal, signed by the Market Participant, must include, under penalty of inadmissibility, at least:</p> <p>a) GME’s decision against which the appeal is being lodged;<br/> b) grounds for the appeal;<br/> c) for appeals against the results of the complaint examinations referred to in Articles 122, 128 and 130 above, the market, date and time of the bid/offer in dispute, as well as the items indicated in subparas. a) and b) above.</p> | <p><del>and 132.1 above, the Internal Appeal Board shall also have jurisdiction over any other dispute arising between GME and Market Participants over the interpretation and application of the Rules and the Technical Rules, except as provided in Article 135, para. 135.1 below.</del></p> <p><del>132.3 Appeals to the Internal Appeal Board shall, under penalty of inadmissibility, be delivered to GME’s registered office or sent by registered letter with acknowledgement of receipt within ten calendar days from:</del></p> <p><del>a) notification of denial of admission to the market, or<br/> b) notification of a penalty, or<br/> c) notification of complaint examination, or<br/> d) publication or notification of the decision against which the appeal is being lodged.</del></p> <p><del>132.4 The appeal, signed by the Market Participant, must include, under penalty of inadmissibility, at least:</del></p> <p><del>a) GME’s decision against which the appeal is being lodged;<br/> b) grounds for the appeal;<br/> c) for appeals against the results of the complaint examinations referred to in Articles 122, 128 and 130 above, the market, date and time of the bid/offer in dispute, as well as the items indicated in subparas. a) and b) above.</del></p> |
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**Article 133: “Appeals to the Internal Appeal Board Pertaining to Financial Guarantee Verification”**

The text of Article 133 has been repealed:

| <b>Current text</b>  | <b>New text</b>   |
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| <p>133.1 If the verifications of the financial guarantees referred to in Article 79, para. 79.6 above or of the updating letter referred to in Article 80, para. 80.3 above have a negative outcome, the Market Participant involved may request the Internal Appeal Board to make a new verification.</p>               | <p><del>133.1 If the verifications of the financial guarantees referred to in Article 79, para. 79.6 above or of the updating letter referred to in Article 80, para. 80.3 above have a negative outcome, the Market Participant involved may request the Internal Appeal Board to make a new verification.</del></p>               |
| <p>133.2 For the purposes of the verifications referred to in para. 133.1 above, a technical member selected among professionals with proven experience in the banking and financial sectors or among professors of law or economics applied to the same sectors shall be integrated into the Internal Appeal Board.</p> | <p><del>133.2 For the purposes of the verifications referred to in para. 133.1 above, a technical member selected among professionals with proven experience in the banking and financial sectors or among professors of law or economics applied to the same sectors shall be integrated into the Internal Appeal Board.</del></p> |
| <p>133.3 The technical member referred to in para. 133.2 above shall be appointed by a resolution of</p>   | <p><del>133.3 The technical member referred to in para. 133.2 above shall be appointed by a resolution of</del></p>   |



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| <p>GME’s Board of Directors for a period not exceeding one year and may be re-appointed only once for the same length of time.</p> <p>133.4 If, after the new verification referred to in para.133.1 above, voting results in a tie, the vote of the Chairperson of the Internal Appeal Board shall prevail. The outcome of this verification carried out by the Internal Appeal Board, including the technical member, shall be binding and definitive for GME, the Market Participant and the bank in charge of treasury services.</p> | <p><del>GME’s Board of Directors for a period not exceeding one year and may be re-appointed only once for the same length of time.</del></p> <p><del>133.4 If, after the new verification referred to in para.133.1 above, voting results in a tie, the vote of the Chairperson of the Internal Appeal Board shall prevail. The outcome of this verification carried out by the Internal Appeal Board, including the technical member, shall be binding and definitive for GME, the Market Participant and the bank in charge of treasury services.</del></p> |
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**Article 134: “Court of Arbitration”**

The text of Article 134 has been amended as follows:

| Current text  | New text  |
|---|---|
| <p>134.1 Notwithstanding the provisions of Article 135, para. 135.1 below, any dispute arising between GME and Market Participants over the interpretation and application of these Rules and the Technical Rules shall be finally settled by a Court of Arbitration.</p>   | <p>134.1 Notwithstanding the provisions of Article 135, para. 135.1 below, any dispute arising between GME and Market Participants over the interpretation and application of these Rules and the Technical Rules shall be finally settled by a Court of Arbitration.</p>   |
| <p>134.2 Prior appeal to the Internal Appeal Board shall be a prerequisite for initiating the arbitration procedure.</p>  | <p><del>134.2 Prior appeal to the Internal Appeal Board shall be a prerequisite for initiating the arbitration procedure.</del></p>   |
| <p>134.3 The decisions of the Internal Appeal Board shall not be binding upon the Court of Arbitration, which shall have any and all powers to review the case independently.</p>   | <p><del>134.3 The decisions of the Internal Appeal Board shall not be binding upon the Court of Arbitration, which shall have any and all powers to review the case independently.</del></p>  |
| <p>134.4 To be valid, the arbitration procedure shall be initiated within thirty days from notification of the decision of the Internal Appeal Board.</p>   | <p><del>134.4 To be valid, the arbitration procedure shall be initiated within thirty days from notification of the decision of the Internal Appeal Board.</del></p>  |
| <p>134.5 The Court of Arbitration shall be composed of three members: one appointed by GME, one appointed by the Market Participant and a third member, acting as President, appointed jointly by both parties or, in case of disagreement, by the President of the Court of Rome, under Article 810 of the Italian Civil Procedure Code.</p> | <p>134.5 The Court of Arbitration shall be composed of three members: one appointed by GME, one appointed by the Market Participant and a third member, acting as President, appointed jointly by both parties or, in case of disagreement, by the President of the Court of Rome, under Article 810 of the Italian Civil Procedure Code.</p> |
| <p>134.6 The Court of Arbitration shall render its decisions in accordance with the applicable laws and the arbitration procedure shall take place in compliance with Article 806 and subsequent Articles of the Civil Procedure Code.</p>  | <p>134.6 The Court of Arbitration shall render its decisions in accordance with the applicable laws and the arbitration procedure shall take place in compliance with Article 806 and subsequent Articles of the Civil Procedure Code.</p>  |

134.7 The Court of Arbitration shall be based in Rome at GME's registered office.

134.7 The Court of Arbitration shall be based in Rome at GME's registered office.