

## Second ASSESSMENT CONSULTATION for Modification Proposal P207

# 'Introduction of a New Governance Regime to Allow a Risk Based Performance Assurance Framework (PAF) to be Utilised and Reinforce the Effectiveness of the Current PAF'

Prepared by: P207 Modification Group

For attention of: BSC Parties and other interested parties

Responses due: 5pm on Friday 9 March 2007

(to: [modification.consultations@elexon.co.uk](mailto:modification.consultations@elexon.co.uk))

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This document has been distributed in accordance with Section F2.1.10 of the Balancing and Settlement Code.<sup>1</sup>

**Proposed Modification P207** seeks to introduce new governance arrangements to allow a risk based Performance Assurance Framework (PAF) to be utilised for the Supplier Volume Allocation (SVA) aspects of the Balancing and Settlement Code (BSC). P207 looks to introduce SVA Assurance objectives into the BSC to define the purpose of the assurance arrangements. P207 proposes that under the new arrangements the role of the PAB would be expanded to allow it to identify, evaluate and prioritise the risks in the market and then choose how to deploy assurance techniques against those risks, and to manage the application of those techniques. Assurance of the Central Volume Allocation (CVA) arrangements would continue to be carried out in the same way as currently.

### PURPOSE OF CONSULTATION

This consultation seeks respondents' views regarding P207 and, in particular:

- Whether the Proposed Modification would better facilitate the achievement of the Applicable BSC Objectives<sup>2</sup> when compared to the current Code baseline;
- Whether there are any alternative solutions that the Modification Group has not identified and that should be considered; and
- Whether there are any substantive issues not considered by the Modification Group which should be brought to the Group's attention for inclusion in its assessment of P207.

**You are invited to provide a response to the questions contained in the attached pro-forma.**

Please send responses, entitled 'P207 Second Assessment Procedure Consultation', by **5pm on Friday 9 March 2007** to the following e-mail address: [modification.consultations@elexon.co.uk](mailto:modification.consultations@elexon.co.uk).

Any queries on the content of the consultation pro-forma should be addressed to Katie Wilkinson (020 7380 4376), e-mail address [Katie.Wilkinson@elexon.co.uk](mailto:Katie.Wilkinson@elexon.co.uk) or David Jones (020 7380 4213), email address [David.Jones@elexon.co.uk](mailto:David.Jones@elexon.co.uk).

This consultation document is also being simultaneously issued for impact assessment by BSC Parties, Party Agents, BSCCo and the Transmission Company.

<sup>1</sup> The current version of the Code can be found at <http://www.elexon.co.uk/bscrelateddocs/BSC/default.aspx>.

<sup>2</sup> A copy of the Applicable BSC Objectives is provided in [Appendix 1](#).

## CONTENTS TABLE

<b>Summary of Impacted Parties and Documents .....</b>	<b>3</b>
<b>1 Executive Summary .....</b>	<b>4</b>
1.1 Structure of this document .....	4
<b>2 Description of Modification.....</b>	<b>5</b>
2.1 Process diagrams .....	6
2.2 Risk Evaluation and Assessment Process .....	7
2.3 Example of the new Risk Based Performance Assurance Process.....	12
2.4 Formation of Panel Committee responsible for Risk Evaluation and Risk Assurance.....	12
2.5 Changes required to current Performance Assurance Techniques .....	13
<b>3 Areas Raised by the Terms of Reference.....</b>	<b>13</b>
3.1 High Level Process.....	13
3.2 CVA Performance Assurance .....	24
3.3 The Panel and Panel Committees .....	28
3.4 Impact on Current Assurance Techniques.....	43
3.5 Impact on the Code and Code Subsidiary Documents .....	49
3.6 Interaction with the Implementation of Approved Modification P197.....	50
3.7 Status of Existing Non-Compliances .....	50
3.8 Consideration of the Next Steps if P207 is Approved.....	51
3.9 Potential Alternative Solutions.....	51
3.10 Other Questions and Comments raised during the Initial Assessment Procedure Consultation.....	53
3.11 Implementation Approach and Transitional Arrangements .....	55
<b>4 Assessment of Modification Against Applicable BSC Objectives .....</b>	<b>56</b>
<b>5 Terms Used in this Document.....</b>	<b>57</b>
<b>6 Document Control.....</b>	<b>59</b>
6.1 Authorities.....	59
<b>Appendix 1: Applicable BSC Objectives .....</b>	<b>60</b>
<b>Appendix 2: Process Followed .....</b>	<b>60</b>
<b>Appendix 3: Results of Initial Assessment.....</b>	<b>63</b>
<b>Appendix 4: Results of First Assessment Procedure Consultation .....</b>	<b>66</b>
<b>Appendix 5: Example of the New Risk Based Performance Assurance Process .....</b>	<b>68</b>
<b>Appendix 6: Example of Potential Risk Management Plan Extract.....</b>	<b>75</b>

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## SUMMARY OF IMPACTED PARTIES AND DOCUMENTS

As far as the Modification Group has been able to assess, the following parties/documents would be impacted by P207.

Please note that this table represents a summary of the full impact assessment results in Appendix 3.

Parties	Sections of the BSC	Code Subsidiary Documents
Distribution System Operators	A <input type="checkbox"/>	BSC Procedures <input checked="" type="checkbox"/>
Generators	B <input checked="" type="checkbox"/>	Codes of Practice <input type="checkbox"/>
Interconnectors	C <input checked="" type="checkbox"/>	BSC Service Descriptions <input checked="" type="checkbox"/>
Licence Exemptable Generators	D <input type="checkbox"/>	Party Service Lines <input type="checkbox"/>
Non-Physical Traders	E <input type="checkbox"/>	Data Catalogues <input type="checkbox"/>
Suppliers	F <input checked="" type="checkbox"/>	Communication Requirements Documents <input type="checkbox"/>
Transmission Company	G <input type="checkbox"/>	Reporting Catalogue <input type="checkbox"/>
<b>Party Agents<sup>3</sup></b>	H <input checked="" type="checkbox"/>	<b>Core Industry Documents</b>
Data Aggregators	I <input type="checkbox"/>	Ancillary Services Agreement <input type="checkbox"/>
Data Collectors	J <input type="checkbox"/>	British Grid Systems Agreement <input type="checkbox"/>
Meter Administrators	K <input type="checkbox"/>	Data Transfer Services Agreement <input type="checkbox"/>
Meter Operator Agents	L <input checked="" type="checkbox"/>	Distribution Codes <input type="checkbox"/>
ECVNA	M <input type="checkbox"/>	Distribution Connection Agreements <input type="checkbox"/>
MVRNA	N <input type="checkbox"/>	Distribution Use of System Agreements <input type="checkbox"/>
<b>BSC Agents<sup>3</sup></b>	O <input type="checkbox"/>	Grid Code <input type="checkbox"/>
SAA	P <input type="checkbox"/>	Master Registration Agreement <input type="checkbox"/>
FAA	Q <input type="checkbox"/>	Supplemental Agreements <input type="checkbox"/>
BMRA	R <input type="checkbox"/>	Use of Interconnector Agreement <input type="checkbox"/>
ECVAA	S <input type="checkbox"/>	<b>BSCCo</b>
CDCA	T <input type="checkbox"/>	Internal Working Procedures <input checked="" type="checkbox"/>
TAA	U <input type="checkbox"/>	<b>BSC Panel/Panel Committees</b>
CRA	V <input type="checkbox"/>	Working Practices <input checked="" type="checkbox"/>
SVAA	W <input type="checkbox"/>	<b>Other</b>
Teleswitch Agent	X <input checked="" type="checkbox"/>	Market Index Data Provider <input type="checkbox"/>
BSC Auditor		Market Index Definition Statement <input type="checkbox"/>
Profile Administrator		System Operator-Transmission Owner Code <input type="checkbox"/>
Certification Agent <sup>4</sup>		Transmission Licence <input type="checkbox"/>
<b>Other Agents<sup>3</sup></b>		
Supplier Meter Registration Agent		
Unmetered Supplies Operator		
Data Transfer Service Provider		
Qualification Service Provider		

<sup>3</sup> The Teleswitch Agent and Profile Administrator are not currently subject to performance assurance techniques, but could be in the future if the activities that they carry out are deemed to be an 'at risk' area of the PAF.

<sup>4</sup> Note that the Certification Agent will cease to exist nine months after the implementation of Approved Modification P197. A Qualification Service Provider will be in place following the Implementation Date of P197 to deliver the Qualification Service.

## 1 EXECUTIVE SUMMARY

The key conclusions of the P207 Modification Group ('the Group') to date are outlined below.

The Group:

- **AGREED** by **MAJORITY** an initial view that the Proposed Modification would better facilitate the achievement of Applicable BSC Objectives (b), (c) and (d);
- **AGREED** by **MAJORITY** the high level process for P207 as set out in section 2;
- **AGREED** by **MAJORITY** that the process should be managed by the PAB;
- **AGREED** by **MAJORITY** that the PAB should be able to recommend to the Panel that Modification Proposals be raised in the area of performance assurance. This would mean that the Panel would have the authority to raise a Modification recommended by the PAB;
- **AGREED** by **MAJORITY** that CVA Assurance would fall under the remit of P207, but in practice the application of performance assurance techniques in CVA areas would not change;
- **AGREED** that changes will need to be made to the BSC Audit, Technical Assurance of SVA Metering Systems, escalation process and the Qualification Process<sup>5</sup> to ensure that they support a risk based governance;
- **AGREED** that changes would need to be made to the Code Subsidiary Documents (CSDs) relating to Technical Assurance of Metering Systems and a number of other CSDs;
- **AGREED** that P207 would not remove any existing non-compliances even in areas of low risk, but performance assurance techniques may be applied differently to these areas following the implementation of P207; and
- **AGREED** that should P207 be approved, the next steps are education for the PAB, the Panel and the Industry of the new process.

### 1.1 Structure of this document

This document is based on the P207 initial Assessment Procedure consultation and the P207 interim report. These documents can be found at the following location: [ELEXON - Modification Proposal P207](#). Where sections of this document are similar<sup>6</sup> to a corresponding section of the initial Assessment Procedure consultation or interim report, this is recorded at the start of the section.

A description of the P207 solution is provided in Section 2. Note that the solution has varied from meeting to meeting of the Modification Group. The solution set out in Section 2 of this document is the current solution for P207. Further information regarding the Group's initial discussions of the areas set out in the P207 Terms of Reference is contained in Section 3. This section sets out how the solution has changed from meeting to meeting. Readers only interested in the final views of the Modification Group should refer to Section 2 for the proposed solution and the sections titled 'Modification Group's Further Discussions' for the final rationale of the Modification Group.

Note that the Modification Proposal, the initial consultation, interim report and much of section 3 of this document states that the risk evaluation and risk assurance process proposed by P207 would be carried out by two new Panel Committees, the Risk Evaluation Group (REG) and the Risk Assurance Board (RAB). The

<sup>5</sup> The qualification Process will be introduced by Approved Alternative Modification P197 on the 23 August 2007. It replaces the current Accreditation, Certification and Entry Process aspects of the BSC.

<sup>6</sup> Similar means that the content of the section is the same as that in previous documents, though clarifications may have been made to ease readability.

Modification Group has now agreed that this process should be undertaken by the PAB and so references to REG and RAB should be read as references to PAB for the final solution.

A summary of the Group's initial views regarding the merits of the Proposed Modification can be found in Section 4. A copy of the Group's full Terms of Reference can be found in [Appendix 2](#), whilst a summary of the responses to the first Assessment Procedure consultation can be found in [Appendix 4](#).

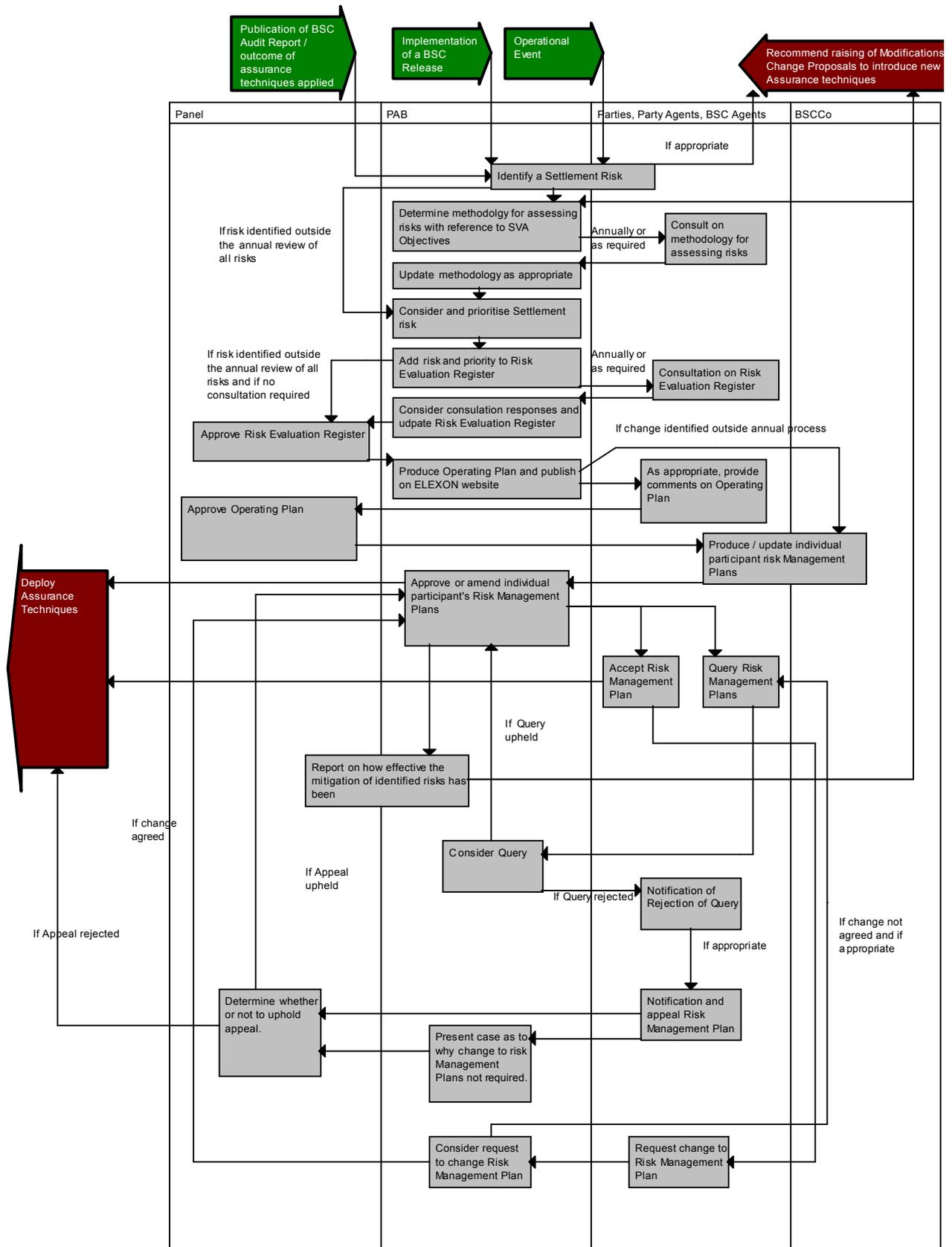
## **2 DESCRIPTION OF MODIFICATION**

This section outlines the solution for the Proposed Modification as developed by the Modification Group.

For a full description of the original Modification Proposal as submitted by energywatch ('the Proposer'), please refer to the P207 Initial Written Assessment (IWA).

Note that some aspects of the Proposed Modification Solution have changed since the initial Assessment Procedure consultation and interim report. This section of this document contains the current proposed solution for P207.

## 2.1 Process diagrams



## 2.2 Risk Evaluation and Assessment Process

### 2.2.1 Identification of Risks

Following the Implementation of P207 a Risk Evaluation Register would be formed (by the Performance Assurance Board (PAB)<sup>7</sup>, in line with the process described below). This could be a spreadsheet and would detail any requirements under the Code that relate specifically to the CVA and SVA market and are perceived to be of some risk to Settlement. In the SVA Market, the requirements under the Code that, if not complied with, could be considered to be a significant risk to Settlement would be determined with reference to the following two SVA Assurance Objectives:

- Energy is allocated efficiently and equitably between Suppliers, to an acceptable level of accuracy, that is derived from the aggregated consumption of Metering Systems for which each Supplier is responsible; and
- Participants act as good stewards of Metering System data, delivering efficient and effective transfer of this data between Suppliers and Supplier hubs and supporting the equitable allocation of energy.

In the CVA market, the concept would be that any and all areas in the Code that relate to the CVA market would be determined as having a significant effect on Settlement and therefore it would be written into the Code that the same level of assurance as is currently delivered would be so in the future, via the application of existing assurance techniques currently prescribed in the Code.

Additions to the first and subsequent Risk Evaluation Registers can be suggested for consideration by the PAB by BSC Parties, Party Agents, BSC Agents, BSCCo or other interested parties at any point in time, e.g. via email to BSCCo. However, it is thought that the vast majority of risks would be identified through the implementation of approved changes in a BSC Release or outcomes of any previously applied techniques e.g. the publication of a BSC Audit Report.

The PAB would, as stated above, be responsible for drafting the first version of the Risk Evaluation Register. Over time, the PAB would be responsible for identifying new risks and / or considering any risks that are proposed for addition to the Risk Evaluation Register, as well as detailing the significance that should be associated with the risk. The PAB would also carry out an annual review of the risks contained within the Risk Evaluation Register.

On an annual basis, the PAB would determine the methodology that it would use to assess the risks and determine their significance to Settlement based on the two SVA Performance Objectives. The methodology would be consulted on with Parties, Party Agents, BSC Agents and other interested parties. The PAB would take into account any comments received from this consultation to make appropriate changes to the methodology that it uses to assess the risks. Annually, the PAB would use the methodology to identify and / or evaluate risks which would be added to the Risk Evaluation Register and would issue the Risk Evaluation Register for consultation to Parties, Party Agents, BSC Agents and other interested parties. The PAB would consider the consultation responses submitted in relation to the Risk Evaluation Register and would provide the final version of the Risk Evaluation Register to the Panel for approval.

On an ad hoc basis, the PAB can consider further risks to Settlement for inclusion on the Risk Evaluation Register, or changes to the priority or continued inclusion of existing risks on the Risk Evaluation Register. These could be identified by the PAB, Parties, Party Agents, BSC Agents or BSCCo. The PAB would also be able to consult with Parties, Party Agents, BSC Agents and other interested bodies on these risks, if the PAB feels that a newly identified risk is of a significant enough nature to be consulted upon. This consultation would be focused on the particular risk(s) to be added to the Risk Evaluation Register; however,

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<sup>7</sup> Note that the Modification Proposal, the initial consultation, interim report and much of section 3 of this document states that the risk evaluation and risk assurance process proposed by P207 would be carried out by two new Panel Committees, the Risk Evaluation Group (REG) and the Risk Assurance Board (RAB). The Modification Group has now agreed that this process should be undertaken by the PAB and so references to REG and RAB should be read as references to PAB for the final solution.

participants would be able comment on any of the other risks in the register, particularly if there is an impact or connection between the new risk and any existing risks. It is envisaged that there would be few consultations of this nature as significant risks are only likely to be introduced by changes to the BSC Arrangements (which are generally delivered three times a year) and following the receipt of a BSC Audit Report (generally delivered once a year). Note therefore that the PAB can update the register whenever it feels it to be appropriate throughout the rest of the year, adding, removing or amending risks without consulting the rest of the industry (if the PAB does not feel that the changes are of a significant nature).

If the PAB believes that a change should be made to the Risk Evaluation Register (whether or not it has been consulted on) the Panel would be asked to agree that change.

### **2.2.2 Determination of Techniques to be used to mitigate risks**

Once a year, the PAB would consider the risks set out in the Risk Evaluation Register and produce an Operating Plan for the forthcoming year. In doing so, the PAB would consider the significance of the risks and the aggregated significance of issues arising across Settlement that have manifested in each risk area with respect to the assurance objectives. The Operating Plan would detail, against each risk on the Risk Evaluation Register, the performance assurance techniques (from the suite of existing performance assurance techniques) that would be applied over the course of the year to mitigate each individual risk and an indication of the basis on which they would be applied. Note that there may be more than one technique applied to mitigate against each risk and some techniques may only be applied dependent on the results of other techniques or in the event that an issue manifests in respect of a risk. The Code would specify that the PAB shall determine that all performance assurance techniques would remain applicable to CVA systems and processes to the extent that they are currently defined, for example Accreditation and Certification<sup>8</sup> of CVA MOAs. It is also envisaged that the performance assurance techniques set out in the Code and Code Subsidiary Documents that cannot be applied flexibly (e.g. Supplier Charges) would be included in the Operating Plan to the extent required under the Code.

Individual participants and the techniques to be applied to them would not be named in the Operating Plan, although the PAB may use its knowledge of the outcome of particular performance assurance techniques at particular participants or classes of participant to inform its production of the Operating Plan (i.e. to determine what performance assurance techniques should be used to mitigate against a particular risk). The Operating Plan would also include an estimate of the costs of providing assurance over the forthcoming year. There would not be a formal consultation on the Operating Plan, however once formed, it would be published on the BSC Website, and participants would be notified of its publication. Should any participant wish to comment on the Operating Plan, they would be able to do so to the Panel (via the BSCCo) and would be given a reasonable amount of time to do so before it was presented to the Panel. The Panel would be asked to approve the Operating Plan, noting any comments submitted to it and any amendments to the BSCCo strategy or budget arising from the proposed Operating Plan.

If the Risk Evaluation Register is updated over the course of the year, the PAB would consider any additional risks included and if appropriate, update the performance assurance techniques in its Operating Plan that it would use to mitigate these risks. The PAB would publish a revised version of the Operating Plan should it be updated and notify the industry of its publication. In this circumstance, the Panel would not be asked to approve changes to the Operating Plan (other than at the annual approval process at the end of the year).

Once the Operating Plan has been agreed by the Panel, individual Risk Management Plans would be produced for each participant. These would be prepared by the PAB, where appropriate in conjunction with the participant<sup>9</sup>. The Risk Management Plans would detail the risks that have been identified and are relevant to each participant (with an explanation about how the PAB came to that decision where a

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<sup>8</sup> Or Qualification following the Implementation of Approved Alternative Modification P197 'SVA Qualification Processes Review'

<sup>9</sup> Note that it is expected that whilst the Code will state that the PAB is responsible for producing the participant's Risk Management Plans, in practice, it is expected that the administration of this function would most likely be delegated to BSCCo in accordance with the current provisions of the Code, Annex B-1, section 3. The PAB would therefore approve the Risk Management Plans drafted by BSCCo.

technique is being applied to one or more participants but not all participant's of that class) and the techniques that would be applied to the participant over the course of the next year (selected from the Operating Plan), to mitigate against those risks. This would include those techniques that cannot be applied based on the risk of the action or the participant under the Code (e.g. Supplier Charges). The Risk Management Plan may also identify issues that have manifested in relation to a risk for that participant<sup>10</sup>. An example of how different participants could have different Risk Management Plans in relation to energisation status mismatches is included in [Appendix 6](#).

The Risk Management Plans would not impose specific resolution actions on participants. Performance assurance techniques identified on a Risk Management Plan may subsequently require a participant to develop its own resolution actions in response of an issue that has been identified at a participant and detailed on its Risk Management Plan. In this case participants would be expected to describe how they intend to resolve the risk in the same way as they currently do.

The PAB would determine the risks that are relevant to each participant by looking at the extent to which the risks highlighted in the Risk Evaluation Register existed in respect of that participant's performance. The way that the PAB determines the risks that are relevant to each participant would be at the discretion of the PAB, but could be based on:

- The participant's dimensions and portfolio of Metering Systems;
- An assessment of the participant's performance history; and
- Knowledge of the relevant control arrangements in place at the participant for each SVA process risk.

Note that it is not intended that these criteria are included in the Code or formally documented, as the criteria would be set by the PAB as appropriate. The PAB would ascertain such knowledge about the participant's performance from current market knowledge and the findings of any previously applied assurance techniques. It is envisaged that the majority of techniques would be common to each type of participant; however, if the PAB believes that a particular participant creates more risk to Settlement than other similar participants in a particular area, then the PAB may determine an additional / different performance assurance technique to be applied to that participant (the performance assurance technique must be one that is listed in the Operating Plan as being a technique that may be used to mitigate the risk identified). The PAB must have evidence to support its view that a specific participant presented an additional or significantly greater risk before applying additional techniques (e.g. from the application of previous performance assurance techniques). The PAB's Terms of Reference would state that it should act impartially to ensure that Parties are treated fairly and so as not to discriminate against any Party or class of Parties.

If the Risk Evaluation Register and Operating Plan are updated during the course of the year, the PAB<sup>11</sup> can update individual participants' Risk Management Plans accordingly. Also, if the PAB becomes aware of new information in respect of a particular participant, this could lead to the PAB updating the participants Risk Management Plan (this would still have to be consistent with the Operating Plan). Likewise, if a participant's circumstances change, or they become aware of further details in relation to a performance assurance technique, the participant can request a change to their Risk Management Plan by the PAB at any time and the PAB would determine whether a change to the Risk Management Plan was required. Any changes or requested changes to the Risk Management Plan would have to be justified. The agreement of a Risk

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<sup>10</sup> Note that an issue is a non-compliance with the Code or an identified breach of the Code. A risk is something that would become an issue if it occurred, but has not occurred at a particular participant yet. The Risk Management Plan will actually contain both risks and issues associated with a particular participant.

<sup>11</sup> Note that it is expected that whilst the Code will state that the PAB is responsible for producing or changing the participant's Risk Management Plans, in practice, it is expected that the administration of this function would most likely be delegated to BSCCo in accordance with the current provisions of the Code, Annex B-1, section 3. The PAB would therefore approve the changes to the Risk Management Plans drafted by BSCCo.

Management Plan by a participant at the start of the year does not mean that the participant cannot suggest changes to it over the course of the year.

### **2.2.3 Query of Risk Management Plan**

If the participant disagreed with an element of its own Risk Management Plan on any reasonable grounds, following the formation of the Risk Management Plan or any changes to the Risk Management Plan, then the participant would clarify this with the PAB by the time of the next appropriate PAB meeting. BSCCo would provide support to participants should they wish to discuss any element of their Risk Management Plans with the PAB. The participant would be entitled to attend the PAB meeting to discuss their Risk Management Plan if this was necessary. It is envisaged that this discussion would take place whilst the Risk Management Plans are being drafted and prior to the Risk Management Plans or any changes to the Risk Management Plans being approved by the PAB.

If, following the PAB approval of a participant's Risk Management Plan, the participant (still) disagreed with an element on the Risk Management Plan, or the participant had requested a change to their Risk Management Plan and did not agree with the decision reached by the PAB, the participant can lodge a formal Query to the PAB. This would have to be within 10 Working Days of the PAB approval of the Risk Management Plan, the PAB approval of changes to the Risk Management Plan or the PAB agreeing whether to make changes to the Risk Management Plan proposed by the participant. This Query would be in writing and could be made simply on the grounds that the participant (acting reasonably) does not agree with a particular element of their Risk Management Plan. Note that it is envisaged that a participant would not be able to argue a legitimate Query on whether or not a technique should be applied where there is a clear requirement in the Code stating that the technique shall be applied to the participant (e.g. the application of Supplier Charges to participants as set out in the Code).

The Query would be heard at a formal meeting (i.e. monthly PAB meeting) and the participant raising the Query would be entitled to attend. The PAB would discuss the Query and respond to it formally i.e. by providing a written response. The PAB may revise the Risk Management Plan as a result of the Query in line with their findings on the Query.

If a Participant queried an element of its Risk Management Plans, the PAB would continue to apply the performance assurance techniques currently in place and operating under the last agreed Risk Management Plan. The application of any newly proposed performance assurance techniques or new applications of an existing technique would be deferred pending the outcome of the Query. Should a Query be upheld, the PAB would determine the date at which the upheld Query would apply from (e.g. the date that the Query was first raised or another more appropriate date).

For the avoidance of doubt, it is proposed that for the purposes of determining which PAF techniques would continue to apply in the event of a Query in respect of the first Risk Management Plan(s) that are produced, the application of the PAF techniques currently in operation under the existing Code shall be considered to comprise each participant's last agreed Risk Management Plan.

### **2.2.4 Appeal of Risk Management Plans**

If within 10 Working Days after receipt of a Query Response the participant still disagreed with the PAB over an element of its Risk Management Plan, a Party could lodge an appeal with the Panel. It would only be open for an affected Party to lodge an appeal. If an affected participant was a Party Agent and it was still in disagreement with the PAB then it would have to seek support from an associated Supplier to appeal to the Panel on its behalf. The grounds for appeal to the Panel would be:

- The PAB had not followed the correct procedures under the Code or CSD;
- The PAB had given too little or too much weight to particular circumstances or evidence submitted, or to the lack of particular circumstances or evidence submitted; or

- The PAB had misinterpreted all or some of the evidence submitted.

The Panel would then hear the appeal. This would be at the next available Panel meeting and would be in the confidential session of the Panel meeting. The Party raising the Appeal would be able to attend and put forward any representation in support of the appeal, but would not be obliged to attend. The Panel would determine whether to uphold the appeal or not and would provide a formal response to the Party in writing as to the outcome of their appeal.

If a Party appealed an element of its Risk Management Plans to the Panel, the PAB would continue to apply the performance assurance techniques currently in place and operating under the last agreed Risk Management Plan. The application of any newly proposed performance assurance techniques or new applications of an existing technique would be deferred pending the outcome of the appeal. Should an appeal be upheld, the Panel would determine the date at which the upheld appeal would apply from (e.g. the date that the appeal was first raised or another more appropriate date).

For the avoidance of doubt, it is proposed that for the purposes of determining which PAF techniques would continue to apply in the event of an appeal in respect of the first Risk Management Plan(s) that are produced, the application of the PAF techniques currently in operation under the existing Code shall be considered to comprise each participant's last agreed Risk Management Plan.

### **2.2.5 Application of Performance Assurance Techniques**

Common performance assurance techniques (i.e. those performance assurance techniques that are being applied to all participants of a particular type in respect of a risk that they all share) would be applied to all participants in the same way and to the same extent. Further Performance Assurance techniques (i.e. those that are being applied to specific participants) would only be applied where a participant significantly contributed to the existence of a risk or issue identified within the Risk Evaluation Register and may comprise targeted audits, escalation proceedings or similar. Both common and further assurance techniques would be set out in the Operating Plan and on each participant's Risk Management Plan.

The PAB would ensure that the application of both common and further assurance techniques would be consistent between participants in similar circumstances. The PAB would apply techniques fairly, consistently and in a non-discriminatory nature.

As each technique is applied, participants' performance would be reported to the PAB via an outcome report<sup>12</sup> in accordance with the reporting requirements of current performance assurance techniques. Any non-confidential outcome report would be published on the ELEXON Website. Where the application of a performance assurance technique provides further information about a participant's performance this may be used to update that participant's Risk Management Plan (in line with the Operating Plan). This may mean that additional techniques could be applied to a participant throughout the year. Where the outcome of a technique indicates that a participant is not meeting significant obligations in the Code, escalation processes could allow for the PAB and ultimately the BSC Panel to be informed of the participant's poor performance in order that further provisions set out under the BSC may be applied in accordance with the powers of the PAB and the BSC Panel.

If new information is collected about an existing or potential new risk or issue following the application of a performance assurance technique, then the PAB could consider whether it should be added to the Risk Evaluation Register.

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<sup>12</sup> The term 'outcome report' is used here to refer to the many and various outputs of each performance assurance technique, e.g. Technical Assurance non-compliance reports, Peer Comparison Reports, Supplier Charge Reports, etc. In this context, the BSC Auditor's Annual Report is an 'outcome report', as are individual audit issue documents.

### **2.2.6 Annual Report**

Once a year, the PAB would prepare an annual report for presentation to the Panel and the industry. The report would contain the results of the work performed by the PAB, particularly to what extent assurance had been provided to mitigate against the risks identified in the Risk Evaluation Register. The bulk of the report would be concerned with the findings of the different assurance techniques that had been applied during the period and the results that had been obtained from the application of those techniques. The report would also contain details of the cost of the provision of the assurance framework over the course of the year and how these costs compare to the costs set out originally in the PAB's Operating Plan; any deviations would be explained. This report may also include areas in which the performance assurance techniques could be improved, for example via a Modification Proposal and may request that the Panel raises a Modification Proposal in this area. The report would also highlight whether there are potential cost savings of making changes and the benefits of making changes. The Annual report would be a non-confidential report that would be published on the ELEXON website. It would not contain any participant specific Confidential Information.

### **2.3 Example of the new Risk Based Performance Assurance Process**

An example of how the new process could operate is set out in [Appendix 5](#).

### **2.4 Formation of Panel Committee responsible for Risk Evaluation and Risk Assurance**

Under P207, the PAB would continue to be responsible for performance assurance under the BSC and would continue to be accountable to Trading Parties (note that this accountability is currently detailed in the PAB's Terms of Reference and is drawn from Annex B-1, 4.1 of the Code). The PAB's Terms of Reference would be amended so that they would be able to evaluate the risks that occur in the market and apply performance assurance techniques to participants based on the risks posed by those participants. The section in the Code that relates to the PAB being the Panel would have to be amended or removed so that the Panel would be able to hear appeals raised by a participant who disagrees with the PAB over its Risk Management Plans.

The PAB would have the ability to recommend to the Panel that it raises a Modification in any particular area relating to performance assurance (risk evaluation or risk assurance) that it feels to be appropriate. Should the PAB recommend a change to a Code Subsidiary Document relating to performance assurance, they would request that the BSCCo raises a Change Proposal which has the endorsement of the PAB.

The PAB would continue to be formed of industry experts acting independently; that is, when appointed to the PAB by the Panel their role is that of industry expert; members would act impartially and would not represent the interests of their employer. It is expected that the membership of the PAB would remain the same following the implementation of P207 as it is prior to the implementation of P207, although it is noted that appointment of members to Panel Committees is the responsibility of the Panel.

The PAB meeting would be held in open session where the PAB was discussing the risks that should be included on the Risk Evaluation Register. This means that anyone entitled to attend an open session of a BSC meeting can attend the meetings, but may only speak at the invitation of the chairperson. This is based on the assumption that the PAB would be looking generally at risks in the market. If the PAB was considering any Confidential Information relating to risks that could be included on the Risk Evaluation Register, then this section of the meeting would be confidential.

Where the PAB is discussing the Operating Plan, Risk Management Plans, the Annual report, the performance of a particular participant or any other business, the meeting would be in closed session as the matters to be discussed may be confidential. If however, a participant is discussing or querying its Risk Management Plans with the PAB, the participant would have the right to attend the appropriate part of the PAB meeting. If the PAB is discussing a specific participant's performance as a result of the application of a

particular performance assurance technique, the participant may<sup>13</sup> be invited to attend that part of the PAB meeting.

The BSC Auditor currently is a non-voting attendee of the PAB, however under P207, the BSC Auditor would only be invited to attend meetings of the PAB as and when required (and would continue not to have a vote). Other experts would be invited to attend meetings of the PAB as and when required. These experts would not be voting members of the PAB. Ofgem and energywatch (or its successor, as appropriate) would be able to attend meetings of the PAB as non-voting attendees. The BSCCo Chief Executive (or his representative) would continue to be obliged to attend meetings of the PAB as a non-voting attendee. BSCCo would continue to provide a chair and secretariat to the Group. The PAB would continue to meet on a monthly basis. The Performance Assurance Administrator (PAA), a function carried out by BSCCo, would continue to exist under P207 so that the PAB can continue to delegate any day to day activities that it so required to BSCCo.

## 2.5 Changes required to current Performance Assurance Techniques

The following changes would need to be made to the current performance assurance techniques to ensure that they could be used flexibly under a risk based Model:

- BSC Audit – the BSC Audit would change to allow the Panel (on the recommendation of the PAB)<sup>14</sup> to vary the scope of the audit for the SVA market based on the risks set out in the Risk Evaluation Register. Participants in the CVA market would continue to be audited as they currently are;
- Technical Assurance of Metering Systems – Technical Assurance of Metering Systems would change to allow the PAB to vary the scope of Technical Assurance Audits and the sample to be checked in the SVA market based on the risks set out in the Risk Evaluation Register. Participants in the CVA market would continue to have Technical Assurance of Metering System checks applied to them as they currently are;
- Escalation to Panel Committee – The ability to escalate a participant to a Panel Committee or the Panel would be based on the risk (with reference to the two SVA Assurance Objectives, where appropriate) that the participant poses to the market when they are underperforming, determined by the outcome of one or more performance assurance Techniques; and
- Qualification – Under Approved Alternative Modification P197 'SVA Qualification Process', the responsibility for the Qualification process was placed on the Panel<sup>15</sup>. Under P207, this responsibility would be placed directly on the PAB in the Code.

## 3 AREAS RAISED BY THE TERMS OF REFERENCE

This section outlines the initial conclusions of the Modification Group regarding the areas set out in the P207 Terms of Reference.

### 3.1 High Level Process

#### 3.1.1 Modification Group's Initial Discussions

Section 3.1.1 is similar to section 4.1 of the initial Assessment Procedure consultation and section 3.1 of the interim report.

<sup>13</sup> Note that this paragraph states that the participant 'may' be invited to attend the PAB. If the PAB are discussing a number of participants' performance generally in relation to a particular matter then it is unlikely that the participants would be invited to attend. If the PAB was focussing on the performance of one particular participant in a certain area, then it is likely that the participant would be invited to attend.

<sup>14</sup> The Panel currently has the responsibility of defining the scope of the BSC Audit, to the extent allowable under the Code. Under P207, the Panel would retain this responsibility, although it may be a role that the Panel would want to delegate to the PAB.

<sup>15</sup> Note that the Panel has subsequently delegated the authority for this role to the PAB.

The Modification Group agreed by majority the high level process for the new governance regime as set out in the attachment to the P207 Modification Proposal with some additions.

The Group agreed that the Risk Evaluation Report should actually be a Risk Evaluation Register to better reflect that it is a living document that can be added to, as and when necessary.

### **3.1.1.1 Consultation on Risk Evaluation Register**

The Modification Proposal stated that a Risk Evaluation Group (REG)<sup>16</sup> should consult on the Risk Evaluation Register. The Group agreed that the Risk Evaluation Register should be consulted on once a year. The Group also agreed that if new risks are identified, these should be discussed by the REG, and if the REG agree that they are risks, then these should be added to the Risk Evaluation Register.

The Group discussed whether the Risk Evaluation Register should be consulted upon each time it was updated. A minority of the Group felt that one annual consultation would be enough as participants would not want to be overloaded with consultations where one new risk was added to the Risk Evaluation Register. A number of members of the Group felt that participants should be consulted each time that the register was updated on the basis that any risk identified could lead to further performance assurance techniques being applied to one or more participants. These Group members therefore felt that participants should be able to comment on the risk that was to be added to the Risk Evaluation Register. These Group members also noted and agreed with the concern that participants should not be overloaded with consultations.

The majority of Group members felt that, in all likelihood, new risks would only be identified as a result of the implementation of a BSC release (i.e. a change in the rules), which currently occurs three times a year or the production of an outcome report of a Technical Assurance check or the BSC Audit and suggested that this would lead to one annual consultation on the Risk Evaluation Register and possibly three interim consultations. A majority of the Group felt that this would not be an overburden on participants.

The Group noted that whilst anyone could propose a new risk, all new risks would have to be discussed by the REG. Meetings of the REG would be held in open session, meaning that any participant could attend the meeting and speak with the agreement of the chairman if they had a particularly strong view in relation to any particular risk. The Group therefore agreed that the REG should determine whether to carry out an interim consultation on the Risk Evaluation Register, if the REG felt that it should obtain the industry's views on a particular risk.

The Group discussed whether an interim consultation should be a consultation on the whole Risk Evaluation Register, or whether it should just focus on new or amended risks. A majority of the Group initially felt that an interim consultation should only focus on the areas of the Risk Evaluation Register that had changed, however a minority of the Group felt that new risks would have to be assessed against existing risks. The Group therefore agreed that whilst any interim consultation would focus on the changes to the Risk Evaluation Register, participants would be able to comment on any other aspects of the Register that they felt to be appropriate.

### **3.1.1.2 Detail for the Evaluation of Risks**

The Modification Proposal states that the REG would be responsible for defining the process that it would then use to identify and evaluate risks. The Group discussed whether it was content with leaving the development of how the risks would be evaluated to the REG. Some members of the Group were comfortable that this was left to the REG, however other members felt these aspects should be considered as part of the Modification Proposal (however noted that should there be a desire for further detail to be added to how the REG evaluate risk, then this would form part of an Alternative Modification as the Proposed Modification is clear that the REG is responsible for these functions).

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<sup>16</sup> Note that the Modification Proposal, the initial consultation, interim report and much of section 3 of this document states that the risk evaluation and risk assurance process proposed by P207 would be carried out by two new Panel Committees, the Risk Evaluation Group (REG) and the Risk Assurance Board (RAB). The Modification Group has now agreed that this process should be undertaken by the PAB and so references to REG and RAB should be read as references to PAB for the final solution.

Those members of the Group that felt that the REG should be responsible for developing how it would evaluate the risks felt that the REG would be a Panel Committee of experts who would therefore have the expertise for developing its methodology for carrying out the risk evaluation. These members of the Group were therefore happy to leave the development of the risk evaluation process to the REG. Other members of the Group felt that if the REG is left to develop the rules for risk evaluation, then this could lead to more appeals of Risk Management Plans, if participants do not believe that risk evaluation had been carried out appropriately. Some members of the Group disagreed that there would be more appeals, noting that where there is the current ability for performance assurance decisions to be appealed, there are actually very few, if any, appeals as the committees use their expertise to make judgements. One Group member noted that the REG might be more comfortable applying rules that are formed by someone else rather than forming their own rules for risk evaluation and applying them.

One Group member suggested that to overcome the concerns of some Modification Group members regarding leaving the REG to determine how it is going to carry out risk evaluation, the REG could be obliged to consult participants on its proposed methodology for carrying out risk evaluation. It should be noted that the methodology that the REG develops for determining the significance of SVA risks must ensure the performance assurance framework seeks to achieve the SVA Assurance Objectives. The majority of the Group felt that this was a sensible way forward and therefore agreed that the REG should consult participants on its methodology for carrying out risk evaluation.

### **3.1.1.3 Appeal of Risk Management Plans**

A majority of the Modification Group was uncomfortable with the fact that a body, described in the Modification Proposal as a Risk Assurance Board (RAB), would produce its Operating Plan without any consultation with participants and could produce individual participants' Risk Management Plans without the ability for individual participants to disagree with the performance assurance techniques being applied to them. The Group noted that current participants do not have any say on the performance assurance techniques applied to them. One Group member noted that if there was an appeals process, it may be difficult for a participant to say that they are being unfairly treated in comparison to other participants when Risk Management Plans are confidential to individual participants.

The Modification Group agreed that if there was an appeals process, that Risk Management Plans should only be appealed as a last resort. A majority of the Group felt that if there was the ability for participants to appeal the decisions of the RAB, this would help to ensure that the RAB makes well informed decisions. A majority of the Group also believed that participants should have the ability to question their Risk Management Plans if they did not feel that they were appropriate. One Group Member suggested that instead of forming an appeals process, that decisions of the RAB should be open to scrutiny by another body, to ensure that they are consistent. The majority of the Group felt that it would not be appropriate to form a separate body to scrutinise the decisions of the RAB. Therefore, the majority of the Group felt that there should be a process whereby participants could appeal Risk Management Plans.

The Group agreed that participants should initially be able to discuss any issues with their Risk Management Plans with the RAB, and then if they were not satisfied with the response from the RAB, appeal to the Panel. The group discussed who appeals should finally be directed to. The majority of the Group felt that the most appropriate body would be the Authority. One member of the Group suggested that appeals could be directed to an Arbitration Panel; however the Group agreed that it would be overly bureaucratic for this body to become involved in the process. The Group also discussed whether it would be appropriate for the Competition Commission to become involved in this type of appeal as participants could be disadvantaged in the market if they disagreed with their Risk Management Plans. The Group concluded that the most appropriate body would be the Authority. The majority of the Group therefore felt that participants should be able to discuss their Risk Management Plans with the RAB and if they still disagree with the plans, appeal them to the Panel and ultimately the Authority.

The Group discussed which type of participants should be able to appeal their Risk Management Plans. The Group agreed that all types of participants would be able to query their plans with the RAB but felt that only Parties should be able to appeal Risk Management Plans with the Panel and the Authority. The Group felt that since Party Agents are not signatories to the Code, and since Parties themselves are ultimately responsible for the performance of their Party Agents, that Party Agents should not be allowed to appeal their Risk Management Plans directly to the Panel or the Authority. The Group felt that if Party Agents were able to appeal their Risk Management Plans, this would undermine the Supplier hub principle. The Group did however believe that if Party Agents had concerns over their Risk Management Plans, an associated Party who had the same issue identified with it could appeal their Risk Management Plans on their behalf.

### **3.1.2 Views of Respondents to Initial Assessment Procedure Consultation**

#### **3.1.2.1 Consultation on Operating Plan**

One respondent suggested that there should be an industry consultation on the Operating Plan.

#### **3.1.2.2 SVA Assurance Objectives**

Two respondents suggested that there should be changes to the SVA Assurance Objectives. One respondent felt that the first objective should be expanded to say that 'energy is allocated efficiently and equitably...so that the amount of GSP Group Correction is minimised'. Another respondent felt that the second SVA objective is a subset of the first and therefore not required explicitly as they felt that the objective should be based on the aggregated performance of a participant as opposed to detailing assurance at Metering System level.

#### **3.1.2.3 Appeal of Risk Management Plans**

Section 3.1.2.3 is similar to section 3.1.2.1 of the interim report.

#### **Queries to the RAB**

A majority of respondents felt that all participants should have the right to query their Risk Management Plans with the RAB. One respondent felt that a period of time should be allocated after the Risk Management Plans are produced to allow all assumptions to be tested and obligations to be understood. Some respondents felt that there may be factors that the RAB was not aware of when they formed the Risk Management Plans or their decisions may be based on inaccurate or misinterpreted information and so felt that it is important for participants to have the ability to query their Risk Management Plans. One respondent suggested that the RAB or BSCCo would not necessarily be able to determine the most appropriate course of action without consulting with the participant. Another respondent suggested that Risk Management Plans would be developed on a cooperative basis between the participant and their BSCCo Operational Support Manager (OSM) as a delegated responsibility from the RAB. This respondent felt that if there were areas where BSCCo and the participant have different views, then this would lead to a discussion at the RAB to determine the appropriate approach.

One respondent suggested that Risk Management Plans should not be imposed and another respondent suggested that it is easier to hold a participant to their plan if they have had the opportunity to comment on it. One respondent felt that there may be increased need for a query process in the infancy of a new process.

One respondent stated that they believed that both REG and RAB decisions should be open to appeal by Parties prior to the implementation of any Risk Management Plan. This respondent also stated that they believed that where a Party Agent was appealing their plans, the REG / RAB should be required to take into account the interaction of the Party Agents' Risk Management Plans with the Risk Management Plans of those Parties employing that Party Agent. This would avoid the possibility of a change to one plan having a negative impact on another. The respondent felt that a requirement for agreement of the change by all Parties that the Party Agent is associated with would lessen this risk.

A majority of respondents agreed with the criteria set out in section 2.2.3 under which Risk Management Plans can be queried with the RAB. One respondent felt that if there are substantive reasons or procedural issues that could lead a participant to believe that its Risk Management Plan is unfair, then it could raise a query, however queries ought to exclude frivolous or vexatious attempts to delay the implementation of a Risk Management Plan. One participant, whilst agreeing with the criteria, felt that the criteria for querying a Risk Management Plan should be the same as that for appealing it to the Panel and to the Authority, and the grounds for appealing the plan to the Panel should be used in all cases. One respondent agreed with the criteria, but felt that there may be other areas that could be queried although offered no suggestions on other criteria at this stage.

A minority of respondents did not agree with the criteria for the query of Risk Management Plans. One respondent stated that it is unclear how the participant would clarify their Risk Management Plans with the RAB through discussion before the next meeting of the RAB. This participant felt that the ground for query as included in section 2.2.3 are reasonable but possibly not exhaustive. Another respondent did not agree with the criteria as they felt that where Party Agents want to query their Risk Management Plans, the interaction between that Party Agent and the associated Parties should be taken into account. One respondent felt that the RAB should not refuse a participant's request to discuss or query their Risk Management Plans and questioned whether criteria are necessary at this stage.

### **Appeals to the Panel**

All respondents felt that Parties should be able to appeal their Risk Management Plans to the Panel. One respondent noted that this is a principle of natural justice. This respondent felt that the grounds for appeal should be well defined and not repeat previous discussions unless clear substantive or procedural defects have occurred. Another respondent noted that if participants feel that they have been unfairly treated by the RAB, then they should have the right to appeal to the Panel as this appeal to an independent body would ensure that the process is fair. The respondent also noted that the BSC Panel should have the knowledge to provide an arbitration role on all issues raised on risk registers. Another respondent felt that it is good practice to have an appeal route to a separate body with suitable expertise as without this, judicial review may be the only appropriate route, and the time cost and effort for a judicial review may be disproportionate. Some respondents felt that in practice, appeals are unlikely to occur as the RAB should be working on a cooperative basis with participants to produce their Risk Management Plans, and all other avenues should be explored before an appeal is raised, however felt that the appeals process acts as a safeguard.

One respondent felt that the right of appeal of Risk Management Plans to the Panel should be expanded and Parties should have the right to appeal any decisions of the RAB to the Panel. Another respondent noted that if the activities of one participant are affecting others, then the appeal process should not be a protracted process.

A majority of respondents felt that Party Agent should be able to appeal their Risk Management Plans to the Panel via an associated Supplier. One respondent felt that it is imperative that all participants that are subject to the assurance process have a right of appeal. This respondent questioned how Supplier Agents should decide which of its Suppliers it should approach in such a situation and the avenues open to a Supplier Agent if its associated Suppliers are not sufficiently interested or slow to assist in the appeal process. The respondent suggested that these points are particularly relevant to independent agents due to the timescales involved in the process. A number of respondents felt that the Supplier hub principle should be observed and noted that Party Agents are not signatories to the Code so a Supplier Agent must appeal a Risk Management Plan through an associated Supplier. One respondent noted that there would be a BSC Party (the associated Supplier) with the same risk and application of assurance technique on their Risk Management Plan as the Party Agent, and therefore the Supplier, would be in a position to appeal the agent's Risk Management Plan on their behalf. Another respondent felt that since the Supplier foots the bill, they should have the right to veto an appeal.

One respondent noted that if a Party Agent has a legitimate complaint, but a Party is not prepared to support this, the Party Agent may be able to bring legal action against the RAB or the Panel. The respondent also questioned whether the Industry would want the situation where a Party Agent did not or could not comply with their Risk Management Plan, and consequently the Removal of Qualification process was initiated, to only be overturned on appeal on the grounds of unreasonableness. The respondent also questioned whether an appeal to the Panel would work satisfactorily if the Panel were to undertake the functions of the RAB.

Another respondent noted that Party Agents and their associated Suppliers should be aware of any shared issues through the work of the REG process, meaning that these issues are already receiving attention, however should the need for appeal arise, this should be taken forward by the Supplier in accordance with Supplier hub principles. One respondent questioned what would happen if there are multiple associated Suppliers to a Supplier Agent wanting to appeal their Risk Management Plans, and questioned how Suppliers would represent each other and their associated Risk Management Plans.

A minority felt that Party Agent should not be able to appeal their Risk Management Plans to the Panel via an associated Supplier. Whilst one respondent agreed with the suggestion in principle, they felt that there is a risk that an upheld appeal on a Supplier Agent in conjunction with one Supplier could actually conflict with the Risk Management Plans of another associated Supplier. The respondent felt that this appeal mechanism could lead to Party Agents having different priorities or performance for different Suppliers creating the possibilities of cross subsidies. The respondent felt that should all associated Suppliers support an appeal, then this could provide some protection.

A majority of respondents agreed with the criteria set out in section 2.2.4 under which Parties can appeal their Risk Management Plans to the Panel. One respondent felt that there should be a tight interpretation of commercial interests so that a Party cannot argue that any commercial impact on it arising from its Risk Management Plan can unfairly prejudice its interests. The respondent felt that there would always be costs to a Party to rectify a material risk, but these costs would be outweighed by the benefits to the Industry of resolving the issue.

One respondent questioned the meaning and significance of the criteria that a Party's BSC interests having precedence over its commercial interests.

Another respondent noted that the criteria should also ensure that the RAB are carrying out their duties appropriately. One respondent felt that the criteria for appeal to the Panel should be the same as that for appealing to the RAB.

A minority of respondents did not agree with the criteria under which a Party can appeal their Risk Management Plans to the Panel. One respondent felt that there should also be a route of appeal for REG decisions.

### **Appeals to the Authority**

A majority of respondents felt that Parties should be able to appeal their Risk Management Plans to the Authority. One respondent felt that this is natural justice, but felt that the criteria for appeal should be tight, i.e. substantive or procedural errors. Other respondents stated that any appeal to the Authority should be in exceptional circumstances. Another respondent stated that it is difficult to envisage such a contentious Risk Management Plan that would end up being appealed to the Authority, however felt that there should be this right as this would act as an incentive for the RAB, Panel and Parties to act reasonably.

One respondent noted that if an appeal is made to the Panel, the Authority could raise any concerns that it has at that stage for the Panel to consider when making its decision. Another respondent felt that it would be good practice to have a route of appeal to a separate body with suitable expertise without the need for judicial review. The respondent also noted that for Party Agents that have a legitimate appeal that no associated Suppliers are prepared to support, they would not be able to take this appeal forward in the same way as they would not be able to take an appeal to the Panel without the support of an associated Supplier.

Another respondent noted that performance assurance techniques can have significant cost implications on organisations and it is essential that Parties are not unfairly prejudiced by the activities of the RAB.

One respondent felt that it would be appreciated if the Authority could provide guidance on the length of time an appeal would take to process once submitted to them, as if an appeal is submitted, a potential risk to Settlement remains unresolved. The respondent noted that Ofgem would sit on the REG and the RAB, so should be aware of the issues and relevant discussions prior to an appeal being raised. A second respondent also raised concerns about the open ended timescales, as the Risk Management Plan would have been developed by the RAB in response to an identified risk.

A minority of respondents did not feel that Parties should be able to appeal their Risk Management Plans to the Authority. One respondent stated that self governance should be encouraged and believed that the Panel should be a sufficient level of appeal. Another respondent felt that Appeal to the Authority was not appropriate and suggested that arbitration may be appropriate.

A majority of respondents agreed with the criteria set out in section 2.2.4 under which Parties can appeal their Risk Management Plans to the Authority. A number of respondents agreed with the criteria for the same reasons as they agreed with the criteria for appeal to the Panel. One respondent felt that the criteria for appeal to the Panel should also apply to an appeal to the Authority.

A minority of respondents did not agree with the criteria under which Parties can appeal their Risk Management Plans to the Authority. One respondent did not agree with the criteria on the basis that they did not agree that Risk Management Plans should be appealed to the Authority.

One respondent felt that a criterion of unfair prejudice may also be relevant and felt that inclusion of this criterion would be consistent with the grounds for appeal under the Master Registration Agreement (MRA). The respondent did however note that it might be argued that this is within the scope of the current three grounds for appeal, if evidence has been presented on unfair prejudice at the first appeal stage.

### **3.1.3 Modification Group's Further Discussions**

#### **3.1.3.1 Consultation on Operating Plan**

The Group discussed whether there should be a consultation on the Operating Plan. Some Group members felt that if there was a consultation on the Operating Plan, this may lead to less appeals of Risk Management Plans, as participants could provide their views on the techniques to be used to mitigate risks overall, before these were transferred to the Risk Management Plans. This would be particularly useful since the Operating Plan would be produced in closed session, and so a consultation would make this part of the process more transparent. Other members of the Group suggested that a consultation on the Operating Plan would be unnecessary as there would have already been a consultation on the Risk Evaluation Register and the methodology used to produce this. These members felt that introducing another consultation on the Operating Plan would unnecessarily lengthen the process of producing the Risk Evaluation Register and the Operating Plan.

Other Group Members felt that there would be advantages in introducing a consultation on the Operating Plan but felt that it would not be practical due to the overall time and therefore cost extensions to the process. Some members of the Group felt that it may be useful to introduce the ability for the PAB to consult on the Operating Plan without making this a requirement.

The Group agreed that instead of having a consultation on the Operating Plans, it should be published on the BSC Website, and the industry would be notified of its publication (e.g. via newscast). Following any update to the Operating Plan, it would be republished and the industry notified. If any member of the industry wished to comment on the Operating Plan, they could do so via BSCCo, who would pass these comments onto the Panel when the Operating Plan is issued to the Panel for approval (on an annual basis). The Modification Group suggested that the Operating Plan should be published at a time that would give the

industry enough time consider it and comment prior to the Panel meeting at which it would be approved, i.e. the Group felt that the publication of this plan as part of the Panel papers would be too late.

### **3.1.3.2 SVA Assurance Objectives**

The Group discussed adding to the first SVA Objective to reference minimising Group Correction Factor. Some members of the Group felt that the word minimise could lead to excessive costs to provide assurance, as the purpose of the risk based approach is to ensure that issues in high risk areas are given greater priority for resolution. Adding the word minimise to the SVA Objectives could imply that all issues should be resolved no matter what their priority. One Group member suggested that the SVA Objective could refer to optimising Group Correction Factor as opposed to minimising it. Another Group member suggested that Group Correction Factor is only one way to measure that energy is allocated efficiently and equitably.

The Group discussed whether the second SVA Objective is a subset of the first, and therefore whether it should be removed. The Group noted that this point had been discussed at the PAF Review Core Working Group, and a majority of that Group felt that the second SVA Objective was not a subset of the first and therefore that it should not be removed.

One member of the Group suggested that current non-compliances have two types of impact, on energy allocation and data transfer. This member of the Group therefore felt that it was appropriate to have two objectives. Another member of the Group suggested that since the draft report into the Data Consistency<sup>17</sup> check highlighted 3.6 million inconsistencies in Settlement, an objective around effective and efficient transfer of data was desirable. Other members of the Group felt that these aspects are covered by the first objective. The majority of the Group felt that the two objectives should remain; a minority felt that the first objective encompassed the second, meaning that the second was unnecessary.

The Group discussed whether the second objective relating to data transfer should include the word 'accurate', i.e. to specify that the data transferred should be accurate. The Group felt that whilst this may be useful, it would be difficult to define the word accurate in this context, and without this definition, the addition would not add any value. The Group noted that this was also discussed in the PAF Review Core Working Group. The Group also felt that the first objective relates to accurate aggregated data where as the second objective relates to data for individual Metering Systems. Therefore the Group felt that accuracy was captured in the objectives as a whole and therefore did not need to be explicitly stated in the second objective.

The Group noted that the form of the Objectives was extensively debated by the PAF Review Core Working Group. The Group therefore felt that although there were differences of opinion over some aspects of the objectives, that there were no strong enough arguments to warrant a change to the objectives described on the Modification Proposal.

### **3.1.3.3 Panel Approval of Risk Evaluation Register and Operating Plan**

The original suggestion was that if the PAB wished to add a new risk to the Risk Evaluation Register mid year, then this could be done with no industry consultation and no approval from the Panel. The Group had further discussion on whether this is acceptable, and some members felt that whilst it may not be worth the PAB consulting participants on every change to the Risk Evaluation Register, it would be appropriate for the Panel to approve all changes. Otherwise there could be a situation that the Panel reviews the Risk Evaluation Register as part of its annual review and disagrees with changes that the PAB have added and have been acting on over the course of the year. Other members of the Group felt that Panel Approval in all circumstances is not required as the PAB should be able to use their judgement as to whether Panel approval of a change to the Risk Evaluation Register is required. The majority of the Group however agreed that the Panel should approve all changes to the Risk Evaluation Register.

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<sup>17</sup> The Data Consistency Check compared 36 data items at various participants for a random sample of 1% of Non Half Hourly Metering Systems to determine the level of consistency of this data across the market.

The Group then discussed whether the same concept applies for the Operating Plan and whether the Panel should agree all changes to this plan. Some Group Members felt that the Operating Plan is the document that will lead to participants spending money on assurance techniques and therefore felt that the Panel should approve all changes to this document. Other Group Members felt that there is no need for the Panel to approve ad hoc additions to the Operating Plan as they will have already approved the change to the Risk Evaluation Register, and therefore it will be appropriate that the Operating Plan is updated to reflect the change to the Risk Evaluation Register. Some members of the Group also felt that, if a new risk had been identified and approved by the Panel for inclusion on the Risk Evaluation Register, then participants will already be thinking about it and working to resolve it, and so the addition to the Operating Plan should not come as a surprise. A majority of the Group felt that it is only necessary for the Panel to approve the Operating Plan annually, and not agree any ad hoc changes to it.

#### **3.1.3.4 Appeal of Risk Management Plans**

Section 3.1.3.4 is similar to section 3.1.3.1 of the interim report.

##### **Queries to the RAB**

The Group noted that the majority of respondents agreed that participants should be able to query their Risk Management Plans with the RAB. The Group noted that participants have no say on the RAB's Operating Plan (i.e. this document is not issued for consultation and there is no ability to appeal against it). One member of the Group felt that once the Operating Plan is set, it may be difficult for participants to appeal their Risk Management Plans as their Risk Management Plans should be consistent with the Operating Plan. The Group noted that this would not stop participants querying and appealing their Risk Management Plans if they disagreed with them.

The Group discussed, should a Party Agent successfully query their Risk Management Plan, whether any associated Parties' Risk Management Plans would be updated. The Group agreed that the RAB would probably only update the plan that had been appealed but agreed to leave this to the discretion of the RAB on the basis that the RAB would make decisions on a case by case basis and would revise Parties' Risk Management Plans as and when needed.

The Group also discussed what would happen if there was a disagreement between a Supplier and one of its agents over a query; whether the RAB would be caught in the middle of the disagreement, and the liabilities of the RAB in such a scenario. The Group agreed that if an agent is non-compliant with a Code requirement, then its associated Supplier can also be found non-compliant. The Group also agreed that if a Supplier Agent was currently non-compliant then they would be in breach of their Certification and the Removal of Accreditation Process<sup>18</sup> could be initiated. The Group therefore agreed that there are ways to address queries between Suppliers and their agents.

The Group noted that the Risk Management Plans would need to be developed with participants, so there should be a good understanding on both sides of the issues and the techniques most appropriate for addressing these issues.

The Group noted that the majority of respondents to the consultation agreed with the criteria for participants to appeal their Risk Management Plans. Those that did not agree with the criteria suggested that extra clarification was required. The Group discussed whether there should be a 'catch all' criteria for raising queries. The Group noted that the first step in the process is an informal discussion with the RAB. This step would not be included in the Code, however the Group agreed that the criteria for this step would be expanded to include 'on any reasonable grounds' that a participant had for querying their Risk Management Plan. (The RAB would determine if the grounds for a query were not 'reasonable', i.e. it is frivolous or vexatious).

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<sup>18</sup> Note that the Certification and Accreditation processes will be replaced with a Qualification process on 23 August 2007 following the implementation of Approved Alternative Modification P197 'SVA Qualification Processes Review'

The Group noted that currently, any participant can write to the PAB, and PAB will provide a written response. This is an informal process.

The Modification Group unanimously agreed that participants should be able to query their Risk Management Plans with the RAB and the criteria for querying the Risk Management Plans, as set out in section 2.2.3.

### **Appeals to the Panel**

The Modification Group unanimously agreed with all respondents to the consultation that Parties should be able to appeal their Risk Management Plans to the Panel.

The Group noted that the majority of respondents to the consultation felt that Party Agents should be able to appeal their Risk Management Plans to the Panel only via an associated Supplier. The Group noted the comments by Party Agents that it may not be possible to find a Party to raise the Query in the timescales specified. The Group however felt that a Supplier Agent querying its Risk Management Plans through an associated Supplier fits with the Supplier hub principle and felt that if this is not working effectively, it is an issue outside of P207.

The Modification Group unanimously agreed with the majority of consultation respondents that Party Agents can appeal their Risk Management Plans to the Panel through an associated Supplier.

The Group unanimously agreed with the majority of consultation respondents on the criteria under which a Party can appeal their Risk Management Plans to the Panel. The Group noted that under these criteria, BSC interests must always override Parties' commercial interests.

### **Appeals to the Authority**

The Group noted an alternative to appealing Risk Management Plans to the Authority would be for these plans to be sent to arbitration. The Group noted that current PAB decisions cannot be taken to arbitration; however Trading Disputes heard by the Trading Disputes Committee (TDC) can be taken to arbitration after being escalated to the Panel.

The Ofgem representative noted that all changes to the BSC are approved by Ofgem, and so it may not be necessary for them to be involved in smaller disputes such as over Risk Management Plans. The Group noted that some decisions under the Master Registration Agreement (MRA) are appealable to Ofgem. The Group noted that the MRA is different to the Code in a number of areas, for example Ofgem are not the approval body for changes to the MRA; the MRA Development Board (MDB) is the approval body. Therefore it is appropriate in limited scenarios for decisions regarding changes to the MRA to be appealed to Ofgem. The Group noted that allowing Risk Management Plans to be appealable to the Authority is a change in the way that the industry is managed and may not be consistent with Ofgem's published better regulation principles.

Some members of the Group felt that there would be few appeals to the Authority, but having this step in the process would ensure that the Panel makes fully informed decisions.

The majority of the Group agreed with the majority of consultation respondents that Risk Management Plans should be appealable to the Authority. In light of the Ofgem representative's comments in this area, the Group agreed to recommend to the Panel that provisional thinking be sought from the Authority in this matter.

The Group noted that the majority of respondents agreed with the criteria for appealing Risk Management Plans to the Authority and agreed that there needs to be clear criteria under which Risk Management Plans can be appealed to the Authority. The majority of the Group agreed that the criteria should be expanded to allow a participant to appeal their Risk Management Plans where they feel that they have been unfairly prejudiced.

The majority of the Group therefore agreed the criteria under which Risk Management Plans can be appealed to the Authority.

### **3.1.4 Provisional Thinking Provided by the Authority**

#### **3.1.4.1 Appeal of Risk Management Plans**

At the Panel meeting on the 11 January 2007, the Panel considered the P207 interim report and requested Provisional thinking from the Authority in relation to the P207 Appeals process. Based on the Provisional thinking, the Panel directed the P207 Modification Group to have an appeals process that ended at the Panel as opposed to the Authority on the basis that the Authority did not feel that its involvement in the appeals process would be appropriate in accordance with its principle objective and statutory duties. The Authority also felt that its involvement in these appeals would not offer the consumer good value for money. In addition the Authority felt that it was not clear that its involvement in the appeal of Risk Management Plans was merited at present as this would be a step away from self governance.

The Panel also directed the Modification Group to remove the appeal criteria relating to Parties being able to appeal elements of their Risk Management Plans on commercial grounds as the Authority had suggested that this may not be appropriate. The Authority felt that Parties are contracted to comply with the Code and if a Party was fully compliant with the Code, then it would not receive a Risk Management Plan that it believed was unfavourable. The Authority felt that allowing the appeal of Risk Management Plans for this purpose could create parallel governance as the Code would state what Parties should do, however appeals would then provide a precedent as to what it is reasonable to do. The Authority felt that the Modification route is more appropriate for making a change to the Code should one or more Parties believe that a rule contained within it is no longer applicable.

### **3.1.5 Modification Group's Further Discussions**

#### **3.1.5.1 Appeal of Risk Management Plans**

The Modification Group noted the direction from the Panel in respect of appeals on commercial grounds and appeals to the Authority of Risk Management Plans. One Group Member suggested that if a decision of the PAB or the Panel was felt by a Party to be anti-competitive, then they would automatically have the right to take an appeal to the Authority, in its role as Competition Authority, outside the BSC. The member questioned how this would apply to Party Agents since they are not licensed. The Group agreed that the onus is on the Supplier to manage its agents and any problems that they may have over their Risk Management Plans.

The Group noted that Trading Disputes can be referred to the Panel; however the Trading Disputes process is objective. The reason for including an appeal mechanism under P207 was that it was felt that the decisions taken by the PAB in these circumstances would be more subjective. The Group also noted that the Panel hear Trading Disputes on an infrequent basis and concluded that they would expect appeals of Risk Management Plans to be infrequent also. If the Panel was hearing Trading Disputes regularly, then there would be no point to having a Trading Disputes Committee. The Group agreed that the same principle should apply to the PAB in respect of appeals of aspects of participants Risk Management Plans.

One Group Member noted that the Risk Management Plans will contain both risks and issues. Since a risk is something that may not have arisen at a participant, the Group felt that it would be appropriate for a participant to be able to appeal a technique that would be applied in respect of the risk, if the participant felt that the performance assurance technique being applied was not appropriate. The Group therefore suggested that appeals on commercial grounds may be a misleading description and felt that it would be appropriate for the PAB to ensure that the performance assurance techniques applied in respect of risks are cost effective.

The Group also noted that the Code currently contains a clause that states that the Panel should ensure that the Code is given effect without undue discrimination between Parties or classes of Party (B1.2.1(c)). The Group therefore felt that an appeal on procedural grounds could refer to this section of the Code should a Party feel that they are being discriminated against. The Group also felt that the Panel would have to take

the SVA Assurance Objectives into account when considering appeals of Risk Management Plans and therefore suggested that these should be incorporated into the Code as a subset of the Panel Objectives. The Group felt that this would also mean that the Panel would have to take the SVA Assurance Objectives into account when approving the Risk Management Plan and Operating Plan.

The Group noted the direction from the Panel and removed the commercial aspect of the grounds for appeal, however suggested to the Panel that the changes to the PAB's Terms of Reference include a clause to ensure that any performance assurance techniques applied to risks should be cost effective.

The Group noted the direction from the Panel and removed the ability for participants to appeal their Risk Management Plans to the Authority from the solution. The Group discussed whether there should be the ability to send a Risk Management Plan to arbitration if a Party felt aggrieved by the Panel's decision. The Group noted that there is a defined electricity arbitration body in the Code (the 'Electricity Arbitration Association'), who can hear Trading Disputes where a Party is not satisfied by the Panel's response in respect of a Trading Dispute. The Group noted that a Trading Dispute has to show that a Settlement Error has occurred and is directly related to the cash flows of participants. If an element of a Risk Management Plan was sent to arbitration, this would be about a Party's Compliance with the Code. The Group therefore questioned how effective arbitration would be. The Group agreed that since the Panel agrees the PAB's Terms of Reference, they would be able to hear appeals relating to procedural issues. The Group felt that there is no need for an arbitration body to become involved in the appeals process.

The Group discussed whether scope of the appeals process should be widened to allow the appeal of any decision of the PAB. The initial view of the Group was that it was appropriate to increase the scope of the appeals process under P207 to any decision of the PAB, as P207 is putting in place a new Governance Regime around the Performance Assurance Framework.

The Group then discussed what decisions of the PAB would actually be appealed. The Group agreed that Parties should not be able to appeal decisions of the PAB relating to the Risk Evaluation Register or Operating Plan. Therefore the need to appeal would be based around the Risk Management Plan or a technique on the Risk Management Plan.

The Group felt that since appeals of the Risk Management Plans could be on procedural grounds, should a participant wish to appeal how a technique on the Risk Management Plan had been applied (if a participant felt that the technique had not been applied in accordance with the Code, Code Subsidiary Documents or the PAB's Terms of Reference) then this would also be classed as an appeal of the Risk Management Plan. The Group felt that a participant should be able to request a change to its Risk Management Plan at any point in time, where they have justification for this. If the PAB did not agree to the change, and the participant was not satisfied with the PAB's reasons for this, then they would be able to query (and if appropriate appeal) their Risk Management Plan.

## **3.2 CVA Performance Assurance**

### **3.2.1 Modification Group's Initial Discussions**

Section 3.2.1 is similar to section 4.1 of the initial Assessment Procedure consultation and section 3.2.1 of the interim report.

One member of the Group questioned whether the Modification Group had the expertise in the CVA arrangements to consider whether CVA Assurance should fall under the REG and the RAB in the same way as the SVA arrangements. Other Group members confirmed that they did have the expertise in CVA to consider this point.

The Group discussed whether CVA Performance Assurance should fall under the risk based Assurance Model described in the P207 Modification Proposal. A number of members of the Group argued that CVA Performance Assurance should fall under the arrangements. These members felt that it is not efficient to

have two separate processes; one for CVA, working as it does currently and monitored by the Performance Assurance Board (PAB) and one for SVA which is risk based and overseen by a REG and a RAB. One Group member noted that if the PAB was only to oversee CVA Performance Assurance, it is likely that the PAB meetings would be very short.

Some Group Members felt that there are links between the CVA and SVA arrangements and activities under CVA have the ability to impact on SVA, particularly in the areas of Grid Supply Point (GSP) Metering. Some Group members also felt that participants such as CVA Meter Operator Agents (MOAs) and their functions should be considered by the REG and their risks determined. These Group members also felt that there are similarities between CVA and SVA, such as the BSC arrangements relying on accurate data entering Settlement and therefore lessons between the two arrangements can be learnt if performance in the markets is considered in the same way.

Other Group members felt that CVA performance assurance should not be risk based. These members of the Group felt that the performance assurance framework (PAF) Review, which led to this Modification being raised, only looked at SVA performance assurance. This review spent nine months determining an approach to improve SVA performance assurance under the Code, but did not look at CVA performance assurance, although the review merely concluded that a 'risk based' approach could apply to assurance in general. Therefore some Group members felt that by including CVA performance assurance under P207, there is a risk that it is being shoehorned into arrangements that are suitable for SVA without proper consideration as to whether they are also suitable for CVA.

These Group members also felt that CVA is a very risky area of the market, such that, if CVA arrangements were not performing adequately then Settlements could grind to a halt. These members therefore felt that a full compliance Audit and the Technical Assurance of Metering System processes should continue to be applied in the same way as they are now to ensure that major issues are not overlooked.

One Group member suggested that if the REG looks at both CVA and SVA risk, the risks in the CVA market may override those in the SVA market, meaning that risks in the SVA market are not properly considered.

The Group discussed whether a CVA Objective could be added to the Code and it be left to the REG to determine that CVA is high risk and the RAB to ensure that the same techniques as now are applied. Some members of the Group felt that the only way to ensure that CVA is considered high risk is to include this in the Code. Therefore these Group members felt that the risks in the CVA market should not be left to the REG to determine.

Some Group members questioned whether it would be possible to form a REG and a RAB with members having appropriate expertise in both CVA and SVA arrangements. The Group noted that currently the PAB and the TDC act in both the CVA and SVA arrangements and there is appropriate expertise in these bodies. Also the Programme Board oversees changes in both the SVA and CVA markets and there is appropriate expertise in this body. The majority of the Group therefore agreed that there is no reason not to think that a REG and a RAB could have the appropriate CVA and SVA expertise.

The Group did agree that it would be inefficient to have one set of bodies, i.e. the REG and the RAB responsible for SVA Assurance and another body, the PAB, responsible for CVA Assurance. The Group believed that the same bodies should be responsible for both CVA and SVA Assurance. The majority of the Group therefore agreed that both CVA and SVA Assurance should fall under the remit of the REG and the RAB, but the Code should be clear that the REG do not have the ability to determine the risks or their priorities in the CVA market, and the RAB does not have the ability to flex performance assurance techniques in the CVA market. A minority of the Group still believed that CVA Assurance risks and the mitigation of those risks should be determined by the REG and the RAB in the same way as SVA risks.

### **3.2.2 Views of Respondents to Initial Assessment Procedure Consultation**

Section 3.2.2 is similar to section 3.2.2 of the interim report.

A majority of respondents agreed with a majority of the Modification Group that CVA assurance should be written into the Code as 'high risk' meaning that the same level of assurance should be applied as it is currently. A number of respondents felt that since the CVA Arrangements are critical to the operation of Settlement and there is the potential for huge damages to participants in the CVA market, should these arrangements not be fully compliant with the Code, it is not appropriate to use a risk based approach to CVA assurance.

Another respondent agreed that CVA assurance should be written into the Code as high risk but did not feel strongly about this point. This respondent suggested that should CVA Assurance be applied flexibly, then the formation of the REG, if it was a representative committee (see section 3.3), should include generators.

Another respondent stated that they felt that at the moment, it is appropriate to write CVA into the Code as high risk, and stated that it is always possible to raise a Modification to change CVA to a risk based approach further down the line.

One respondent stated that the PAF review did not include CVA within its remit and felt that no evidence has been provided to show that the current assurance regime is deficient in the area of CVA assurance. The respondent also suggested that no compelling arguments have been brought forward to define CVA as anything other than high risk, and therefore felt that it is appropriate that CVA should be written into the Code as high risk.

Another respondent stated that the current CVA assurance arrangements give a high level of assurance at a minimal relative cost and felt that the best way to maintain this and avoid inefficient disruption is to keep the existing arrangements for CVA assurance. This respondent felt that good quality CVA data and problem free processes are vital to the BSC arrangements.

A minority of respondents felt that the risks associated with CVA assurance should be determined by the REG and the assurance techniques applied by the RAB in the same way as assurance in the SVA market would work. One respondent felt that although CVA Assurance was not discussed by the PAF review Group, this does not mean that CVA assurance requires the retention of the current performance assurance regime to run in parallel with the risk based approach, and it would be inefficient and costly to do so. This respondent felt that there is no logical reason why the REG cannot identify and evaluate risks to CVA assurance against CVA objectives in the same way as it would for SVA assurance. The respondent felt that if the natural conclusion is that the CVA market requires a fully compliance based outcome, then the REG would reach that conclusion.

The respondent felt that the aim of P207 is to introduce a robust set of governance arrangements to ensure maximum flexibility and felt that by precluding CVA there are significant disadvantages to achieving flexibility. The respondent questioned whether, if risks in the CVA market changed or there are risks across the CVA and SVA markets, how these would be picked up, and if the only way to pick these up would be to raise further Modifications, then this would be costly and inefficient.

The respondent felt that since the REG's work would be subject to open consultation, there are safeguards and flexibility of good governance by applying the two stage approach to CVA assurance as well as SVA assurance without any detriment to the process adapting to a changing market. The respondent felt that placing CVA Assurance under the REG and the RAB was part of the original Modification and felt that any move away from this would be part of an Alternative Modification.

One respondent felt that a compliance based approach to CVA assurance would limit the flexibility of SVA assurance.

Another respondent felt that it would seem appropriate to use the same methods for both SVA and CVA so that they are treated equally, though stated that their views in this area were not strong.

One respondent felt that CVA assurance should be written into the Code as compliance based, but felt that there would be no need to use the phrase 'high risk'.

One respondent suggested that risks should be graded against the metering Codes of Practice, One to Eight, that apply to both CVA and SVA. This respondent felt that Grid Supply Point (GSP) Metering Systems should be exempted or considered as low risk for the following reasons:

- It has fully compliant Code of Practice One Metering Systems installed;
- The Metering Systems are dual redundant, i.e. there are two sets of Meters measuring the same power flow (a requirement of Code of Practice Metering Systems); and
- The data is used for statistical and aggregation purposes and not for trading.

The respondent felt that some generators (prior to 1993) may be high risk where they have Code of Practice One Metering Systems, but with a dispensation as there is only one Voltage Transformer (VT) available for Metering Systems. Other than this, the respondent felt that, as a rule,

- Fully Code of Practice One compliant Metering Systems should be considered as low risk;
- Code of Practice One Metering Systems with a dispensation should be considered as medium to high risk;
- Codes of Practice Two to Eight Metering Systems should be considered as high risk, whether or not they have a dispensation; and
- All Alpha Codes of Practice should be considered as high risk.

### **3.2.3 Modification Group's Further Discussions**

Section 3.2.3 is similar to section 3.2.3 of the interim report.

The Group noted that the majority of respondents to the initial consultation felt that CVA should be written into the Code as high risk. The Group had some concerns over how the REG should consider the phrase high risk and felt that it would be better to refer to CVA assurance as not changing from the current arrangements except potentially for which body delivers the assurance. The Group noted that it is not anticipated that the words high risk would actually be included in the Code. The wording high risk has been used to provide the concept for CVA assurance.

The Group noted that whilst CVA assurance would be carried out in the same way as it is currently under P207, it could be changed to a risk based approach in the future through a different Modification.

The Group noted the consultation response that suggested that assurance should be based on the Code of Practice of the Metering System at each particular site. The Group felt that this suggestion was useful and that the comments were valid, however felt that this is detail that the REG could use when formulating their methodology for how risks could be assessed.

The Proposer noted that it felt that there should be a consistent approach to CVA and SVA assurance under P207 so that flexibility is not constrained. The Proposer suggested that under the Proposed Modification, CVA assurance should be considered by the REG and the RAB in the same way as SVA Assurance, and any hardwiring of CVA assurance in the Code as high risk should be an Alternative Modification. The Group noted the legal advice that hardwiring CVA assurance in to the Code as high risk can form part of the Proposed Modification and therefore the majority of the Group believed that there should be no change to assurance in the CVA market under P207, other than to change the committees responsible for the assurance from the PAB to the REG and the RAB.

The Modification Group therefore agreed by majority that under the Proposed Modification, CVA Assurance would continue to be carried out in the same way as it is currently, however it would be managed by the REG and the RAB as opposed to by the PAB.

### **3.3 The Panel and Panel Committees**

#### **3.3.1 Modification Group's Initial Discussions**

##### **3.3.1.1 Risk Evaluation Group (REG)**

Section 3.3.1.1 is similar to section 4.3.1 of the initial Assessment Procedure consultation and section 3.3.1.1 of the interim report.

The REG is the body that identifies, assesses and prioritises risks. The Group discussed the constitution of the REG and whether it should be formed of industry experts acting independently in the same way as all other Panel Committees under the Code, or whether it should be formed of representatives of Parties to the Code. The Group agreed that the meetings of the REG would be held in open session and that there would be a consultation on the resulting Risk Evaluation Register.

Taking account of these facts, the initial view of a slight majority of the Group was that the REG could be formed of members that represent their individual Party and therefore put forward their Party's views on whether a proposed risk should be included on the Risk Evaluation Register and the significance of the risk. A minority of the Modification Group felt that the REG should be formed of independent industry experts. Following further discussion, the view of the Group changed and a slight majority of the Group felt that the REG should be formed of independent industry experts.

A number of members of the Group stated that industry experts should currently be employed by a participant that is active in the market, so that they have the relevant expertise to look at current risks. The Group noted that the current drafting of the Code is clear that members of Panel Committees have to have relevant expertise and to act impartially and without being representative, and therefore agreed that no changes to the Code to further clarify the definition of industry experts acting independently is required.

Those members of the Modification Group that believed that the REG should be made up of industry experts acting independently believed that the advantages of this are as follows:

- The REG may need to consider Confidential Information to be able to properly determine risks and their significance (if this was the case, such matters would have to be discussed in a closed portion of the meeting). It would not be appropriate to share Confidential Information with representatives of each Party under the Code. If the REG was representative, they would have to use collated, non-confidential data, which would not be to the same level of detail as the confidential data;
- If the REG was representative, Parties may not send experts to the meetings; they may send the person who is available at the time. An independent Panel Committee would have members appointed by the Panel, who would be experts in that area;
- If the REG was representative, at some meetings, some Parties may have resource constraints, meaning that they could not attend. At other meetings, potentially many Parties may turn up. This may lead to some meetings actually being unrepresentative if only particular types of Party attend and differing decisions being made, depending on who was able to attend;
- If the REG is representative it may be harder to reach decisions as different types of participants may vote in different ways, reflecting the views of their appointing organisation;
- If the REG is representative, this may lead to block voting by a particular set of participants to reach a decision that is best for them as opposed to best for assurance in the market, which in turn may lead to more appeals of Risk Management Plans;
- Setting up a representative committee would be more complex than the current Panel Committee baseline and therefore may be inefficient; and
- External stakeholders are likely to be more comfortable with decisions made by a group of independent industry experts rather than a group of Party representatives.

One Group member felt that the REG and the RAB should be the same body and believed that this would only be possible if the REG was made up of independent experts.

Those members of the Group that believed that the REG should be made up of Party representatives believed that:

- Having a representative committee should cut down the responses received as part of the consultation as all Parties would have already had a chance to have their say at the REG meeting;
- Small Suppliers may find it easier to have their say, particularly if they are able to vote by proxy;
- The people in companies that are actively involved in performance assurance in that company would be involved in the process and would be able to make the decisions; and
- Over the last couple of years, Suppliers have been working together to bring about improvements. A representative REG would work in the same way. The market has matured and participants can work together in the best interests of the industry.

The Group discussed whether the BSC Auditor should be a non-voting attendee of the REG (the BSC Auditor currently has the right to attend but not vote at the PAB). The Group felt that if it was appropriate for the BSC Auditor to attend meetings of the REG (e.g. to explain or provide background on the Audit report), then the BSC Auditor could be invited to attend meetings of the REG. The Group also felt that, if appropriate, experts in other fields could be invited to attend meetings of the REG where their input is likely to be required. The Group also felt that Ofgem and energywatch could be part of the Group as non-voting attendees if they so desired.

The Group briefly discussed a number of aspects that would need to be considered if the REG was representative, but did not discuss this area in detail as the proposed solution (as agreed by a majority of the Group) is that the REG is comprised of independent experts. The Group agreed to consult on this matter in the initial consultation to gauge the industries' views on this matter. The Group agreed that if industry responses to the initial consultation suggested that the REG should be comprised of representatives of Parties, the Modification Group would need to consider whether each Party has one vote, or whether votes depend on market shares (and, if so, whether these would be capped). The Group would also need to consider whether voting could be carried out by proxy, or whether each Party would have to attend a meeting to be able to vote.

The Group looked at which type of Parties should be members of the REG, if it was decided that this would be a representative body. On the 14 November 2006, there were 192 BSC signatories. These were split into the following types of Party:

- Licensed Distribution System Operators (LDSOs) – There were 17 BSC Parties registered as LDSOs;
- Interconnector Administrators (IAs) – There were 4 BSC Parties registered as IAs;
- Interconnector Error Administrators – There were 4 BSC Parties registered as IEAs;
- Transmission Company (TC) – There was 1 BSC Party registered as the TC;
- Trading Parties – The distinction between a BSC Party and a Trading Party is that a Trading Party must have an Energy Account, whereas a BSC Party which is not a Trading Party will not have an Energy Account (the only exception to this is the TC who are not a Trading Party but do have an Energy Account). Trading Parties (but not BSC Parties) are entitled to vote for the BSC Panel Industry representatives, although it should be noted that LDSOs and the TC appoint their own representatives to the BSC Panel. Trading Parties were split into the following categories:
  - Generators – There were 54 BSC Parties registered as Generators;
  - Interconnector Users – There were 33 BSC Parties registered as Interconnector Users;

- Non-Physical Traders – There were 49 BSC Parties registered as Non-Physical Traders; and
- Suppliers – There were 48 BSC Parties registered as Suppliers.

The Group felt that anyone who was impacted by the BSC arrangements and would require assurance that the arrangements are working as expected should be able to be a member of the REG if it was a representative committee, but decided that if necessary they would determine who these Parties should be following responses to the initial consultation.

### **3.3.1.2 Risk Assurance Board (RAB)**

Section 3.3.1.2 is similar to section 4.3.2 of the initial Assessment Procedure consultation and section 3.3.1.2 of the interim report.

The RAB is the body responsible for risk assurance. The RAB would have a similar function to the current PAB in as much as it would be responsible for applying and managing the results of the application of performance assurance techniques, however it would be able to do this flexibly. The RAB would also be responsible for producing its Operating Plan, Risk Management Plans for individual participants and its Annual report. The Group discussed the constitution of the RAB and whether it should be formed of independent industry experts in the same way as all other Panel Committees under the Code, or whether it should be formed of representatives of Parties to the Code. A majority of the Modification Group believed that the RAB should be formed of industry experts. The role of the RAB would be to consider the techniques that should be used to mitigate the risks identified by the REG, produce the participant Risk Management Plans and then manage the application and results of the techniques.

The majority of the Group felt that the RAB should be an independent expert body due to the fact that its meetings should be in closed session and it would see Confidential Information. The additional reasons quoted in 3.3.1 for why the REG should be a group of independent experts also applied to the RAB. Other members of the Group felt that the RAB could be a representative body on the basis that members would be required to sign a document to say that the information that they receive as that body would be kept confidential. Some members of the Group noted that whatever the make up of the Group, it would be formed of participants in the market. These Group members believed that the additional reasons quoted in 3.3.1 for why the REG should be a group of representatives also applied to the RAB. Other Group members felt that even if representative members confirmed that they would keep information confidential, they may be pressured to share this information.

### **3.3.1.3 Recommendations to the Panel that a Modification should be raised**

Section 3.3.1.3 is similar to section 4.3.3 of the initial Assessment Procedure consultation and section 3.3.1.3 of the interim report.

The Modification Proposal states that the REG and possibly the RAB would be able to recommend to the Panel that Modifications are raised in areas relating to performance assurance. The Group discussed whether the Panel Committees should be able to raise Modifications themselves or whether they should recommend to the Panel that a Modification be raised. If a Panel Committee recommends to the Panel that a Modification should be raised then, if the Panel agrees with the recommendations, it would raise the Modification. The Group agreed that the Panel Committees would not be able to raise Modifications themselves, and agreed that if one of these Panel Committees believed that a Modification should be raised, then this should be recommended to the Panel. This is consistent with the TDC which is able to recommend to the Panel that Modifications are raised in relation to Trading Disputes, but cannot raise Modifications in its own right.

The Group discussed whether the RAB should be able to recommend to the Panel that Modifications are raised, or whether it would only be the REG that would be able to do this. A majority of the Modification Group initially felt that the RAB should not be able to recommend that Modifications are raised. These members of the Group felt that the role of the RAB is to monitor compliance as opposed to recommend

change. These Group members also felt that since the meetings of the RAB would be held in closed session, potential Modifications should be aired in an open forum before being recommended as Modifications. Therefore, if the RAB felt that a Modification should be raised, it would be able to report this to the REG (possibly in its annual report). The REG could consider the subject area and determine whether to recommend to the Panel that a Modification is raised. This would fit with the REG having a more strategic role of identifying and prioritising risk, and leaving the RAB to focus on the management of techniques to mitigate these risks. The majority of the Group also felt that it would be useful for any potential Modifications to be discussed by the REG in open session to obtain a wide range of views before being raised as a Modification.

A minority of the Group felt that the RAB should also be able to recommend to the Panel that Modifications be raised in areas relating to the application of performance assurance. These Group members felt that as the RAB was the body that determined what performance assurance techniques should be applied to mitigate against risks, it would be best placed to know if a change was required to an existing technique or if a new technique was required. Some members of the Group were concerned that the RAB could propose that a Modification be raised that the REG did not agree with. This would mean that the Modification would never be aired at the Panel. One Group member felt that P207 is aiming to give the RAB flexibility; however in not letting the RAB recommend to the Panel that Modifications are raised in areas of performance assurance, this does not give the RAB flexibility.

One Group member noted that the Panel is asked to approve the Operating Plan of the RAB. If the RAB could recommend Modifications to the Panel, this would be the same reporting structure.

The Group also discussed whether either Panel Committee would need to have the ability to raise Modifications on the basis that these committees are formed of industry members who can raise Modifications in their own right. The majority of the Group felt that a Modification recommended by a Panel Committee carries more weight as it would be backed by members of the Group as opposed to a Modification raised by an individual company. The Group also felt that, particularly in the context of the RAB, a group member would be prevented from raising a Modification via their company arising from an issue that was discussed in a closed Panel Committee.

The Group therefore initially concluded by majority that the REG should be able to recommend to the Panel that Modification Proposals are raised (as included in the Modification Proposal), but the RAB should not be able to do this.

#### **3.3.1.4 Panel**

Section 3.3.1.4 is similar to section 4.3.4 of the initial Assessment Procedure consultation and section 3.3.1.4 of the interim report.

The Group agreed that the functions of the REG and the RAB should be defined in the Code as Panel Committees. Therefore none of the functions of these roles relating to performance assurance would be placed on the Panel to carry out or delegate as it sees fit. The Panel would only become involved in the process in the yearly approval of the Risk Evaluation Register and Operating Plan, and to hear appeals from Parties if these are raised.

#### **3.3.1.5 Performance Assurance Board (PAB)**

Section 3.3.1.5 is similar to section 4.3.5 of the initial Assessment Procedure consultation and section 3.3.1.5 of the interim report.

The Group discussed the ongoing status of the Performance Assurance Board (PAB). The Group agreed that all the current functions of the PAB would become functions of the RAB; however the RAB would have the added functions of producing the Operating Plan and individual participant Risk Management Plans and annual report. The Group discussed whether the RAB could actually be the PAB, whether the PAB's name could be changed to the RAB, or whether the PAB should be disbanded and a new Panel Committee called

the RAB created. The majority of the Modification Group felt that the last option would be the appropriate way forward. The majority of the Group felt that the name of the 'Risk Assurance Board' would better reflect the role of that committee as opposed to the name 'Performance Assurance Board'. The majority of the Group also felt that it would be better to disband the current PAB and appoint members to the RAB as opposed to simply changing the name of the PAB to the RAB, to ensure that the members of the new RAB are appropriately qualified in terms of mitigating risk as well as managing the performance assurance techniques.

A minority of the Modification Group felt that it would be more efficient if the PAB were to take on the role of the RAB. These Group members felt that if the PAB and the RAB were the same, this would also make the implementation of the Modification easier.

### **3.3.2 Views of Respondents to Initial Assessment Procedure Consultation**

#### **3.3.2.1 Risk Evaluation Group (REG)**

Section 3.1 is similar to section 3.3.2.1 of the interim report.

A majority of respondents to the initial Assessment Procedure consultation believed that the REG should be comprised of independent industry experts. Respondents cited the following arguments as to why it is appropriate that the REG should be comprised of independent industry experts:

- A committee comprised of independent industry experts is required to ensure that objective decisions are taken regarding the integrity and quality of Settlements and the associated risks;
- It is essential that the committee is acting in an independent capacity and not using the opportunity to promote any commercial / political preference;
- This would ensure that the whole industry is represented and therefore that risks are identified based on an overall view of the industry as opposed to from specific groups;
- If the REG was comprised of Party representatives, they may approach the work of the REG from the commercial viewpoint of their companies and have a subjective view of the risks to Settlement. A subjective approach may be watered down or compromised to satisfy particular participants.
- From the point of view of external stakeholders (e.g. energywatch) and BSC stakeholders, it is difficult to see how a subjective approach to risk evaluation and identification provides the assurance that material risks would be effectively addressed, compared to the objective approach that would be achieved if the REG was comprised of independent industry experts;
- It would be difficult for a representative committee to consider Confidential Information;
- Whilst a representative approach may be more active in terms of industry participation, this would be based on company's commercial interests;
- Smaller Parties may find it difficult to have their views about risks adequately reflected, particularly if the materiality of risks is determined through voting by representatives. Small Parties may also find it difficult to spare the resource to attend all meetings, meaning that their views may not be recognised. An independent committee would have to consider the materiality of risks based on the market as a whole;
- If the voting in a representative committee leads to a deadlock, then who would arbitrate on whether a particular risk is material or not;
- Since there would be a consultation on the risk evaluation register, all Parties would be able to contribute through this method, and so there is no need to have a representative REG. The consultation process is seen as a fair means to obtaining the views of all Parties, so there is no need to change this to a more complex governance arrangement;

- The number of outstanding non-compliances and qualified BSC Audit Reports suggests that the industry has not been working together to resolve Settlement issues. A more focused approach on resolving risks which are objectively determined by an independent committee is a much more effective approach to assurance than one where representatives decide the level of non-compliance that their companies can accept;
- This matches the arrangements for all other Panel Committees;
- Independent experts should ensure consistency in the operation of the committee and enables all pertinent information to be examined when determining what needs to be included on the Risk Evaluation Register;
- An independent REG ensures that the committee is fair, as if the committee was formed of Party representatives, then it is unlikely that all Parties would be able to provide people to attend the meetings, which may leave those Parties at a disadvantage;
- A body with similar accountability as the current PAB (i.e. to Trading Parties collectively) is preferable, whilst enabling the Panel to ensure that the group includes an appropriate range of expertise. The views of all Parties would be taken into account through the consultation process;
- Party representatives would be susceptible to vested interests influencing their decisions and Parties with large resources would be able to influence decisions;
- If the REG was representative, it would be difficult to develop constituency representation with sufficient flexibility to allow individual views to be represented, yet it would be inefficient for all Parties to be individually represented;
- REG may require Confidential Information regarding Parties to perform its duties, however a representative REG may have to receive Confidential Information in an anonymous format which may influence its abilities to perform its role successfully;
- For the industry to have confidence in the REG's decisions, the industry must see that the REG is acting impartially and without any scope for bias. A representative REG would not fulfil this requirement;
- The industry requires distinct expertise on the REG e.g. in areas such as the BSC, operational arrangements, quantitative and process risk analysis, performance and controls management. For this reason, there must be a robust appointment process which would be achieved by an independent REG; and
- An independent committee ensures that the REG should be considering issues and reaching decisions in terms of what is best for assurance in the market as opposed to an individual Party.

One respondent also suggested that the REG should be held in open session to support transparency. Another respondent suggested that in order for the group to be effective, members should have experience and knowledge of the risks presented to Settlement accuracy and issues in the market. The respondent suggested that there should be a rolling three yearly review of membership to ensure that the Committee Members experience and knowledge reflect the current market, whilst maintaining a degree of continuity. The respondent suggested that group members should be working, or have been working in the industry in the last five years to achieve this. The respondent also felt that this principle should also be extended to other Panel Committees. Another respondent suggested that membership should be subject to industry voting with votes published in the same way as proposed under P206 'Publication of BSC Panel Election Results'. This respondent suggested that there should be a term of office for members of perhaps two years, with an option to renew membership for a further year, although members should leave the committee if they leave their company.

A minority of respondents felt that the REG should be comprised of members that represent their individual Parties. Respondents cited the following arguments as to why it is appropriate for the REG to be comprised of Party representatives:

- The REG should be a forum for Suppliers to discuss those areas that are causing them disproportionate risk. This focus would not exist if the group were made up of industry experts;
- The REG would be answerable to the Panel which is made up of independent members, so a representative REG should not be a concern;
- The nature of the REG necessitates the need for members to have current industry knowledge and expertise. Participant representatives can bring commercial knowledge and effective risk management techniques drawn from their expertise of working for commercial organisations whose responsibilities are directly linked to reducing cost and increasing value for stakeholders. This knowledge would mean that the REG is able to deliver a more focused approach to performance assurance whilst ensuring that costs and complexity are kept low;
- If the REG was independent, Parties would not be acting in a manner that would deliver value; and
- The concept of independent Panel Committees has not moved with the fast changing pace of the energy market where open and frank discussions could be had at industry meetings.

One respondent commented that there is a value in consultants representing smaller Parties to ensure that their voice is heard.

Another respondent noted that whether the REG is made of independent experts or Party representatives, the membership may be a similar set of people. This respondent felt that the membership list should be clearly published.

The consultation asked that if the REG should be formed of Party representatives, how voting would be carried out. A number of respondents answered the question but re-iterated that they did not believe that the REG should be a representative committee. A majority of respondents stated that should the REG be representative, then there should be one vote per Party. Respondents gave the following reasons as to why it is most appropriate that there is one vote per Party:

- One vote per Party would restrict as much as possible any voting advantage that the larger Parties may have over the smaller Parties;
- Ensures that when individual BSC Party risks are raised that they are not diluted by a market shares mechanism;
- Market shares of independent Suppliers or new entrants is often very small compared with other Suppliers;
- Minority market players may be more sensitive to certain aspects of SVA assurance. If a market share approach was adopted, the scope for change may be very limited.

One respondent suggested that no Party should be able to vote on any issues by which they are directly impacted.

One respondent suggested that voting should be based on a weighted average in proportion to a company's market share. The respondent suggested that thresholds could be included in the structure to ensure that Parties are adequately represented. The respondent noted that other governance regimes have similar principles and deliver effective change control. These arrangements provide transparency of activities to the industry.

One respondent, whilst not agreeing with a representative REG, suggested that if the REG was representative, voting could be on the basis of one vote per Party within a group, e.g. if a Party had a

number of Supplier IDs and a number of Meter Operator Agent IDs, then they would get one vote as a Supplier and one vote as a Meter Operator Agent.

Another respondent suggested that constituency based voting would seem appropriate, in a similar way to voting under the Master Registration Agreement (MRA), i.e. votes are cast when there are consequences for the voting Party or constituency.

One respondent suggested that Parties could appoint or nominate members, but the members would still need to be accountable to Trading Parties collectively, and this would not ensure an appropriate range of expertise. The respondent suggested that having one vote per Party would ensure that everyone had a say, but would lead to unwieldy membership and would not adequately reflect the extent to which individual Parties might be impacted by particular issues or risks. The respondent also suggested that votes based on market shares would not be reflective of the relative extent to which different Parties would be impacted. The respondent suggested that an alternative of constituency based representation may be problematic as representation may be constrained and therefore inefficient due to conflicting views.

The respondent therefore suggested that if the committee was representative, then it would be sensible to include a principle, where if there was an issue that a de-minimis number of Parties or Company Groups was concerned about, then it should be included on the Risk Evaluation Register. This should avoid vetoes by particular groups. The respondent questioned, if the approval of the Risk Evaluation Register or the risk evaluation methodology required a yes or no answer, what would happen if majority support could not be achieved.

The consultation also asked that, should the REG be made up of Party representatives, what Parties should be represented on the Group. A slight majority of respondents felt that all BSC Parties should be represented. One respondent suggested that this is required to ensure that there is a balance of expertise. Another respondent suggested that all Parties should be represented, otherwise there could be a prejudice against certain BSC signatories.

Some respondents suggested that, whilst they believe that all Parties would have to be invited to join a representative REG, the numbers of Parties involved would be so large that this is a reason why they would not support a representative REG.

One respondent suggested that to keep the numbers of Parties at the REG manageable, an approach used under the Electricity Pool could be adopted. For example, on the Pool Executive Committee, a Group Representing Other Generators (GROG) was established to ensure that the opinion of all forms of generation was represented. Consideration would be required to provide assurance that similar provisions could be made under a representative REG, e.g. to ensure the views of independent Suppliers or Generators are taken on board.

Another respondent suggested that Parties should only participate in issues that are relevant to them. This could limit the size of the meetings to a more manageable level.

A slight minority felt that only certain types of BSC Parties should be represented. Of these respondents, all felt that Suppliers should be represented, and in addition, some respondents felt that generators, the Transmission Company, and LDSOs should be represented.

One respondent suggested that risks would impact on Trading Parties, and so Suppliers, LDSOs and the Transmission Company should be the voting members of the REG, although other Parties would be able to attend but should not have a role in decisions. Another respondent suggested that the REG would be carrying out activities that impact on Supplier, LDSOs and Generators (although Generators in a minimal or non-existent way if CVA Assurance is written into the Code as high risk), and so these are the Parties that should have voting rights on the REG. This respondent suggested that to keep the numbers of representatives on the REG low, there could be some trade body representatives to represent the views of their members. The respondent also suggested that it would not have to be the same person from the trade body at each meeting as the body would have the seat as opposed to an individual member.

One respondent suggested that the impact of risk in the SVA market primarily rests with Suppliers and LDSOs, and so these should be the members of the REG.

The consultation asked whether the BSC Auditor should sit on the REG. A majority of respondents felt that the BSC Auditor should only attend REG meetings by invitation. Respondents noted that whilst the BSC Auditor would have a significant input to risk evaluation, the industry should only pay for the cost of the BSC Auditor's time at the REG meetings where this is required. Some respondents noted that it may be that the BSC Auditor's input is required at every REG meeting, in which case the BSC Auditor would be invited to every REG meeting. One respondent suggested that if it was felt that the BSC Auditor's input was required on a regular basis, then he could be a permanent non-voting member of the REG. One respondent suggested that if the REG ask the BSC Auditor to prepare material for discussion at a REG meeting, or ask the BSC Auditor to attend a REG meeting, then they should be obliged to do so under their contract.

One respondent noted that if the BSC Auditor was not invited to a meeting, as their input was not required, the BSC Auditor would be free to attend the meeting (provided it was non-confidential) in the same way as anybody else, to gain visibility of the issues being discussed.

One respondent noted that the group has not discussed in detail the frequency of meetings of the REG, other than they would be once a year. The respondent noted that BSCCo and BSC Parties are also experienced in Audit processes, and so it may not be necessary for the BSC Auditor to be present if the group wanted to understand the outcome of a BSC Audit Report. Another respondent suggested that the BSC Auditor should always attend the REG to present the current audit issues following the publication of a BSC Audit Report. One respondent noted that should the REG recommend that the BSC Audit scope is revisited which could lead to cost implications for the BSC Auditor, then there could be a conflict of interest if the BSC Auditor was a permanent member of the group.

A minority of respondents felt that the BSC Auditor should have a permanent seat on the REG. One respondent suggested that the BSC Auditor is one of the most knowledgeable bodies in the Industry as they have an exclusive view of all issues across all sectors in the market. The respondent suggested that the Auditor is therefore able to provide feedback on the scale of an issues and its overall impact on Parties and Settlement which would subsequently enable the committee to prioritise items for inclusion on the risk register and therefore felt that the BSC Auditor should have a permanent seat on the REG in a proactive consultative capacity. Another respondent suggested that it is important for the BSC Auditor to have a continual understanding of the perceived risks in the market, and therefore the BSC Auditor should have a permanent seat of the REG in an advisory and observational capacity.

### **3.3.2.2 Risk Assurance Board (RAB)**

Section 3.3.2.2 is similar to section 3.3.2.2 of the interim report.

A majority of respondents felt that the RAB should be comprised of independent industry experts. A number of respondents cited the same reasons for why the RAB should be independent experts as they did for the REG (as set out in section 3.3.2.1). Additional reasons cited were as follows:

- The RAB should be independent as this would better achieve the commitment to confidentiality required by such a committee.

One respondent noted the criteria, as set out in section 2.2.2 that the RAB may use to determine a participant's risk and suggested that the BSC Auditor would be the only person with a true working knowledge of the participant's history and the control arrangements in place at the participant. Other respondents suggested that the RAB should be formed in the same way as the current PAB to ensure that the group includes an appropriate range of expertise. One respondent also suggested that the RAB should have a similar accountability to the current PAB, i.e. to Trading Parties.

Another respondent suggested that the industry experts on the RAB should be different to those on the REG as the skill set is different and to avoid a conflict of interest between the REG and the RAB. This respondent

felt that a member of the RAB who is involved in assessing whether a Party has met the required Performance Level should not also be involved in identifying the risks to be managed.

A minority of respondents felt that the RAB should be comprised of members that represent their individual Parties. One respondent cited the same reasons for why the RAB should be formed of Party representatives as they did for the REG (as set out in section 3.3.2.1). Additional reasons cited were as follows:

- The RAB would be acting in accordance with their Panel agreed Terms of Reference which can require that confidentiality is maintained; and
- The people on the RAB need to understand how commercial organisations are managed. Parties need to focus on business drivers that improve processes which directly impact customers, and the RAB should not distract Parties attention from this.

One respondent suggested that the RAB's methodology for assessing risk needs to be a published document to ensure that this process is as transparent as possible. The respondent suggested that each individual Risk Management Plan needs to include detailed information about how each risk rating is calculated and the information that has been used to calculate it. The respondent suggested that participants need the opportunity to assess how the RAB have carried out their assessment and have the ability to challenge this where appropriate.

### **3.3.2.3 Recommendations to the Panel that a Modification should be raised**

Section 3.3.2.3 is similar to section 3.3.2.3 of the interim report.

A majority of respondents felt that the REG should have the right to recommend to the Panel that a Modification should be raised in an area relating to performance assurance. One respondent suggested that the REG would be best placed to be able to identify any generic issues and therefore felt that they should have the ability to recommend to the Panel that a Modification should be raised. The respondent felt that if this was left to a Party to do, it could not be ensured that the Modification would be raised. Another respondent suggested that Modifications would be presented in a timelier manner and based on independent Parties views of the risks associated with the arrangements if recommended for raising by the REG. One respondent suggested that this would help avoid the situation where a problem is recognised but there is no Party wanting to raise a Modification to do something about it.

One respondent suggested that the root causes of issues should be resolved rather than taking ongoing resolution action. Another respondent believed that the REG has a strategic role in evaluating, identifying and prioritising risks, and suggested that should the REG feel that it needs to tackle this in a different way, it should have the ability to recommend to the Panel that a Modification is raised. One respondent suggested that since the REG would review the outputs of the RAB's programme of work, part of this activity would relate to deciding which techniques are working effectively and identifying amendments to those techniques that are failing to deliver assurance.

One respondent agreed that the REG should be able to recommend to the Panel that Modifications be raised provided that the REG was a committee formed of independent experts. The respondent suggested that if the REG was formed of Party representatives, then the requirement for the REG to recommend to the Panel that Modifications be raised is not required as Parties already have this ability.

A minority of respondents felt that the REG should not have the right to recommend to the Panel that a Modification should be raised in an area relating to performance assurance. One respondent suggested that these decisions should actually be made by the RAB based on the findings of the REG. Another respondent suggested that if a Party feels that there is value in a Modification or a Change Proposal, then they would raise it. The respondent did not feel that it should be the role of the REG to recommend that a Modification be raised, but suggested that the REG could discuss potential Modifications which could then be raised by a Party, should a Party wish to do so.

Respondents were split as to whether the RAB should have the right to recommend to the Panel that a Modification should be raised in an area relating to performance assurance.

The following reasons were cited as to why the RAB should have the right to recommend to the Panel that Modifications should be raised:

- The RAB would meet more frequently than the REG and would therefore be able to action initiatives in a more efficient timescale;
- If the RAB identifies performance assurance techniques that are not currently in its toolbox, then they should be able to recommend to the Panel that a Modification be raised to add these techniques. The Panel would choose whether to raise a Modification and the Panel meeting is held in open session. Any Modification is issued for consultation. This process provides a number of safeguards to BSC Parties that the Modification would be thoroughly discussed prior to the Authority determining whether or not to approve the Modification. Therefore, the fact that the Modification originated from a closed meeting is not an issue;
- The REG should not act as a further barrier to agreement on a recommendation of the RAB. If the RAB, as a Panel Committee of independent experts is carrying out its task objectively, and can make a strong case for the additional techniques, then allowing them to recommend to the Panel that a Modification should be raised should improve the flexibility of the assurance regime. Without this, there is the risk that the process becomes overly bureaucratic;
- There is more weight behind a recommendation from a Panel Committee than an individual Party;
- This would help to avoid the situation of a problem being recognised but no Party wanting to raise a Modification to do anything about it; and
- If only the REG have the ability to recommend Modifications, this could give rise to potential areas of conflict between the REG and the RAB, for example if the RAB suggest a Modification but the REG disagree with it and do not want to progress it further. This potential disagreement could be exaggerated if the REG were representative and therefore individual commercial interests were affecting its decisions.

The following reasons were cited as to why the RAB should not have the right to recommend to the Panel that Modifications should be raised:

- There should be a structure in the arrangements and the RAB should be reporting to the REG. The REG are the strategic group who should carry out this function;
- The RAB should act as a governance group that provides Risk Management Plans and assurance techniques to tackle the issues of non-compliance, and allows the REG to propose Modifications based on risk evaluation;
- There is an analogy here with the democratic institutions of executive (RAB), judiciary (REG) and legislative (the Authority). The executive (RAB) have no right to create new laws (i.e. directly recommend that Modifications be raised), but does have a voice to be able to suggest improvements in governance (i.e. can suggest to the REG where it believes that Modifications should be raised);
- Requiring that the RAB present their case for a Modification to the REG would introduce a degree of robustness into the process and would ensure that the RAB has to make a full and complete case for the Modification in support of their request; and
- If a Party feels that there is value in a Modification or a Change Proposal, then they would raise it.

One respondent stated that they did not feel that potential Modifications discussed in a closed session should affect the decision as to whether the RAB should be able to recommend to the Panel that

Modifications be raised as any Modification can be raised by a single Party without any previous discussions in an open forum.

#### **3.3.2.4 Performance Assurance Board (PAB)**

A majority of respondents felt that the responsibility for risk assurance should be operated by a new body called the Risk Assurance Board (RAB), and that the PAB should therefore be disbanded. One respondent suggested that this is required to give a clean break from the current Performance Assurance Framework regime. This respondent stated that the effect of P207 is to introduce a different delivery mechanism for performance assurance (risk based as opposed to compliance based) and so the respondent felt that the committee responsible should be named appropriately.

Two respondents noted that there is no requirement for both a RAB and a PAB and with the change in assurance regime, it is appropriate for a new body, the RAB to be formed.

A number of respondents suggested that they would expect that many of the current members of the PAB would re-apply and be reappointed to the RAB.

A minority of respondents felt that the PAB should be renamed as the RAB. One respondent suggested that this would allow for a smoother implementation and transition phase. Another respondent stated that they felt that much of the experience gained by the PAB would assist the work of the RAB and would not wish to see this expertise lost. One respondent stated that the appointment of a completely new body would be more complicated administratively and noted that the Panel has the right to review the membership of the PAB. A number of respondents felt that despite these factors, there was merit in re-badging the PAB as the RAB as renaming it would make it clear that the role had changed. One respondent suggested that the membership of the RAB may need to be extended to ensure that it has the expertise to cover the full range of business.

One respondent suggested that if the REG and the RAB were both Panel Committees formed of Industry members acting independently, then these should be combined into one Panel Committee.

One respondent felt that the PAB should be responsible for risk assurance, under its current name and the way it works could be modified to take on the additional roles of the REG and the RAB. The respondent felt that this would be less bureaucratic and cumbersome.

One respondent suggested that the Modification Group should consider whether the PAB should have an MRA representative as a voting member in a similar way to BSCCo having voting rights on MRA Committees.

### **3.3.3 Modification Group's Further Discussions**

#### **3.3.3.1 Risk Evaluation Group (REG)**

Section 3.3.3.1 is similar to section 3.3.3.1 of the interim report.

The Group noted that the majority of consultation respondents believed that the REG should be a Panel Committee formed of independent industry experts.

The Group discussed whether the REG would have the appropriate expertise and felt that members of the REG should be experts in the current market. The Group discussed whether there should be a time limit on the length of membership to ensure that members have current experience, however the Group noted that the Panel would be responsible for ensuring that there is appropriate membership in the REG, and noted that the Panel can periodically review the membership of Panel Committees. The Group noted that Panel Committees have a Panel Member as a sponsor who should be able to pick up where members of a Panel Committee are not acting impartially or are no longer an expert in that area, and who can report this to the Panel.

The majority of the Group therefore agreed with the majority of consultation responses that under P207, the REG should be a Panel Committee formed of independent industry experts.

The Group noted that since they agreed that the REG should be formed of independent industry experts, the consultation questions relating to the composition and voting rights of a committee formed of Party representatives was not relevant and so did not discuss these consultation responses.

The Group noted that the majority of consultation respondents felt that the BSC Auditor should be invited to attend the REG on an as required basis. The Group noted that the general arguments for the BSC Auditor having a permanent seat on the REG were based on the substantial knowledge of the Auditor meaning that they could add to the debate. Some members of the Group felt that the BSC Auditor would keep the REG on the right lines in terms of the risks in the market, however noted that as long as the membership of the REG was correct, then this should not be an issue.

Some members of the Group felt that if, over time, there are less non-compliances, there may be less need for the BSC Auditor to be present. Therefore, if the BSC Auditor was invited to sit on the REG as required as opposed to being a permanent member, then this would be more flexible. The majority of the Group felt that having the BSC Auditor as a permanent member of the REG is too prescriptive.

The majority of the Group therefore agreed with the majority of the consultation respondents that the BSC Auditor should be invited to sit on the REG as a non-voting member as and when required, but should not have a permanent seat on the REG. The Group also agreed that other experts could be invited to meetings of the REG as and when required.

#### **3.3.3.2 Risk Assurance Board (RAB)**

Section 3.3.3.2 is similar to section 3.3.3.2 of the interim report.

The Group noted that the majority of responses to the consultation agreed that the RAB should be comprised of independent industry experts and agreed by majority that the RAB should be comprised of independent industry experts.

The Group questioned whether the BSC Auditor should be a member of the RAB. The Group noted that the BSC Auditor is entitled to attend all meetings of the PAB in the capacity of the BSC Auditor. They are not entitled to vote but are entitled to speak.

Some members of the group felt that the BSC Auditor may need to attend meetings of the RAB to gain a view of how issues are being resolved and to feed into the materiality calculation in the BSC Audit. The Group also noted that the BSC Auditor's role on the PAB is mutually beneficial as the BSC Auditor can provide detail to the PAB as to how processes work. By attending the RAB, the BSC Auditor can easily find out how the RAB are dealing with issues.

The Group felt that the advantages of the BSC Auditor having a permanent seat on the RAB are that the RAB could use the expertise of the BSC Auditor, and the BSC Auditor would be aware of the issues and resolutions being discussed by the RAB. The Group thought that the disadvantages of the BSC Auditor attending the RAB would be the cost of the BSC Auditor's time.

The majority of the Group agreed that, in the same way as the REG, the BSC Auditor should be invited to attend the RAB as and when required.

#### **3.3.3.3 Performance Assurance Board (PAB)**

The Group noted that the majority of respondents to the consultation felt that the PAB should be disbanded and a new RAB created. The Group noted that this would mean that there would need to be a handover period with the two committees existing in parallel for a short period of time. Some members of the Group felt that transition would be more efficient if the PAB become the RAB however other members of the Group felt that there should be a clean break between the old and new arrangements, and that this would be best achieved with the creation of a new Panel Committee.

The Group noted that if the RAB was formed of completely different members to the PAB then there could be a lack of continuity in the assurance arrangements. The Group asked whether the current PAB members

would be able to transfer knowledge from the PAB to the RAB, as the RAB needs to have access to the Confidential Information discussed by and decisions made by the PAB to ensure that it would be able to work effectively. The Group noted that the Code could not oblige individual PAB members to pass knowledge onto the RAB, however, it can ensure that the PAB as a committee passes information to the RAB. The Group noted that BSCCo would also be available to help in this area.

The Modification Group noted that if the RAB is a new committee, a new indemnification letter would need to be completed for all members, including those members that served on the PAB.

The Group discussed how a new Panel Committee would be formed. The committee could be formed through nominations to the Panel and the Panel appointing members to the committee, in the same way as other Panel Committees under the Code are formed. The Group noted the two respondents to the consultation suggested that members of the RAB should be elected. The Group felt that for the purposes of P207 the REG and the RAB should be formed in the same way as other Panel Committees under the Code. Should a Party wish to change the way that Panel Committees are formed, this should be raised as a separate Modification.

The Group noted that nominations are received from people who want to be a member of a Panel Committee. The Group felt that current members of the PAB could put themselves forward as a member of the RAB; however no membership should be automatically transferred over from the PAB to the RAB.

The Modification Group therefore agreed that the REG and the RAB should be formed in the same way as any other Panel Committee under the Code.

The Modification Group then discussed whether the REG and the RAB should be combined into one body on the basis that they are both going to be Panel Committees formed of members whose views are independent to the views of their companies. The Group noted that even if they suggested that the Panel Committees should be separate, the Panel could still appoint one committee of people to carry out both roles. Some members of the Group felt that the roles of the two bodies would be different and therefore may require different members with different expertise. Other members of the Group felt that a single committee could be formed with the appropriate expertise and it would be more efficient to have just the one committee as the REG function may be quite a small function (e.g. considering ad hoc risks occurring during the year). The Group therefore agreed that one Panel Committee should be responsible for both the REG and the RAB role.

Since they had agreed that one Panel Committee should be responsible for both the REG and the RAB roles, the Group then discussed whether it would be most efficient if this body was the PAB. The Group noted that the membership of the Panel Committee would be determined by the Panel, who could choose the same membership of the PAB for any new Panel Committee, or choose to appoint new members from those who put themselves forward (who may or may not currently be members of the PAB). The Panel would have to ensure that the members of the Panel Committee had the appropriate expertise to carry out the risk based process.

The Group felt that there were two aspects to the question of whether the Panel Committee responsible for this risk based model should be the PAB. The Group felt that if it is just a case of renaming the PAB, then there are arguments for and against this. The Group felt that if a new Panel Committee was to be introduced, with potentially new membership, then this should probably have a different name to ease confusion. The Group agreed that they would not want to disband the PAB to create a new Committee to carry out the risk based assurance process as this would be inefficient, though suggested that the Panel review the membership of the PAB to ensure that the membership of the PAB has the appropriate expertise to carry out the risk based role. The Group therefore discussed whether the PAB should be renamed.

The arguments for renaming the PAB, is that the name Performance Assurance Board may not properly reflect the function of the Committee if P207 were to be approved. A change of name would therefore

reflect the role of the Committee. A new name may give a different perception of the role of the Committee and may lead to a culture change to the workings of the Committee.

The arguments against renaming the PAB are that the Committee will continue to be able to work appropriately, whatever its name is. A change of name will lead to work rebadging documents. In total eighteen Code Subsidiary Documents would need to be updated to change the name of the PAB to a new name and two sections of the Code would be affected.

The Group agreed by a slight majority to retain the name 'Performance Assurance Board' for the Committee undertaking the risk based assurance functions under P207.

The Group discussed whether the PAB should contain an MRA representative under P207. The Group noted that committees under the MRA have a BSC representative since BSCCo is a signatory to the MRA. The Group also noted that the BSC representative on MRA Committees has limited voting rights, which relate to those things set out in the MRA that the BSCCo has to agree to for them to be changed. The Group were not sure where any MRA representative would obtain its voting rights from within the BSC and therefore agreed that the PAB should not contain a MRA representative under P207. The Group noted that this may be a wider issue that could be pursued under another Modification, if appropriate.

#### **3.3.3.4 Recommendations to the Panel that a Modification should be raised**

The Group noted that the majority of respondents to the initial consultation believed that the REG should be able to recommend to the Panel that Modifications be raised in the area of performance assurance.

The Group discussed whether there is actually a requirement for a Panel Committee to recommend that a Modification should be raised. Some members of the Group felt that if there is enough support for a Modification then a Party would raise it. Other members of the Group felt that it may be hard for an individual company to form a business case to allow it to raise a Modification. A Modification recommended by the REG may not be a business sensible solution for a particular Party, but may make the operation of the market better. In this scenario, an individual company may not want to raise the Modification, so the REG could recommend change on behalf of all Parties. Also, if an issue is contentious, it may be better if a committee recommended that it should be raised as it would have the backing of the committee, as opposed to an individual Party raising it.

The Group noted that Parties can raise Modifications at any time. In terms of the REG recommending that a Modification be raised, this is only a recommendation as the Panel would have to agree to raise it. Therefore frivolous and vexatious issues would not become Modifications. Through the Modification process there would be industry consultations and a final decision by the Authority, so there are safeguards to ensure that only Modifications that better facilitate the Applicable BSC Objectives are actually approved.

The Majority of the Modification Group agreed with the majority of respondents to the consultation that the REG should be able to recommend to the Panel that Modifications be raised in the area of performance assurance.

The Group noted that consultation respondents were equally split as to whether the RAB should be able to recommend to the Panel that Modifications be raised in the areas of performance assurance. Some members of the Group felt that since the RAB would be making a recommendation to the Panel as opposed to actually raising a Modification, and since the RAB have a different role to the REG, that both Panel Committees should be able to recommend to the RAB that a Modification be raised. These Group members felt that the REG should not be able to prevent the RAB's activity or recommendations by not taking a Modification Proposal forward to the Panel and that the RAB should be able to recommend Modifications when they don't have an appropriate technique to address risks. Other group members felt that there should be a hierarchy and the RAB should only be able to propose a new tool if allowed by the REG.

The Group discussed the areas in which Modification Proposals could be suggested. One area would be a procedural change. Another area would be a change to a Performance Standard. The Group felt that there

is a difference between these types of Modification and questioned whether the RAB should be able to recommend a Modification that changes the rules as well as enforcing the rules. The Group noted the areas in which the REG and the RAB could recommend Modifications would be limited to performance assurance.

The Group noted that under current arrangements, if a decision falls on two Panel Committees and the committees cannot agree, then the decision is escalated to the Panel for decision. Therefore, having a process whereby a Modification suggested by the RAB can be blocked by the REG goes against this principle.

The Modification Group agreed by a slight majority that the RAB should be able to recommend to the Panel that Modifications should be raised.

Following agreement that the REG and the RAB should be combined into one Panel Committee, and that this should be the PAB, the Group agreed that the PAB should be able to recommend to the Panel that Modifications should be raised in areas relating to performance assurance.

### 3.4 Impact on Current Assurance Techniques

The Modification Group discussed each of the current performance assurance techniques and the changes that may need to be made to these to ensure that they are compatible with a Risk Based Approach to Assurance. The Group based their discussions on the work carried out by the PAF Review Core Working Group in this area.

The Group agreed that a number of the current techniques would not require any changes to be made to them as they are already sufficiently flexible, as follows:

Feature of Technique	Description	Current BSC Drafting
Making BSC Rules available	Publication of BSC and CSD documentation. Publication of changes to BSC and CSD documentation. Help/search service to enable key rules (or sets of rules) to be found quickly.	Section C3.1.1 (e) of the BSC states that ELEXON is responsible for the provision of such facilities, services and information in connection with the implementation of the BSC as it may provide or the BSC Panel may require.
Education on BSC rules	Publication of guidance (e.g. plain English versions, worked examples) for key BSC and CSD documented processes / changes to processes.	
Notification of Common Issues	Publication of common (market) issues identified by the PAF techniques. It may also be possible to provide some view as to root causes of these issues.	
Guidance on common issues	Publication of guidance (e.g. plain English versions, worked examples) on common (market) issues identified by the PAF techniques and on the best ways to address them. This may include a view as to root causes of these issues. It may also reference other areas of the BSC that may help in monitoring or controlling the issue in some way. What is not being proposed is the sharing of more general business operational practices beyond this as these are confidential and are an area where competitive advantages may be gained.	

Feature of Technique	Description	Current BSC Drafting
Desk based reviews of additional data / information	Off-site reviews of documentation and data provided by participants, e.g. LWIs. This function could be performed by ELEXON or a subcontractor.	Such reviews are currently used as a methodology in the Technical Assurance of Suppliers and Supplier Agents Technique. The process of Technical Assurance is identified in Section J of the BSC and defined in BSCP 535 (Technical Assurance).
Targeted audit	An in-depth audit of a particular participant as a result of performance information (e.g. Key Performance Indicator (KPI) monitoring or a more general audit). An objective might be to quantify the significance for other participants of any under performance.	The BSC makes provision for targeted audit work by the BSC Auditor (ad-hoc audits) and under BSCP535, Technical Assurance of Suppliers and Supplier Agents.
Calculation of material error contribution / impact based on collected data	The collection of sample data or system 'snapshots' in order to: <ul style="list-style-type: none"> <li>• Estimate the extent of a particular issue at market or participant level; and</li> <li>• Estimate the net effect on Suppliers (allowing for the effect of GSP Group Correction).</li> </ul>	The BSC Audit is set out under section H5 of the BSC which includes the determination of a materiality threshold against which Settlement Errors are to be measured. In order to determine the impact on Settlement the BSC Auditor collects sample data or system 'snapshots' in order to estimate the extent of a particular issue at market or participant level and to estimate the net effect on Suppliers (allowing for the effect of GSP Group Correction) where possible.
Peer comparison - Suppliers & Agents	Comparison of the performance of participants against their peers.	The process is identified in the BSC under section J and is detailed in BSCP 534 (PARMS Techniques).
Removal of approved status	Removal of approved status would result in a participant no longer being approved to operate in the market. Suppliers using an unapproved agent would be in breach of the BSC. This removal process could include earlier notification to industry of a participant's inclusion in the removal process.	The current Removal of Accreditation Process is noted in BSCP534 (PARMS Techniques) and is detailed in BSCP531 (Accreditation). Under P197, the removal of Qualification Process will be documented in BSCP534 and BSCP537 (Qualification Process for SVA Parties, SVA Party Agents and CVA MOAs)
Naming to Associated Suppliers	Identification of an underperforming Supplier Agent to all Suppliers that use its services.	Currently defined as part of the Technical Assurance of Suppliers and Supplier Agents Technique. The process of Technical Assurance is identified in Section J of the BSC and defined in BSCP 535 (Technical Assurance).
Forum to discuss and address common issues	Potential to hold a variety of participant-driven forums (could be facilitated by ELEXON) designed to: consider and prioritise common issues; identify solutions; and support changes.	Section C3.1.1 (e) of the BSC states that ELEXON is responsible for the provision of such facilities, services and information in connection with the implementation of the BSC as it may provide or the BSC Panel may require.

Feature of Technique	Description	Current BSC Drafting
Development and progression of rectification plans	Plans for the rectification of underperformance and non-compliance.	Section C3.1.1 (n) of the BSC states that ELEXON is responsible for monitoring whether any Party is or could be in Default of the BSC (in accordance with Section H3) and for gathering rectification plans accordingly. The Error and Failure Resolution Process allows ELEXON to identify and track areas of non compliance.

The Group agreed that a number of the current techniques would not require any changes under P207 as although they are not flexible at the moment, further flexibility should be introduced as a separate Modification since it may have wide reaching impacts:

Feature of Technique	Description	Current BSC Drafting
Definition and Monitoring of Key Performance Indicators (KPIs)	Pre-defined set of measures and required targets (or standards) to be reached. The KPIs would be selected to provide stakeholders (Panel/ industry) with an overview of the general health of the market, to identify errant performance by individual participants, and to identify potential obstacles to the efficiency of processes.	<p>The current Serials and Standards are established in Annex S-1 of the BSC and identified within Section J of the BSC as being further defined in BSCP 533 (PARMS Data Provision).</p> <ul style="list-style-type: none"> <li>The Modification Group agreed that a subsequent Modification Proposal would be required to revise / replace current KPIs.</li> </ul>
Liquidated Damages	Application of charges for failure against agreed contractual obligations and then distribution of those charges to 'damaged' Parties.	<p>The current form of Liquidated Damages is Supplier Charges which are applied for failure to meet obligations set out in Annex S-1 of the BSC and are applied only to those Serials defined within Annex S-1. The process for managing Supplier Charges is detailed within BSCP 536 (Supplier Charges).</p> <ul style="list-style-type: none"> <li>The Modification Group agreed that a subsequent Modification Proposal would be required to revise / replace the current form of liquidated damages.</li> </ul>

The Group agreed that a number of techniques should be amended under P207 to ensure that they are compatible with the risk based approach to assurance, as follows:

Feature of Technique	Description	Current BSC Drafting	Action Required
BSC Audit	<p>The current BSC Audit is undertaken using a high precision compliance-based approach. This includes the sampling of transactions in order to draw conclusions regarding the compliance (or otherwise) of processes with the BSC. The scope of the BSC Audit is set out in the BSC and cannot be varied in the absence of a Modification Proposal.</p> <p>An Agreed Upon Procedures Audit would comprise a detailed review of operational controls against key BSC requirements supported by evidence and testing as appropriate at each BSC Party, Party Agent and BSC Agent as required. This type of approach conforms to a SAS-70 (Statement of Auditing Standards No. 70) type of audit that is commonly applied in the USA.</p>	<p>A risk-based approach to audit work and the derivation of the scope of audit work is applicable to any of the current detective and audit-related assurance techniques. This includes the BSC Audit.</p> <p>The BSC Audit is set out under section H5 of the BSC. The BSC currently requires that the BSC Audit is a compliance-based audit to a strict scope.</p>	<p>Changes to the BSC so that the Panel can set the terms of Reference for the BSC Audit based on the risks identified in the Risk Evaluation Register and the recommendations of the PAB from the Operating Plan. The Panel could delegate responsibility for this function to the PAB.</p>

Feature of Technique	Description	Current BSC Drafting	Action Required
Technical Assurance of HH Metering Systems	<p>The Technical Assurance of HH Metering Systems is identified in Section J of the BSC and the nature and scope of the Technical Assurance Agent's (TAA) work is set out in Section L of the BSC and detailed in BSCP 27 (Technical Assurance of Half Hourly Metering Systems for Settlement Purposes). Accordingly, the Technical Assurance process cannot be varied in the absence of a Modification Proposal.</p> <p>A risk-based definition of such auditing techniques would permit the Panel or PAB to vary the scope of this work.</p>	<p>A risk-based approach to audit work and the derivation of the scope of audit work is applicable to any of the current detective and audit-related assurance techniques. This includes the Technical Assurance process.</p> <p>The Technical Assurance of HH Metering Systems is identified in Section J of the BSC and the nature and scope of the Technical Assurance Agent's (TAA) work are set out in Section L of the BSC and detailed in BSCP 27 (Technical Assurance of Half Hourly Metering Systems for Settlement Purposes).</p>	<p>Changes to the BSC so that the PAB can set the scope and sampling of Technical Assurance checks on SVA Metering Systems based on the risks identified in the Risk Evaluation Register.</p>
Escalation to committee	<p>Should the risk that a participant presents (perhaps from non-compliance or underperformance) reach a certain level then that participant might be invited to appear at a formal body to explain the issues and set out its rectification plans and actions.</p>	<p>Section C3.1.1 (n) of the BSC states that ELEXON is responsible for monitoring whether any Party is or could be in Default of the BSC (in accordance with Section H3) and the triggers for referral to the Panel in Section H are high. The PAB Escalation Cycle is identified in Section J of the BSC and detailed in BSCP 534 (PARMS Techniques).</p>	<p>Clarification of escalation powers and processes and confirmation that these would be based on risks.</p>
Self Certification	<p>Declaration from an officer of an applicant that it meets the requirements for qualification. Further assurance could be provided if the declaration (or aspects of it) were checked by a third party.</p>	<p>The current requirement for Accreditation and Certification is set out in Section J of the BSC and is detailed in BSCP 531 (Accreditation).</p> <p>Under P197, the Qualification Process will be documented in BSCP537 (Qualification Process for SVA Parties, SVA Party Agents and CVA MOAs).</p>	<p>Under P197, this process is managed by the Panel. Changes required to make the PAB will be responsible for the Qualification process.</p>

Feature of Technique	Description	Current BSC Drafting	Action Required
Mandatory pre-qualification approval	Where a participant can demonstrate that it has processes and controls in place that meet the minimum requirement or where its service levels meet those specified by the BSC this would be recognised by Certified Status or similar. Suppliers would be required to use Certified Agents under the BSC.	The current requirement for Accreditation and Certification is set out in Section J of the BSC and is detailed in BSCP 531 (Accreditation). The current requirement for Entry Processes is set out in Section J of the BSC and is detailed in BSCP 511 (Entry Process – Supplier Meter Registration Service) and BSCP 512 (Entry Process – Supplier). Under P197, the Qualification Process will be documented in BSCP537 (Qualification Process for SVA Parties, SVA Party Agents and CVA MOAs).	Under P197, this process is managed by the Panel. Changes required to make the PAB will be responsible for the Qualification process.
Pre-qualification testing and witnessing	Independent witnessing of testing or provision of test results to ELEXON during market entry.	The current requirement for Entry Process Testing is set out in Section J of the BSC and is detailed in BSCP 511 (Entry Process – Supplier Meter Registration Service) and BSCP 512 (Entry Process – Supplier). The current requirements prescribe the testing and witnessing that is mandatory. This will not be the case when Modification P197 is implemented. Under P197, the Qualification Process will be documented in BSCP537 (Qualification Process for SVA Parties, SVA Party Agents and CVA MOAs). Witnessed testing will only be carried out where required.	Under P197, this process is managed by the Panel. Changes required to make the PAB responsible for the Qualification process.
Re-qualification	A participant may be required on an annual or ad-hoc basis to repeat some or all of previous Self Certification or pre-qualification testing in order to demonstrate that it has processes and controls in place that meet the minimum requirements. It may be envisaged that the PAB could determine the trigger for an ad-hoc re-qualification based upon failure to meet pre-defined performance criteria.	The concept of Re-Certification is currently set out in Section J of the BSC and is detailed in BSCP 531 (Accreditation). Under P197, the Re-qualification Process will be documented in BSCP537 (Qualification Process for SVA Parties, SVA Party Agents and CVA MOAs)	Under P197, this process is managed by the Panel. Changes required to make the PAB responsible for the Re-qualification process.

### 3.5 Impact on the Code and Code Subsidiary Documents

[Appendix 3\(f\)](#) sets out the sections of the Code that are expected to be impacted by P207. It is expected that the high level process in section 2 will be described in the Code, however there may be a need to introduce a new BSCP containing further detail. This will be determined in conjunction with the Modification Group once the legal text has been drafted. Changes to the BSC Audit, Technical Assurance of Metering Systems, Escalation Process and Qualification will also need to be made to the Code, as described in section 2.5. The detail of the impact of P207 on the Code will be included in the P207 Assessment Report, once the legal drafting is complete.

[Appendix 3\(g\)](#) and (h) set out the expected impacts on the Code Subsidiary Documents by P207. An assessment of the level of changes required to Code Subsidiary Documents and other Configurable Items has been undertaken, along with the complexity of the changes as detailed below:

Document	Change	Complexity
BSCP27 'Technical Assurance of Half Hourly Metering Systems for Settlement Purposes'	Remove prescribed sampling, checks from BSCP27 for SVA Metering Systems but keep prescriptive process for arranging site visits and reporting (Scope and Sampling restrictions removed from Section 1, prescriptions surrounding categorisation of non-compliances would need to be removed/re-written - section 1.15, prescription regarding checks to be completed removed from Sections 1 and 4, forms in section 4 would need to be updated to reflect new processes and requirements. Sampling process, categorisation of non-compliances will need to be updated in order to reflect new process - Sections 2 and 3). The Process for the Technical Assurance of CVA Metering Systems will remain as currently drafted.	Rewriting
BSCP534 PARMS Techniques'	Some changes of phrasing such as 'will / must to may / could'. Update of the escalation process to ensure that it is risk based.	Minor text amendment
BSCP535 Technical Assurance'	Some changes of phrasing such as 'will / must to may / could'.	Minor text amendment
BSCP537 'Qualification Process for SVA Parties, SVA Party Agents and CVA MOAs'	References to the Panel in relation to the Qualification Process would have to be amended to the PAB	Minor text amendment
CoP4 'Code of Practice for the Calibration, Testing and Commissioning Requirements of Metering Equipment for Settlement Purposes',	Use of will/shall in relation to the TAA might need to be relaxed.	Minor text amendment
BSC Audit Service Description	Current requirement to report to the Panel (as in Section H) - should this change? May need to update to clarify that the BSC Audit can attend meetings only at the request of PAB. Some changes of phrasing such as 'will / must to may / could'.	Minor text amendment
Service Description for SVA Technical Assurance	As BSCP27	Rewriting
TAA User Requirements Specification.	As BSCP27	Rewriting

### **3.6 Interaction with the Implementation of Approved Modification P197**

The Group discussed whether the Qualification Process which will be introduced by Approved Alternative Modification P197 'SVA Qualification Process Review' on the 23 August 2007, and which is currently managed by the Panel (although the Panel has delegated responsibility for this process to the PAB), should be amended so that the PAB is responsible for the process. The Group noted that the Qualification Process replaces the current Accreditation, Certification and Entry Process requirements and these performance assurance techniques are managed by the PAB. The Group discussed why, under Approved Alternative Modification P197 'SVA Qualification Process Review', the responsibility for Qualification had been placed on the Panel. The Group noted that the reason for this was that the PAF Review was progressing at the same time as Modification P197, and at that time, there was a suggestion that the PAB may not exist following a Modification resulting from the PAF Review. Therefore to future proof the solution, the P197 Modification Group agreed that the Panel should be responsible for Qualification.

Since the PAB will now continue to exist under P207, the Group felt that it would be appropriate for the responsibility for Qualification to be placed directly on the PAB in the Code. The Group felt that this would ensure that the Qualification Process is undertaken with reference to the SVA Assurance Objectives.

The Group noted that the new BSCP537 'Qualification Process for SVA Parties, SVA Party Agents and CVA MOAs' that has been developed to describe the Qualification Process will need to be updated to refer to the PAB as opposed to the Panel.

The Group felt that there may be complications if P207 were implemented before P197 as changes to the P197 approved legal text would need to be made before the text came into effect, however, the Implementation Date for P207 will be considered following the receipt of Impact Assessment responses for P207.

### **3.7 Status of Existing Non-Compliances**

Section 3.7 is similar to section 4.5 of the initial Assessment Procedure consultation and section 3.5.1 of the interim report.

The Group discussed the status of existing non-compliances. The Group noted that all participants are required to be compliant with the Code. Therefore, if any participant had an existing non-compliance, this would not be removed with the implementation of P207, even if it was in an area that the REG later considered to be low risk.

The Group agreed that the RAB would evaluate each non-compliance that a participant has when they write each participant's first Risk Management Plan to determine how performance assurance techniques should be applied to the participant in respect of its existing non-compliances. The Risk Management Plans should allow the RAB and the participant to prioritise their efforts on the higher risks; however existing non-compliances may not be completely ignored.

If over time, areas change from being high risk to lower risk, but participants have non-compliances in the area, the same principles would apply and the participant's Risk Management Plans would set out how the performance assurance techniques would be applied in relation to these risks.

The Group noted that this approach is consistent with the approach of the Financial Services Authority (FSA) who use a risk based assurance regime.

A Group member asked how this approach fitted in with the Supply Licence condition that Suppliers must comply with the BSC. It was noted that Suppliers must currently comply with the BSC and mechanisms for breach of this compliance remain available. It was noted that the Authority may wish to consider this point as part of any Supply Licence review.

### **3.8 Consideration of the Next Steps if P207 is Approved**

The Modification Group agreed that it would be down to the PAB to determine whether any Modifications are required to introduce new performance assurance techniques in respect of particular risks following the implementation of P207. The Group agreed at this stage, the next step would be to ensure that there is enough education to the industry and the PAB regarding the new process, should P207 be approved.

### **3.9 Potential Alternative Solutions**

#### **3.9.1 Views of Respondents to Initial Assessment Procedure Consultation**

Two respondents suggested that changes should be made to the two SVA Assurance Objectives. One respondent suggested that the first objective should be updated to:

'Energy is allocated efficiently and equitably between Suppliers, to an acceptable level of accuracy, that is derived from the aggregated consumption of Metering Systems for which each Supplier is responsible and that the amount of GSP [Grid Supply Point] Group correction is minimised'.

Another respondent suggested that the second SVA Objective is a sub-set of the first objective since they felt that you couldn't achieve the first objective without achieving the second.

One respondent suggested that the 'Reduced PAF – No Central Admin' option that was discussed during the PAF review should be discussed by the Modification Group as a potential Alternative Modification.

One respondent suggested that there should be a Master Registration Agreement (MRA) representative on the Panel Committees responsible for risk evaluation and risk assurance in a similar way to ELEXON having a voting right under the MRA.

#### **3.9.2 Modification Group's Discussions**

A number of the suggestions raised by consultation responses could have been tweaks to the Proposed Modification as opposed to an Alternative Modification. Therefore, the Group's discussions around the changes to the SVA Assurance Objectives are set out in section 3.1.3.2 and the Group's discussions around the suggestion of a MRA representative are included in section 3.3.3.3. The potential alternative solutions discussed by the Group are as follows:

##### **3.9.2.1 Representative Panel Committee Responsible for Risk Evaluation**

One Group Member suggested that an alternative solution should be formed whereby there would be two Panel Committees undertaking the roles of risk evaluation and risk assurance (similar to that discussed initially as part of the Proposed Solution). The Panel Committee responsible for Risk Evaluation would be made up of members who represented their Parties' views. There would potentially be 8 members on this Committee; seven Suppliers and one LDSO Representative. The LDSO representative could be part of a Trade Association. Members would be appointed by the Panel, who would have to ensure that both large and small Suppliers were represented. Membership could rotate so that each small Supplier would not have to make a monthly commitment. The Panel Committee responsible for risk assurance would be the PAB, with the same make up as it is currently; i.e. members acting independently to their companies views. The process itself would be the same as that under the Proposed Modification.

The Group Member suggesting this solution felt that the advantages of it would be the members of the Committee would be looking forward as to the risk occurring in the future (whereas the PAB looks at the issues that have occurred in the past). It was suggested the members would be better placed to establish the risks that may occur in the industry if they represented their companies' views than if they acted independently.

The majority of the group felt that this suggestion would not be better than the Proposed Modification for the reasons discussed when representative Panel Committees were discussed under the Proposed

Modification. These reasons are set out in section 3.3. Some members of the Group agreed in principle with this Panel Committee being formed of members representing their Companies' views for the reasons discussed in section 3.3, however felt that the issue of representative Panel Committees should be taken forward separately from P207.

The Group therefore agreed by majority that this solution should not be taken forwards as an Alternative solution as it does not better address the defect than the Proposed Modification.

### **3.9.2.2 Minimal changes to the Code and major changes to BSCP534 'PARMS Serials'**

One member of the Group felt that the changes proposed by P207 could be achieved with minimal changes to the Code and more extensive changes to BSCP534. BSCP534 lists an escalation cycle with severity levels of 1-7. It also gives guidance as to how the PAB should measure participants against the severity levels. The Group member therefore suggested that changes to BSCP534 may be a simpler way to resolve the defect. The methodology for assessing risk could also be recorded in this BSCP.

The Group noted that this solution was not discussed under the PAF Review. The Group also noted that BSCP534 does not currently describe the detail of the risk evaluation process, and the consultations that have been suggested as part of this process. The Group therefore felt whilst this could be a way of implementing P207, the process and changes developed under the Proposed Modification ensure full clarity of the Process for Participants. The Group therefore unanimously agreed not to take this potential alternative solution forward as the solution described in the Proposed Modification is likely to be more transparent than making changes to BSCP534. The Group noted that under the Proposed Modification, BSCP534 would be updated to complement the proposed process.

### **3.9.2.3 Reduced PAF – No Central Admin Option from the PAF Review**

The PAF Review briefly discussed a solution whereby Suppliers would establish an assurance regime by working collectively outside the BSC. The PAF Review Core Working Group did not define this solution in any depth, and a majority of respondents to the consultation undertaken as part of the PAF Review were more supportive of a Risk Based Approach to assurance than the Reduced PAF, no central admin option. One respondent to the initial P207 consultation suggested that the Modification Group should consider this option and develop it into an Alternative Modification. After further discussion, the respondent felt that this option should no longer be pursued as an Alternative Modification. Therefore the Group agreed that it was not appropriate to form an Alternative Modification around this suggestion.

## **3.9.3 Provisional Thinking Provided by the Authority**

### **3.9.3.1 Representative Panel Committees Responsible for Risk Evaluation and Risk Assurance**

At the Panel meeting on the 11 January 2007, the Panel considered the P207 interim report and requested Provisional thinking from the Authority in relation to Panel Committees being responsible for Risk Evaluation and Risk Assurance being formed of members that represented their company or a particular constituency as opposed to being independent of their companies' views. The Authority commented that there may be potential problems with manageability and conflicts of interest associated with allowing Panel Committee Members responsible for risk evaluation and risk assurance to represent their companies' views. The Authority suggested that, in principle, it is more supportive of independent Committee Members who represent constituencies than it is of company representatives. The Authority also questioned whether the debate over the form of Panel Committees is logically tied into the performance assurance framework, or whether it is a broader issue that should be discussed separately. The Panel therefore directed the Modification Group to not consider representative Panel Committees under P207.

### **3.9.4 Modification Group's Further Discussions**

The Group noted the direction provided by the Panel and noted that representative Panel Committees need not be discussed further under P207.

### **3.10 Other Questions and Comments raised during the Initial Assessment Procedure Consultation**

One respondent stated that they did not support P207 and had a number of questions. The questions and the Modification Groups answers are detailed below:

1) Under such a process who would be responsible for determining the scope of the BSC Audit? The Modification Group agreed that the Panel would continue to be responsible for determining the scope of the BSC Audit.

2) Under such a process who would be responsible for determining the scope of the Technical Assurance (TA) checks? The Modification Group agreed that the PAB would continue to be responsible for determining the scope of TA checks.

3) Under such a process who would be responsible for determining the scope of the work of the Technical Assurance Agent (TAA)? The Modification Group agreed that the PAB would continue to be responsible for determining the scope of the work of the TAA.

4) Appendix 2 example. In the instance that "naming to peers" becomes appropriate, how will this work. Would all agents be notified of all other agents and similarly Suppliers of Suppliers (i.e. each Party type's own peers) or would "Parties" only receive information on both other parties and also Agents? The Modification Group agreed that there would be no change to the current process in this aspect. Currently naming to all peers (all other industry members) would only apply following the Removal of Accreditation Process or following a breach of the Code due to persistent and material non-compliance. These provisions have never been used. If there was a desire to use the naming to peers process differently, e.g. as set out in the example, new provisions would have to be put in place to allow this, potentially via a Modification Proposal or a Change Proposal, which may be recommended by the PAB if P207 were approved.

5) Appendix 2 example, Techniques – the example notes the setting up of a "Supplier Group" as a "common assurance technique" for a generic Supplier issue. We appreciate that this may be an example only at this stage however would like to take the opportunity to recommend that any such group be extended to include representation from all types of Parties involved in the process in question, in order to fully understand and address the issue. The Modification Group noted this point.

6) Appendix 2 example, - the example notes advising "associated Suppliers" of an Agent's issues – please can you advise as to how this list will be decided upon. The Modification Group agreed that there would be no change to the current process in this aspect. The relationship between Suppliers and agents is confirmed to ELEXON by the Suppliers and their agents. If there is a disagreement of an association between a Supplier and an agent, then ELEXON records the Supplier's view as they are the signatory to the Code.

One respondent stated that they had thought that P207 was a relatively straightforward introduction of more effective governance arrangements. This respondent suggested that the Modification Group may be seeking to over-compensate in terms of protective measures that ensure that there is no 'naming and shaming' of non-compliant Parties, justified or not. The respondent felt that P207 is intended to improve compliance significantly, improve data quality significantly and reduce Settlement costs considerably and felt that P207 would save money in the long term. The Modification Group discussed what was meant by the term reducing costs and noted that it was felt that by prioritising the resolution of more risky issues, this should lead to these issues being resolved resulting in cost savings that could be passed onto consumers. The Group noted this point.

One respondent felt that all performance assurance non-compliance issues should be addressed, even under a risk based approach. The Modification Group noted this point.

One respondent felt that details relating to the risk based assurance regime should be actively reported by ELEXON and not just placed on the website requiring participants to look for these. The Modification Group noted this point and has agreed that ELEXON should notify the industry when these details are placed on the ELEXON website.

One respondent suggested that at the moment, they could not envisage any cost savings under P207 and felt that the added complexity of the changes may create costs. The Modification Group noted this point.

One respondent felt that the existing PAB have the necessary skills for the work that they do and did not feel that there is a case for change. The Modification Group noted this point.

One respondent suggested that the Modification seems to be slightly premature, pending the conclusions of the Industry Codes Compliance Review that is currently being carried out by Ofgem. The Modification Group noted this point and noted that since the Modification has been raised, that they have a duty to progress it.

One respondent felt that without moving to a representative approach there is no benefit to P207 being implemented and it would not be an improvement on the status quo. This respondent felt that independence and risk evaluation do not work well together as they felt that it is likely that the Independent Experts would not have current experience of the industry and would therefore be unable to adequately assess the risks as effectively as participants who can speak openly about the issues their organisations face. The respondent felt that it is likely that this approach would lead to the Risk Evaluation Register being identical to the BSC Audit issues lists which would deliver no additional value to the current process. The respondent felt that if the Risk Evaluation Group were representative then they would be able to work proactively to resolve current issues with assurance. The respondent felt that if multiple Parties are affected by the same issue then this can be highlighted by the REG and a common approach agreed which would help the RAB to ensure appropriate assurance techniques are utilised across all affected Parties. The Risk Management Plans agreed with parties would then provide additional assurance that all parties are being treated fairly. The Modification Group noted this point.

One respondent stated that they felt that this proposal merely adds more levels of bureaucracy. They felt that it does not address current underlying issues and had concerns as to exactly how effective it would be. The respondent felt that this could be a costly exercise to create a function that already appears to exist within the Code. The Modification Group noted this point.

One respondent felt that the Panel should undertake a periodic review of the population of their Panel Committees including a requirement for a proportion of Panel Members to have worked in the industry and a proportion to be from outside the industry. The Modification Group noted this point but agreed that the formation of Panel Committees is down to the Panel.

One respondent stated that their initial impression of P207 was that it seems to be more complicated than the current regime, but hoped with familiarity that the process would prove to be efficient. The Modification Group noted this point.

One respondent suggested that the Modification Group should further explore how it is proposed that performance be managed, i.e. at a Party ID level or Supplier ID level? The Modification Group agreed that this is based on where the obligation lies and would be up to the responsible Panel Committee.

One respondent stated that the phrase included in section 3.4 of the initial Consultation document that attendees at open Panel Committee meetings could "speak at the invitation of the chairperson" is an antiquated approach when someone is discussing your Party. The Modification Group noted that this is the way that open Committees are currently run under the Code, where a person is not a member of that committee.

One respondent asked when the central implementation costs and the ongoing operating costs of a revised PAF would be available. These would be added to the Assessment report following the industry Impact Assessment which is scheduled to run at the same time as this Assessment Procedure consultation. The Modification Group agreed that an impact assessment could not be sought until the full solution was defined.

One respondent suggested that there would be limited costs anticipated apart from the greater effort allowed for more analysis of problems to ensure swifter rectification with plans agreed by REG and RAB appropriately, to resolve issues raised. This respondent felt that costs would be absorbed. The Modification Group noted this point.

One respondent felt that looking at the solution described in the initial consultation, they could not see how this would provide an improvement above the current process, particularly in securing value to the company or the industry; however, the respondent stated that they remained open minded and would continue to support the modification to its conclusion before making a recommendation from the company. The Modification Group noted this point.

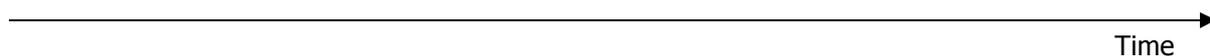
### 3.11 Implementation Approach and Transitional Arrangements

#### 3.11.1 Modification Group’s Discussions

The Modification Group had an initial discussion about the implementation approach for P207 which was included in the initial Assessment Procedure Consultation and the Interim Report. The initial implementation approach was based on two new Panel Committees being formed as the REG and the RAB. Since the Group has agreed that the PAB will manage the new process, the revised implementation approach is shown in the

<p><u>P207 Implementation Date</u></p> <p>All Code Changes</p> <p>New BSCP for new process created if required</p> <p>PAB Terms of Reference updated</p>	<p>PAB education of new process / assessing risks if necessary</p> <p>Define and consult on methodology</p> <p>Produce, consult on and obtain approval of Risk Evaluation Register</p> <p>Produce, publish and obtain approval of Operating Plan</p> <p>Produce Risk Management Plans allowing discussion with participants. PAB approve risk management Plans</p> <p>Performance Assurance techniques continue to be applied as they are currently</p>	<p><u>P207 Effective Date</u></p> <p>Change CSDs relating to performance assurance techniques</p>	<p>Assurance techniques applied as per Risk Management Plans</p> <p>Participants can Query / Appeal Risk Management Plans</p>
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diagram below:



The implementation approach for P207 will see two separate sets of changes being introduced. On the Implementation Date, all changes to the Code will be made. The changes will include the new process and PABs role in this, adding the SVA Objectives and the changes that will need to be made to the Code to introduce flexibility into the techniques. The changes to the techniques will include clauses to say that they do not come into effect until the effective date of P207. If it is determined that a new BSCP is required to

document the new process then this will be produced for the P207 Implementation Date. The changes required to the PAB's Term of Reference will also be produced for the P207 Implementation Date.

Following the Implementation Date, the PAB will produce the Risk Evaluation Register, the Operating Plan and approve the Risk Management Plans, in line with the Code requirements. If necessary, there may need to be education provided to the PAB, the Panel, and the industry at this stage. Whilst the PAB is producing these documents, they will continue to apply current assurance techniques in line with the current process.

The effective date of P207 is the date at which all the changes to the current assurance techniques that are included in Code Subsidiary Documents will take effect and from this date, the PAB will begin to apply the performance assurance techniques to participants as set out in their Risk Management Plans. This date would coincide with the time that all the Risk Management Plans have been approved by the PAB. Should a participant wish to Query or Appeal their Risk Management Plan, then this is likely to occur after the P207 effective date, however the participant would be bound by the timescales set out in section 2.2.3 (and so this could be before the P207 effective date if appropriate).

The Implementation Date and the effective date will be set following receipt of the Impact Assessment Responses. The Implementation Date will be an actual date, but the effective date may be a date or may be an event (e.g. approval of the Risk Management Plans by the PAB).

The implementation approach ensures that the process by which the Risk Evaluation Register, Operating Plan and Risk Management Plans are produced is contained in the Code whilst these documents are being produced. However, the PAB would not be able to apply the techniques flexibly until after the P207 effective date.

#### **4 ASSESSMENT OF MODIFICATION AGAINST APPLICABLE BSC OBJECTIVES**

This section outlines the initial views of the Modification Group regarding the merits of P207 against the Applicable BSC Objectives.

The initial **MAJORITY** view of the Modification Group was that the Proposed Modification **WOULD** better facilitate the achievement of Applicable BSC Objectives (b), (c) and (d) when compared to the current Code baseline, for the following reasons:

##### **Applicable BSC Objective (b) - The efficient, economic and co-ordinated operation of the GB Transmission System:**

- The Modification will allow a greater focus on the more material issues in Settlement. This will lead to the quicker resolution of these issues which will feed through into better demand forecasting.

##### **Applicable BSC Objective (c) - Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity:**

- The PAB will be able to identify and highlight risks that are seen as significant. This will mean that SVA participants can concentrate on resolving these risks so that energy is allocated more equitably between Suppliers and that the transfer of Metering Systems between Supplier hubs is underpinned by improved data quality;
- Issues in high risk areas should be resolved sooner as they will be seen as higher priority;
- Participants will be able to focus resource onto significant risks as opposed to ensuring compliance with every insignificant risk which will lead to increased efficiency of the overall Settlement Process at market participants;

- Addressing significant risks should also encourage new participants that enter into the market to have more robust systems as their awareness of the significant risks would allow them to address or at least mitigate these risks prior to market entry; and
- The new process will be clearer and more transparent than the current process. This will be particularly achieved by defining the SVA Assurance Objectives. Under the new process, the PAB will be more accountable to Parties meaning that performance assurance techniques will be more consistently applied.

**Applicable BSC Objective (d) - Promoting efficiency in the implementation and administration of the balancing and Settlement arrangements:**

- BSCCo will be able to focus resource onto identifying and helping the industry to resolve significant risks as opposed to all non-compliances with the Code. This will lead to increased central efficiencies.

The initial **MINORITY** view of the Modification Group was that the Proposed Modification **WOULD NOT** better facilitate the achievement of Applicable BSC Objectives (c) and (d) when compared to the current Code baseline, for the following reasons:

**Applicable BSC Objective (c) - Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity:**

- Participants are obliged to be fully compliant with the Code, and risk based approach to assurance will not change this. Therefore a risk based approach to assurance will not achieve anything.

**Applicable BSC Objective (d) - Promoting efficiency in the implementation and administration of the balancing and Settlement arrangements:**

- The proposed process will lead to greater central costs due to increased bureaucracy.

The Group agreed that the Proposed Modification would have a neutral impact on Applicable BSC Objective (a).

One member of the Group noted that he felt that the current big issues in Settlement may be in a better state now if a risk based approach to Performance Assurance had been applied in the past.

Another Group Member suggested that the increased efficiency of the new process will extend beyond the Code to consumers.

Two members suggested that the move away from a Panel Committee formed of members that represented their company's views means that this Modification is not as effective as it could have been.

## 5 TERMS USED IN THIS DOCUMENT

Other acronyms and defined terms take the meanings defined in Section X of the Code.

Acronym/Term	Definition
BMRA	Balancing Mechanism Reporting Agent
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
BSCP	Balancing and Settlement Code Procedure

<b>Acronym/Term</b>	<b>Definition</b>
CDCA	Central Data Collection Agent
CoA	Change of agent
CRA	Central Registration Agent
CSD	Code Subsidiary Document
CVA	Central Volume Allocation
ECVAA	Energy Contract Volume Aggregation Agent
FAA	Funds Administration Agent
GSP	Grid Supply Point
HH	Half Hourly
IWA	Initial Written Assessment
KPI	Key Performance Indicator
NHH	Non-Half Hourly
PAB	Performance Assurance Board
PAF	Performance Assurance Framework
RAB	Risk Assurance Board
REG	Risk Evaluation Group
SAA	Settlement Administration Agent
SMRA	Supplier Meter Registration Agent
SVA	Supplier Volume Allocation
SVAA	Supplier Volume Allocation Agent
SVAO	Supplier Volume Allocation Agent Operations
TAA	Technical Assurance Agent
TDC	Trading Disputes Committee
VASMG	Volume Allocation Standing Modification Group

## 6 DOCUMENT CONTROL

### 6.1 Authorities

Version	Date	Author	Reviewer	Reason for Review
0.1	18/01/07	Katie Wilkinson	David Jones / Adam Richardson / Natasha Hall	For review of Proposed Solution
0.2	12/02/07	Katie Wilkinson	David Jones	For Technical Review
0.3	16/02/07	Katie Wilkinson	Modification Group	For Modification Group review
0.4	21/02/07	Katie Wilkinson	Colin Berry	For Quality Review
0.5	23/02/07	Katie Wilkinson		Incorporating Comments
1.0	23/02/07	P207 Modification Group		For industry consultation
1.0	23/02/07	P207 Modification Group		For impact assessment

## APPENDIX 1: APPLICABLE BSC OBJECTIVES

For reference the Applicable BSC Objectives, as contained in the Transmission Licence, are:

- (a) The efficient discharge by the licensee [i.e. the Transmission Company] of the obligations imposed upon it by this licence [i.e. the Transmission Licence];
- (b) The efficient, economic and co-ordinated operation of the GB transmission system;
- (c) Promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
- (d) Promoting efficiency in the implementation and administration of the balancing and settlement arrangements.

## APPENDIX 2: PROCESS FOLLOWED

Copies of all documents referred to in the table below can be found on the BSC Website at: [ELEXON - Modification Proposal P207](#)

Date	Event
29/09/06	Modification Proposal raised by energywatch
12/10/06	IWA presented to the Panel
16/10/06	First Assessment Procedure Modification Group meeting held
2/11/06	Second Assessment Procedure Modification Group meeting held
15/11/06	Third Assessment Procedure Modification Group meeting held
24/11/06	Initial Assessment Procedure Consultation issued
08/12/06	Initial Assessment Procedure Consultation responses returned
12/12/06	Forth Assessment Procedure Modification Group meeting held
11/01/07	Interim Report presented to the Panel. Panel Request Authority provisional thinking
12/01/07	Provisional thinking requested from the Authority
09/01/07	Fifth Assessment Procedure Modification Group meeting held
29/01/07	Sixth Assessment Procedure Modification Group meeting held
30/01/07	Provisional thinking received from the Authority
08/02/07	Authority Provisional thinking presented to the Panel. Panel directs Modification Group
12/02/07	Seventh Assessment Procedure Modification Group meeting held

## ESTIMATED COSTS OF PROGRESSING MODIFICATION PROPOSAL<sup>19</sup>

<b>Meeting Cost</b>	£4,000
<b>Legal/Expert Cost</b>	£0
<b>Impact Assessment Cost</b>	£5,000
<b>ELEXON Resource</b>	125 man days £38,700

The costs have changed to those quoted in the Initial Written Assessment due to the extra analysis and initial consultation required surrounding P207 and the five extra P207 Modification Group meetings that are planned for P207.

### MODIFICATION GROUP MEMBERSHIP

Member	Organisation	16/10 /06	02/11 /06	15/11 /06	12/12 /06	09/01 /07	29/01 /07	12/02 /07
David Jones	ELEXON (Chairman)	✓	✓	✓	✓	✓	✓	✓
Katie Wilkinson	ELEXON (Lead Analyst)	✓	✓	✓	×	✓	✓	✓
Carole Pitkeathley	energywatch (Proposer)	✓	×	×	×	✓	✓	✓
Rosie McGlynn	E.ON UK	✓	✓	✓	✓	✓	✓	✓
Richard Harrison	npower	✓	✓	✓	✓	✓	✓	✓
Colin Prestwich	Smartestenergy	✓	✓	✓	✓	✓	✓	✓
Chris Carberry	Scottish Power	×	✓	✓	✓	✓	✓	✓
Andrew Latham	Centrica	✓	✓	✓	✓	×	✓	✓
Sue Edwards	Scottish and Southern	✓	✓	×	✓	✓	✓	×
James Evans	British Energy	✓	✓	✓	✓	✓	✓	✓
Craig Tate	Gaz de France	×	✓	✓	✓	✓	✓	✓
Frank Welsh	United Utilities	×	×	✓	×	×	×	×

<sup>19</sup> Clarification of the meanings of the cost terms in this appendix can be found on the BSC Website at the following link:  
[http://www.elexon.co.uk/documents/Change\\_and\\_Implementation/Modifications\\_Process\\_-\\_Related\\_Documents/Clarification\\_of\\_Costs\\_in\\_Modification\\_Procedure\\_Reports.pdf](http://www.elexon.co.uk/documents/Change_and_Implementation/Modifications_Process_-_Related_Documents/Clarification_of_Costs_in_Modification_Procedure_Reports.pdf)

Attendee	Organisation	16/10 /06	02/11 /06	15/11 /06	12/12 /06	09/01 /07	29/01 /07	12/02 /07
Natasha Hall	ELEXON (Lawyer)	✓	✓	✓	✓	✓	✓	✓
Adam Richardson	ELEXON (Technical Expert)	✓	✓	✓	×	✓	✓	✓
Ysanne Hills	ELEXON (Lead Analyst)	✓	✓	✓	✓	×	×	×
Nicholas Rubin	Ofgem	✓	✓	✓	✓	✓	×	✓
Abid Sheikh	energywatch	×	✓	✓	✓	×	×	×
John Sykes	BSC Panel	✓	×	✓	×	✓	✓	✓
James Kelly	SAIC	✓	×	×	×	×	×	×
Mark Gribble	LogicaCMG	✓	×	×	×	×	×	×
Isabel-Scott Skinner	ELEXON (Technical Expert)	×	×	×	✓	×	×	×
Eddie Wall	Centrica	×	×	×	×	✓	×	×
Richard Hall	Ofgem	×	×	×	×	×	✓	×
Tracy Bennett	ELEXON (Lawyer)	×	×	×	×	×	×	✓

## MODIFICATION GROUP TERMS OF REFERENCE

The Modification Group shall consider and/or include in the Assessment Report as appropriate:

- The role of the Panel and Panel Committees, including existing and potential new Panel Committees;
- The high level process for P207 including the key deliverables and timescales for these deliverables;
- CVA performance assurance;
- Impact on the current assurance techniques to ensure they support a risk based governance;
- Legal Text and changes required to Code Subsidiary Documents;
- The interaction with the implementation of P197;
- The Implementation Approach and transitional arrangements;
- The status of existing non-compliances; and
- A consideration of the next steps if P207 is approved.

The Modification Group shall be mindful that this Modification was preceded by the PAF Review and the Modification seeks to reflect the outcomes of that review and not revisit that work. This review was led by a Core Working Group of industry members and included two industry consultations.

### APPENDIX 3: RESULTS OF INITIAL ASSESSMENT

#### a) Impact on BSC Systems and Processes

BSC System / Process	Impact of Proposed Modification
Performance Assurance	The Performance Assurance process is substantially impacted as performance assurance would be based on risks as opposed to ensuring that all requirements in the BSC are complied with.

#### b) Impact on BSC Agent Contractual Arrangements

BSC Agent Contract	Impact of Proposed Modification
LogicaCMG (TAA)	The TAA is affected by P207 as the scope of Technical Assurance of SVA Metering Systems would be based on 'at risk' areas that are re-assessed on a regular basis. Contracted services would need to have flexibility built into Service Descriptions in order to be able to vary the scope and scale of work undertaken from time to time in line with an industry assessment of risk.
PwC (BSC Auditor)	The BSC Auditor is affected by P207 as the scope of the BSC Audit would be based on key 'at risk' areas that are re-assessed on a regular basis. Contracted services would need to have flexibility built into Service Descriptions in order to be able to vary the scope and scale of work undertaken from time to time in line with an industry assessment of risk.

#### c) Impact on BSC Parties and Party Agents

BSC Parties and Party Agents are currently subject to a range of performance assurance techniques and so would be impacted by the extent of performance assurance applied to them. Parties and Party Agents would need to input into the risk assessment process including the consultation on the methodology for risk evaluation and the risks identified to help determine what the 'at risk' areas of Settlement are. Parties and Party Agents may need to redeploy their activities to adjust to any transitional arrangements.

#### d) Impact on Transmission Company

No impact identified.

#### e) Impact on BSCCo

Area of Business	Impact of Proposed Modification
Performance Assurance	<p>The Performance Assurance Team would have to support the PAB in producing its methodology for assessing risks, producing and updating the Risk Evaluation Register and the Operating Plan and producing the Annual Report in line with the process described in section 2 above, both initially and on an ongoing basis. The Performance Assurance Team would also have to produce the Risk Management Plans for each participant in conjunction with the Participant and would have to support the Query and Appeal of these Risk Management Plans.</p> <p>The Performance Assurance Team would have to manage the performance assurance process differently, ensuring that the</p>

Area of Business	Impact of Proposed Modification
	<p>techniques are applied in line with the risk assessment and the individual Risk Management Plans.</p> <p>More work / analysis may be required to determine (and monitor) the 'at risk' areas of Settlement depending on the process developed by the PAB.</p>
Communications	<p>BSCCo would be required to update the BSC Website, guidance notes and information sheets.</p> <p>BSCCo would also be required to provide education of the new PAF to the industry and Panel and Panel Committees.</p>
Implementation	<p>Changes to the Code and Code Subsidiary Documents as detailed below would need to be made. Changes of the PAB Terms of Reference would need to be made. Education about the new process would need to be provided to the PAB and the industry.</p>

#### f) Impact on Code

Code Section	Impact of Proposed Modification
B 'The Panel'	<p>Section B would need to be amended to include the new proposed process, and introduce the SVA Objectives.</p>
C 'BSCCo and its Subsidiaries'	<p>Section C would need to be amended to ensure that the requirements in relation to monitoring Parties to check that they are not in Default or likely to go into Default are compatible with a risk based approach to assurance.</p>
F 'Modification Procedures'	<p>Section F would need to be amended to allow the PAB to recommend to the Panel that Modifications be raised in areas relating to performance assurance.</p>
H 'General'	<p>Section H would need to be amended to ensure that the requirements in relation to the BSC Audit are compatible with a risk based approach to assurance. References to defaults would also need to be amended to allow the Panel and Panel Committees to be more flexible.</p>
L 'Metering'	<p>Section L would need to be amended to ensure that the requirements in relation to the Technical Assurance of Metering Systems are compatible with a risk based approach to assurance.</p>
X 'Definitions and Interpretation'	<p>New definitions in relation to the risk based approach to performance assurance may be required.</p>

#### g) Impact on Code Subsidiary Documents

Document	Impact of Proposed Modification
BSCP27 'Technical Assurance of Half Hourly Metering Systems for Settlement Purposes'	<p>BSCP27 would have to be amended to ensure that the Technical Assurance of SVA Metering Systems is compatible with a risk based approach to assurance.</p>

Document	Impact of Proposed Modification
BSCP534 'PARMS Techniques'	BSCP534 would have to be amended to ensure that it is compatible with a risk based approach to assurance. In particular, the appendix relating to the escalation process would need to reference the SVA Assurance Objectives and base the escalation process on the risk of participants in relation to those objectives.
BSCP535 'Technical Assurance'	BSCP535 would have to be amended to ensure that it is compatible with a risk based approach to assurance, for example references to rectification plans being provided for all non-compliances may need to be amended.
BSCP537 'Qualification'	BSCP537 is a new BSCP which will be introduced with the implementation of Approved Alternative Modification P197 on the 23 August 2007. BSCP537 would have to be amended so that the PAB (as opposed to the Panel) is responsible for the Qualification Process.
New BSCP?	There may need to be a new BSCP will to contain the P207 process (e.g. the formation of the Risk Evaluation Register, Operating Plan, Risk Management Plans and Appeals process). This will be confirmed when the legal text is finalised.
BSC Auditor Service Description	The BSC Auditor Service Description would need to be updated to ensure that it is flexible enough to allow a risk based approach to assurance. This would also need to be clarified to state that the BSC Auditor can attend meetings of the PAB at their request.
SVA TAA Service Description	The TAA Service Description would need to be updated to ensure that it is flexible enough to allow a risk based approach to assurance for SVA Metering Systems.
CoP4 'Code of Practice for the Calibration, Testing and Commissioning Requirements of Metering Equipment for Settlement Purposes'	The use of would and shall in relation to the TAA might need to be relaxed.

#### **h) Impact on Core Industry Documents and Other Documents**

No impact identified.

#### **i) Impact on Other Configurable Items and Other Items**

Document	Impact of Proposed Modification
TAA User Requirements Specification	The TAA User Requirements Specification would need to be updated to ensure that it is flexible enough to allow a risk based approach to assurance for SVA Metering Systems.
PAB Term of Reference	The PAB Terms of Reference will need to be amended to reflect the changes to their functions.
Guidance Notes	Guidance Notes will need to be drafted to provide the industry, the PAB and the Panel of details of the new Process.

**j) Impact on BSCo Memorandum and Articles of Association**

No impact identified.

**k) Impact on Governance and Regulatory Framework**

No impact has been identified on the governance and regulatory framework. Whilst the title of P207 refers to the introduction of a new governance regime, this would be within the BSC. It is not envisaged that P207 would impact the governance and regulatory framework outside of the BSC.

**APPENDIX 4: RESULTS OF FIRST ASSESSMENT PROCEDURE CONSULTATION**

14 responses (representing 52 Parties and 15 non-Parties) were received to the P207 Initial Assessment Procedure consultation.

A summary of the consultation responses is provided in the table below (bracketed numbers represent the number of Parties and non-Parties represented by respondents).

Q	Consultation question	Yes	No	Neutral
1.	Do you believe that the REG should be comprised of independent industry experts or Party representatives?	Independent Experts 11 (40,15)	Party representatives 3 (12,0)	
2.	If the REG was comprised of Party representatives, for making decisions on the Risk Evaluation Register, do you believe that there should be one vote per Party or do you believe votes should be based on market shares (or other voting mechanism (please describe))?	One Vote Per Party 7 (13,9)	Market shares 1 (10,0)	Other 4 (23,2)
3.	If the REG was comprised of Party representatives, which of the following types of BSC Signatories do you believe should be represented on the committee? <ul style="list-style-type: none"> <li>• All BSC Signatories (BSC)</li> </ul> If , no, which of the following should be represented: <ul style="list-style-type: none"> <li>• Licenced Distribution System Operators (LDSOs)</li> <li>• Interconnector Administrators (IAs)</li> <li>• Interconnector Error Administrators (IEAs)</li> <li>• Transmission Company (TC)</li> <li>• Generator Trading Parties (GTP)</li> <li>• Interconnector User Trading Parties (IUTP)</li> <li>• Non-Physical Trading Parties (NPTP)</li> <li>• Supplier Trading Parties (STP)</li> <li>• ECVNAs &amp; MVRNAs</li> </ul>	All BSC signatories 6 (13,6)	Some BSC Signatories 4 (28,2)  in particular:  LDSOs 3 (26,2)  Transmission Company 1 (10,0)  Generators 2 (20,0)  Suppliers 5 (37,2)	
4.	Do you believe that the BSC Auditor should sit as a non-voting member of the REG or should be invited to attend the REG as and when the	Permanent seat	Invited as Required	

Q	Consultation question	Yes	No	Neutral
	REG determine their assistance is required?	4 (2,11)	10 (50,4)	
5.	Do you agree that the RAB should be comprised of independent industry experts?	Independent experts 12 (41,15)	Party Representatives 2 (11,0)	
6.	Do you believe that the REG should have the right to recommend to the Panel that a Modification should be raised in an area relating to performance assurance?	12 (45,15)	2 (10,0)	
7.	Do you believe that the RAB should have the right to recommend to the Panel that a Modification should be raised in an area relating to performance assurance?	7 (30,13)	7 (22,2)	
8.	Do you agree that the responsibility for Risk Assurance should be operated by a new body called the Risk Assurance Board, as opposed to the Performance Assurance Board (PAB) in its current form or re-named as the RAB? If no, please indicated whether the PAB should continue with this function as the PAB, or re-named as the RAB.	New body called the RAB 9 (26,9)	PAB renamed as the RAB 4 (20,6)	PAB carried out role, retaining name of PAB 1 (5,0)
9.	Do you believe that performance assurance of the CVA market should be written into the Code as high risk and therefore requiring the same level of assurance as is currently applied, or do you believe that the risks associated with CVA Assurance should be determine by the REG and the assurance techniques applied determined by the RAB?	CVA Assurance written into the Code as high risk 10 (42,8)	CVA Assurance determined by the REG and RAB 3 (10,1)	Other 1 (0,6)
10.	Do you believe that all participants (Parties and Party Agents) should have the right to query their Risk Management Plans with the RAB?	13 (47,15)		See response 1 (5,0)
11.	Do you agree with the criteria (set out in section 3.2.3 of the consultation document) under which Risk Management Plans can be queried with the RAB?	11 (36,15)	3 (16,0)	
12.	Do you believe Parties should have the right to appeal their Risk Management Plans to the Panel?	14 (52,15)		
13.	Do you believe Party Agents should have the right to appeal their Risk Management Plans to the Panel via an associated Supplier (i.e. one who shares the 'risk' and associated performance assurance technique)?	13 (47,15)	1 (5,0)	
14.	Do you agree with the criteria (set out in section 3.2.4 of the consultation document) under which Parties can appeal their Risk Management Plans to the Panel?	12 (46,15)	2 (6,0)	

Q	Consultation question	Yes	No	Neutral
	Please give rationale.			
15.	Do you believe Parties, and Party Agents via an associated Supplier, should have the right to appeal their Risk Management Plans to the Authority?	12 (41,14)	2 (11,1)	
16.	Do you agree with the criteria (set out in section 3.2.4 of the consultation document) under which Parties can appeal their Risk Management Plans to the Authority?	11 (31,14)	2 (11,1)	See response 1 (10,0)
17.	Do you believe there are any alternative solutions that the Modification Group has not identified and that should be considered?	3 (16,0)	11 (36,15)	
18.	Are there any further comments on P207 that you wish to make?	10 (44,18)	4 (8,7)	

Details of the arguments made by respondents can be found in Section 3, along with the Modification Group's consideration of these arguments. Full copies of the consultation responses are attached as a separate document, Attachment A.

## APPENDIX 5: EXAMPLE OF THE NEW RISK BASED PERFORMANCE ASSURANCE PROCESS

This appendix seeks to describe, by way of a simplified example, the way that the new process could operate in practise.

This scenario assumes that P207 has been in place for one year. The REG and the RAB have been set up and produced and had approved their initial Risk Evaluation Register and Operating Plans. The RAB has produced Risk Management Plans for all participants and has applied them for one year.

The following performance assurance Techniques are available for use by the RAB (where these are not available at the moment, Modifications would have been raised approved and implemented to introduce the new techniques):

- Qualification (and Re-Qualification);
- Key Performance Indicators;
- Risk based Audit;
- Targeted Audit;
- Escalation to Committee (initially to the RAB, with provision to escalate to the BSC Panel);
- Naming to Peers / Public / Ofgem;
- Notification to Associated Suppliers; and
- Development and Progression of Rectification Plans.

The following participants act in the SVA market:

- Suppliers:
  - Watt Energy
  - Ample Savings

- Business Joule
- Ohm Energy
- Supplier Agents:
  - Metering Hertz
  - Tesla Services

The process would be as follows (the timeline of events used in this example has been set out for indicative purposes only):

- **1st June 2008** – the BSC Auditor publishes its report following a risk-based audit. There are 3 issues in the Opinion, 3 in the Statement of Significant Matters (SSMs) and 300 other issues.

Issue Status	Issue Description	Issue Relates To...
BSC Audit Opinion	Energisation Status Mismatches	<b>Industry-wide Issue</b>
BSC Audit Opinion	Significant backlog of failed business processes following agent migration	Supplier <b>Watt Energy</b>
BSC Audit Opinion	Line loss factors not being applied correctly	HHDA <b>Metering Hertz</b>
BSC Audit SSM	Incorrect application of Gross Volume Correction	NHHDC <b>Metering Hertz</b>
BSC Audit SSM	Inadequate management of material NHH exceptions	Supplier <b>Watt Energy</b>
BSC Audit SSM	Excessive backlog of unprocessed "no access" reports	NHHDC <b>Metering Hertz</b>

- **1st July 2008** – the RAB publishes its Annual Report drawing on information in the BSC Audit Report, the progress in addressing issues throughout the year, the effectiveness of the tool sets used etc.
- **14th July 2008** – the Panel approves the RAB's Annual Report.
- **1st August 2008** - the REG meets and considers the RAB's Annual Report. It establishes the matters it wishes to include in the Risk Evaluation Register and consult upon, regarding risks to the SVA Assurance Objectives.
- **14th August 2008** – the REG issues its consultation.
- **14th September 2008** – the REG considers the results from the consultation.
- **30th September 2008** – the REG submits its Risk Evaluation Register to the Panel for approval. In summary it concludes that the 3 Opinion Issues and 2 of the 3 SSM issues are material risks to the SVA Assurance Objectives that need managing (the SSM regarding unprocessed "no access" report not being considered a significant risk to the SVA Assurance Objectives). The REG also identifies a further area that may constitute material risk to the SVA Assurance Objectives.
- **14th October 2008** – the Panel approves the Risk Evaluation Register. The published Risk Evaluation Register records the following significant risks:

Risk Area	Current Status
Energisation Status Mismatches	BSC Audit Opinion
Significant backlog of failed business processes following agent migration	BSC Audit Opinion
Line loss factors not being applied correctly	BSC Audit Opinion

Risk Area	Current Status
Incorrect application of Gross Volume Correction	BSC Audit SSM
Inadequate management of material NHH exceptions	BSC Audit SSM
New Risk - Application of Estimating Processes	Unknown

- 1st November 2008** – the RAB considers the Risk Evaluation Register and produces its Operating Plan. It is estimated that this will require 10% less budget than the previous year as the risks to the SVA Assurance Objectives have reduced. A requirement for a new Key Performance Indicator (KPI) to monitor energisation status mismatches is identified.
- 14th November 2008** – the Panel Approves the RAB's Operating Plan. The published Operating Plan records the following:

Risk Area	Current Status	Applies to...	Actions and Applicable Assurance Techniques Noted in the Operating Plan
Energisation Status Mismatches	BSC Audit Opinion	Industry-wide	<ul style="list-style-type: none"> <li>Include in Scope of BSC Audit for all participants.</li> <li>Gather and monitor individual participant rectification plans.</li> <li>Escalation to Committee if rectification plans not progressed.</li> <li>Recommend to the REG the introduction of a basic KPI (could be provided to support industry self-monitoring).</li> </ul>
Significant backlog of failed business processes following agent migration	BSC Audit Opinion	One Supplier	<ul style="list-style-type: none"> <li>Include in Scope of BSC Audit for all participants.</li> <li>Gather and monitor individual participant rectification plans.</li> <li>Deploy Targeted Audit on particular Supplier part-way through year.</li> <li>Escalation to Committee if rectification plans not progressed.</li> <li>Naming to peers if Escalation to Committee is required.</li> </ul>
Line loss factors not being applied correctly	BSC Audit Opinion	One HHDA	<ul style="list-style-type: none"> <li>Include in Scope of BSC Audit for all participants.</li> <li>Notification to Associated Suppliers.</li> <li>Gather and monitor individual participant rectification plans.</li> <li>Deploy Targeted Audit on particular HHDA part-way through year.</li> <li>Escalation to Committee if rectification plans not progressed.</li> <li>Naming to peers if Escalation to Committee is required.</li> <li>Require Re-Qualification if rectification plans not progressed.</li> </ul>
Incorrect application of Gross Volume Correction	BSC Audit SSM	One NHHDC	<ul style="list-style-type: none"> <li>Include in Scope of BSC Audit for all participants.</li> <li>Notification to Associated Suppliers.</li> <li>Gather and monitor individual participant rectification plans.</li> <li>Deploy Targeted Audit on particular NHHDC part-way through year.</li> <li>Escalation to Committee if rectification plans not progressed.</li> <li>Naming to peers if Escalation to Committee is required.</li> <li>Require Re-Qualification if rectification plans not progressed.</li> </ul>

Risk Area	Current Status	Applies to...	Actions and Applicable Assurance Techniques Noted in the Operating Plan
Inadequate management of material NHH exceptions	BSC Audit SSM	One Supplier	<ul style="list-style-type: none"> <li>• Include in Scope of BSC Audit for all participants.</li> <li>• Gather and monitor individual participant rectification plans.</li> <li>• Escalation to Committee if rectification plans not progressed.</li> <li>• Naming to peers if Escalation to Committee is required.</li> <li>• Deploy existing KPI to monitor broader risk.</li> </ul>
Application of Estimating Processes	Unknown	Unknown	<ul style="list-style-type: none"> <li>• Include in Scope of BSC Audit for all participants.</li> </ul>

The REG considers the creation of the new energisation status KPI and recommends to the Panel that a Modification to include this KPI in the BSC is raised.

- **December 2008 to January 2009** – the RAB makes sure the appropriate set of Risk Mitigation Plans (RMPs) is in place that utilise appropriate assurance techniques. Information received from participants during this process reveals the following:
  - Suppliers indicate that they plan to progress the energisation status mismatch issue collectively as part of a self-managed industry initiative.
  - A letter is received from a Watt Energy Director advising that the issue relating to significant backlogs of failed business processes has already been resolved.
- The RAB therefore establishes the following risk mitigation plans:
  - **Common Techniques - Applied to all Suppliers (Watt Energy, Ample Savings, Business Joule, Ohm Energy)**

Assurance Technique	Scope
Key Performance Indicators	Inadequate management of material NHH exceptions
Risk-based Audit	Energisation Status Mismatches. Backlogs of failed business processes following agent migration. Application of Line loss factors. Application of Gross Volume Correction. Management of material NHH exceptions. Application of Estimating Processes.
Development and Progression of Rectification Plans	Energisation Status Mismatches (Taking account of feedback from the Supplier Group that has been established to progress this issue as part of a self managed industry initiative.) Management of material NHH exceptions (where an issue is identified by the KPI – see above).
Escalation to Committee <sup>20</sup>	Energisation Status Mismatches.

- **Further Techniques - Applied to Watt Energy Only**

Assurance Technique	Scope
Targeted Audit	Backlogs of failed business processes following agent migration.

<sup>20</sup> These techniques will not be applied at this stage but may be employed should feedback from other techniques identify a need for their use.

Assurance Technique	Scope
Development and Progression of Rectification Plans	Backlogs of failed business processes following agent migration. <i>(Only in the event that the targeted audit is unable to confirm that this issue has been resolved).</i> Management of material NHH exceptions.
Escalation to Committee <sup>20</sup>	Backlogs of failed business processes following agent migration. Management of material NHH exceptions.
Naming to Peers / Public / Ofgem <sup>20</sup>	Backlogs of failed business processes following agent migration. Management of material NHH exceptions.

- **Common Techniques - Applied to all Applicable Agent Roles (Metering Hertz, Tesla Services)**

Assurance Technique	Scope
Risk-based Audit	Energisation Status Mismatches. Backlogs of failed business processes following agent migration. Application of Line loss factors. Application of Gross Volume Correction. Management of material NHH exceptions. Application of Estimating Processes.
Development and Progression of Rectification Plans	Energisation Status Mismatches.
Escalation to Committee <sup>20</sup>	Energisation Status Mismatches.

- **Further Techniques - Applied to Metering Hertz Only**

Assurance Technique	Scope
Targeted Audit	Application of Line loss factors. Application of Gross Volume Correction.
Development and Progression of Rectification Plans	Application of Line loss factors. Application of Gross Volume Correction.
Notification to Associated Suppliers	Application of Line loss factors. Application of Gross Volume Correction.
Escalation to Committee <sup>20</sup>	Application of Line loss factors. Application of Gross Volume Correction.
Naming to Peers / Public / Ofgem <sup>20</sup>	Application of Line loss factors. Application of Gross Volume Correction.
Re-Qualification <sup>20</sup>	Application of Line loss factors. Application of Gross Volume Correction.

- **1 February 2009 – 31 March 2009** – Monitoring conducted against Rectification Plans. Progress is as follows:

Risk Area	Assurance Techniques Already Used	Progress / Action in this and future periods
Energisation Status Mismatches.	Development and Progression of Rectification Plans. RAB asks for regular progress reports from the Supplier self-managed industry initiative.	Considerable progress for all but one large Supplier ( <b>Business Joule</b> ). Escalation to Committee (RAB) deployed for <b>Business Joule</b> . Authority agreement to new KPI following progression of modification and implementation to be taken forward.
Backlogs of failed business processes following agent migration.	Letter received from <b>Watt Energy</b> Director advising that this issue has already been resolved. Targeted Audit (day visit) commissioned to confirm.	Issue resolved.
Application of Line loss factors not being applied correctly.	Development and Progression of Rectification Plans for <b>Metering Hertz</b> . Notification to associated Suppliers of <b>Metering Hertz</b> of the issue status.	No rectification plans provided. Name <b>Metering Hertz</b> as being under further investigation following failure to provide rectification plan. Escalation to Committee (RAB) deployed for <b>Metering Hertz</b> . Targeted Audit deployed. This confirms the problem is only occurring for one of the agent's associated Suppliers ( <b>Business Joule</b> ). Notify associated Suppliers of <b>Metering Hertz</b> of the results of the Targeted Audit, noting implications for failure to address the issue. Update Risk Mitigation Plans for <b>Business Joule</b> , noting that, as the Supplier responsible, Escalation to committee may be employed if the Supplier does not resolve the matter with its Agent.
Application of Gross Volume Correction.	Development and Progression of Rectification Plans for <b>Metering Hertz</b> . Notification to associated Suppliers of <b>Metering Hertz</b> of the issue status.	Progress made in accordance with plans. Notification to associated Suppliers of <b>Metering Hertz</b> of the progress made.
Management of material NHH exceptions.	Development and Progression of Rectification Plans for <b>Watt Energy</b> . Existing KPI deployed across Suppliers as this is viewed as a broader risk.	Progress in accordance with plan for Supplier <b>Watt Energy</b> . KPI Monitoring reveals similar issue at <b>Ample Savings</b> and <b>Ohm Energy</b> . Development and Progression of Rectification Plans deployed for these Suppliers.
Application of Estimating Processes.	None	This will be the subject of the BSC Audit. Fieldwork due to take place at all participants during March and April.

- **1 April 2009 – 31 May 2009** - Monitoring conducted against Rectification Plans. Progress is as follows:

Risk Area	Assurance Techniques Already Used	Progress / Action in this and future periods
Energisation Status Mismatches.	Development and Progression of Rectification Plans. RAB asks for regular progress reports from the Supplier self-managed industry initiative. Escalation to Committee (RAB) deployed for <b>Business Joule</b> .	Considerable progress for all Suppliers. New KPI implemented.
Backlogs of failed business processes following agent migration.	Issue already resolved – confirmed in last period by a Targeted Audit.	N/A.
Application of Line loss factors not being applied correctly.	Development and Progression of Rectification Plans for <b>Metering Hertz</b> . Notification to associated Suppliers of <b>Metering Hertz</b> of the issue status. <b>Metering Hertz</b> named as being under further investigation following failure to provide rectification. Escalation to Committee (RAB) deployed for <b>Metering Hertz</b> . Targeted Audit deployed. This confirms the problem is only occurring for one of the agent's associated Suppliers ( <b>Business Joule</b> ).	Limited progress. Escalation to Committee (RAB) deployed for Supplier <b>Business Joule</b> .
Application of Gross Volume Correction.	Development and Progression of Rectification Plans for <b>Metering Hertz</b> . Notification to associated Suppliers of <b>Metering Hertz</b> of the issue status.	Issue resolved. Notification to associated Suppliers of <b>Metering Hertz</b> of the resolution of the issue.
Management of material NHH exceptions.	Development and Progression of Rectification Plans for <b>Watt Energy</b> . Existing KPI deployed across Suppliers as this is viewed as a broader risk. Development and Progression of Rectification Plans for <b>Ample Savings</b> and <b>Ohm Energy</b> .	Issue resolved for Supplier <b>Watt Energy</b> . Progress in accordance with plans for <b>Ample Savings</b> and <b>Ohm Energy</b> .
Application of Estimating Processes.	BSC Audit fieldwork takes place at all participants during March and April.	This will be included in the BSC Audit Report to be published in June 2009.

- **1st June 2009** – the BSC Auditor publishes its report following a risk-based audit. There are 2 issues in the Opinion, 2 in the Statement of Significant Matters (SSMs) and 280 other issues.

Issue Status	Issue Description	Issue Relates To...
BSC Audit Opinion	Line loss factors not being applied correctly	Supplier <b>Business Joule</b> (HHDA <b>Metering Hertz</b> )
BSC Audit Opinion	Flawed estimating processes	HHDA <b>Tesla Services</b>

BSC Audit SSM	Energisation Status Mismatches	<b>Industry-wide Issue</b>
BSC Audit SSM	Inadequate management of material NHH exceptions	Suppliers <b>Ample Savings</b> and <b>Ohm Energy</b>

## APPENDIX 6: EXAMPLE OF POTENTIAL RISK MANAGEMENT PLAN EXTRACT

A risk that could be identified on the Risk Evaluation Register might be:

- “Errors in the registration and maintenance of Half Hourly (HH) Metering System data result in or mismatches of energisation status for Metering Systems between participants in the HH market that impact the energy volumes submitted into Settlement”.

Previous assurance work may have determined that energy is being misallocated between Suppliers as a result of mismatches in the energisation status of Metering Systems for which they are responsible.

The PAB may also identify (from previous audit work conducted) specific concerns at a number of participants related to this risk.

For example, it may be common practice that the maintenance of energisation status is largely an automated process, however, one Meter Operator Agent may have an entirely manual process for maintaining energisation status which the BSC Auditor observed as being particularly weak.

Another Meter Operator Agent may have no formal process in place for maintaining energisation status records for HH Metering Systems, automated or otherwise, which the BSC Auditor recorded as a non-compliance with the BSC.

The PAB might therefore state within the Operating Plan that:

- All HH Suppliers, Meter Operator Agents (MOAs) and Data Collectors (DC) will be subject to an annual audit of the processes and controls in place for the registration and maintenance of HH Metering System energisation status;
- A targeted audit will be conducted six months through the year on Meter Operator Agents (MOAs) that have been previously identified as having weak processes and controls or no processes and controls in place for the registration and maintenance of HH Metering System energisation status;
- The Error and Failure Resolution (E&FR) process will be applied to all Suppliers in order to resolve the mismatches in HH energisation status that exist across Settlement that are leading to misallocation of energy volumes between Suppliers; and
- The E&FR process will be applied to participants that are identified as non-compliant with the BSC in respect of processes and controls relating to the registration and maintenance of HH Metering System energisation status.

Consequently, an individual Risk Management Plan for a **Supplier** with **no previously identified non-compliances** and that exhibited **less risk** would show them as being subject to:

- An annual audit of the processes and controls in place for the registration and maintenance of HH Metering System energisation status;
- The E&FR process to resolve the mismatches in HH energisation status that exist across Settlement that lead to misallocation of energy volumes between Suppliers [as the Operating Plan states that all Suppliers will be subject to the E&FR process in this area to resolve the mismatches, which may not be non-compliances]; and
- The E&FR process in respect of any specific non-compliances that might be identified in this area in the future.

An individual Risk Management Plan for a **Meter Operator Agent** with **no previously identified non-compliances** and that exhibited **less risk** would show them as being subject to:

- An annual audit of the processes and controls in place for the registration and maintenance of HH Metering System energisation status;

- The E&FR process in respect of any non-compliances that might be identified in this area in the future.

An individual Risk Management Plan for a **Meter Operator Agent** with **no previously identified non-compliances** that exhibited **more risk** in this area would state that they would be subject to:

- An annual audit of the processes and controls in place for the registration and maintenance of HH Metering System energisation status;
- A targeted audit to be conducted six months through the year of the processes and controls in place for the registration and maintenance of HH Metering System energisation status; and
- The E&FR process in respect of any non-compliances that might be identified in this area in the future.

An individual Risk Management Plan for a **Meter Operator Agent** with **previously identified non-compliances** that exhibited **more risk** in this area would state that they would be subject to:

- An annual audit of the processes and controls in place for the registration and maintenance of HH Metering System energisation status;
- A targeted audit to be conducted six months through the year of the processes and controls in place for the registration and maintenance of HH Metering System energisation status; and
- The E&FR process in respect of existing non-compliances identified and any non-compliances that might be identified in this area in the future.