

# WHOLESALE-RETAIL CODE AUTHORITY TIMETABLED CHANGE PROPOSAL

For use by the Panel

<b>Change Proposal Reference</b> <i>(To be completed by the Panel Secretary)</i>	<b>CPW021</b>	Version No	<b>1.0</b>
<b>Submission:</b> <i>(delete as appropriate)</i>	Authority Timetabled Change Proposal		
<b>Title:</b> of Authority Timetabled Change Proposal	Negotiating Alternative Eligible Credit Support reasonably and in good faith		
<b>Summary:</b> of Authority Timetabled Change Proposal <i>(no more than two sentences)</i>	This is a proposal to amend section 9.11.5 of and Schedule 3 to Part 2: Business Terms of the Wholesale-Retail Code to clarify the Wholesaler's and Retailer's obligations to one another to negotiate Alternative Eligible Credit Support reasonably and in good faith having due regard to the Principles.		
<b>Status of the Authority Timetabled Change Proposal</b> <i>(To be completed by the Panel Secretary)</i>			
First Time Published	4/07/2017	Rejected	
Assessment		OFWAT - Further Information required	
Consultation	4/07/2017	OFWAT - Approved	
Recommendation		OFWAT - Rejected	
Further Information Required		Approved and Implemented	
<b>General Details of the Proposer</b>			
Name of Proposer	Cathryn Ross on behalf of the Authority		
Capacity (for Change Proposals – on behalf of a Party, as a Panel member, as the customer representative or on behalf of MOSL or the Authority; for Charging Change Proposals – on behalf of a Wholesaler).	The Authority		
Contact Email; Tel/Mob.	<a href="mailto:priya.sinha@ofwat.gsi.gov.uk">priya.sinha@ofwat.gsi.gov.uk</a> Tel: 0121 644 7655 <a href="mailto:Daniel.Mason@ofwat.gsi.gov.uk">/Daniel.Mason@ofwat.gsi.gov.uk</a> Tel: 0121 644 7629		
Requirements for the Panel to comply with pursuant to section 6.3.3 of the Market Arrangements Code in relation to the on the process to be followed and/or the timetable within which the	The Authority requires a recommendation from the Panel by Tuesday 11 July at the latest.		

Panel must consider the Authority Timetabled Change Process.	
<b>Related Documents</b>	
Reference of any associated Panel Change Proposal/ Charging Change Proposal	Not applicable
Documents Accompanying Form	
<b>Change Proposal/ Charging Change Proposal Details</b>	
Description of (i) The enhancement, issue or defect which this Change Proposal seeks to address, or (ii) the modified or new charging method or charging structure required pursuant to this Charging Change Proposal, as required under the Market Arrangements Code Section 6.2.1(b).	
<p>The proposal clarifies the current ambiguity within section 9 of and Schedule 3 to Part 2: Business Terms of the Wholesale-Retail Code as to the extent of Wholesalers obligations in considering and responding to Alternative Eligible Credit Support. Evidence of this ambiguity has arisen in the context of the Water Retail Company's proposals for Alternative Eligible Credit Support which it has made to various Wholesalers.</p> <p>Schedule 3 currently states "where a Contracting Retailer seeks to establish arrangements for Alternative Eligible Credit Support with the Contracting Wholesaler, the Contracting Wholesaler shall be obliged to give due and proper consideration to such proposals". The circumstances referred to above have demonstrated that it is not clear what is meant by "due and proper consideration". In particular there is a lack of detail on the principles which a Wholesaler should apply in considering and responding to such proposals, other than that as a minimum any resultant agreement should comply with the basic features of such credit prescribed by Schedule 3.</p> <p>This defect is contrary to the Principles particularly the Principles of Efficiency, Proportionality, Transparency, No Barriers to Entry and Non-Discrimination. The Authority is particularly concerned that the lack of clarity described above is an unnecessary barrier to Retailers and other trading parties, because it limits access to and the scope to develop new and innovative credit support options that could be expected to evolve in a dynamic, competitive market which respect a similar apportionment of credit risk to the options specified in section 9.11.4 of Part 2: Business Terms of the Wholesale-Retail Code.</p>	
Description of the Change Proposal/ Charging Change Proposal, its nature and purpose and (for Change Proposals only) how it is consistent with the Principles and falls within the Objectives noted below, as required under the Market Arrangements Code Section 6.2.1(c).	
<p>The proposal is to make the following amendments to Part 2: Business Terms of the Wholesale-Retail Code:</p> <ul style="list-style-type: none"> <li>• Amendment to section 9.11.5</li> </ul>	

“The Parties may agree Alternative Eligible Credit Support for all or part of the Credit Support Amount subject to the Alternative Eligible Credit Support at all times in accordance with the process and complying with the requirements specified in Schedule 3 of these Business Terms.”

- Amendment to Schedule 3

“Where a Contracting Retailer seeks to establish arrangements for Alternative Eligible Credit Support with the Contracting Wholesaler, the Contracting Wholesaler shall be obliged to give due and proper consideration to such proposals. Both parties shall be obliged, in relation to the proposals:

- (a) to act reasonably towards one another and without unreasonable delay, and
- (b) to negotiate in good faith with each other,

in accordance with the principles of Non Discrimination and No Barriers to Entry set out in Schedule 1 to the Wholesale Contract.”

### Consultation questions

1. Do you agree that both parties should be under an obligation to negotiate reasonably, in a timely manner and in good faith with regard to alternative eligible credit support? And does the change proposal achieve that objective? Please explain your answer
2. Do you agree that the change proposal is consistent with the relevant principles of the Code?
3. Should the Panel recommend the change proposal?

### Timetable

Stage	Authority Timetabled Change Proposal
Change proposal raised	4 July
Industry consultation issued	4 July
Industry consultation closed	7 July
Panel recommendation	11 July

### Principles and Objectives

Principles	Affected (Y/N)	Description
Efficiency	Y	It promotes the efficient, economic and innovative operation of the water and wastewater sector by removing ambiguity around the nature of a Wholesaler’s obligations in relation to proposals for Alternative Eligible Credit Support.
Proportionality	Y	It proposes a principles based solution to questions around the nature of such

		negotiations which addresses the uncertainty without being overly prescriptive.
Transparency	Y	This proposal improves the Wholesaler's obligations in relation to proposals for Alternative Eligible Credit Support and makes the arrangements under the Wholesale-Retail Code more readily accessible to Retailers, by removing ambiguity as to how such proposals should be dealt with.
Simplicity, cost-effectiveness and security	N	This proposal does not affect the Central Systems or the processes established by or under the Market Terms.
Barriers to entry	Y	This proposal reduces barrier to entry by providing greater certainty on wholesalers' obligations to negotiate alternative eligible credit support. The proposed obligation addresses the differences in bargaining power between wholesalers and new entrants by requiring wholesalers to act reasonably, in a timely manner and negotiate in good faith. In absence of this proposal, wholesalers may not always have an incentive to do this.
Non- discrimination	Y	The proposal expressly requires the parties to negotiate having regard to the Principle of Non-Discrimination.
Customer participation	N	This proposal does not affect Customer participation.
Customer contact	N	This proposal does not affect Customer contact.
Seamless markets	N	This proposal does not affect whether the customer experience in relation to Areas of Wholesalers as between Areas in England and Wales, and Scotland is seamless.
No limit on upstream competition	N	This proposal does not place any constraint or limit on the introduction and development

		of competition in the upstream water and sewerage market.
Business Terms Objectives	N	This proposal does not affect the Business Terms Objectives.
Operational Terms Objectives	N	This proposal does not affect the Operational Terms Objectives.
Market Terms Objectives	N	This proposal does not affect the Market Terms Objectives.
Description of the impact of the Change Proposal/ Charging Change Proposal on the following items, as required under the Market Arrangements Code Sections 6.2.1(e), (f) and (g).		
Configured Item	Impacted (Y/N)	Description
Wholesale-Retail Code, Part 1 (Objectives, Definitions and Principles)	N	
Wholesale-Retail Code, Part 2 (Business Terms)	Y	This is a proposal to amend section 9.11.4 and Schedule 3 as described above.
Wholesale-Retail Code, Part 3 (Operational Terms)	N	
Wholesale-Retail Code, Part 4 (Market Terms)	N	
Wholesale-Retail Code, Part 5 (CSDs)	N	
Wholesale-Retail Code, Part 6 (Operational Forms)	N	
Appointment	N	
Licence	N	
Any other industry code, agreement or document (e.g. the Wholesale Contract or the MOSL Articles) (please specify)	N	
Central System	N	
Trading Party systems which interface with Central Systems and other relevant Trading	N	

Party systems/ business processes.		
Scottish Core Industry Documents	N	
<b>Impact Assessment</b>		
<p>General Comment</p> <p>Pre-go live, consideration of the timing of adoption and implementation of the change may be relevant.</p>	<p>This proposal does not require systems changes or impose direct monetary costs on trading parties.</p> <p>In terms of benefits, the proposed changes clarify obligations of trading parties to ensure these are consistent with the Principles of the Code and operate to further competition and consumer interests.</p>	
<b>Cost/Benefit Estimate</b>		
<p>Financial Benefit Estimate (Low: &lt; £10K, Medium: £10K To £100K, High : &gt; £100K)</p>		
<p>Description of any discussions on the topic of the Change Proposal/ Charging Change Proposal at the User Forum (as relevant) or otherwise relevant discussions with parties, as required under the Market Arrangements Code Section 6.2.1(h).</p>		
<p>Not applicable.</p>		
<b>Further Comments</b>		
<p>No further comments.</p>		