

MARKET ARRANGEMENTS CODE CHANGE PROPOSAL

Change Proposal Reference <i>(To be completed by the Panel Secretary)</i>	CPM004	Version No	1.0
Type of Change Proposal:	Code Change Proposal		
Submission Date	18 th August 2017		
Title: of Market Arrangements Code Change Proposal	Board Nomination Process Extension		
Summary: of Market Arrangements Code Change Proposal <i>(40 to 50 Words Maximum)</i>	This proposal seeks to amend the Market Arrangements Code (MAC) to allow further time for the MOSL Board to seek legal advice on a discrepancy between the MOSL Articles of Association and the MAC as it pertains to the process for appointing a Retailer Director to the MOSL Board.		
General Details of the Proposer			
Name of Proposer	Roland George (Head of Legal at MOSL)		
Capacity (on behalf of a Trading Party, as a Panel Member, as the Customer Representative or the Market Operator).	The Market Operator		
Contact Email	sarvesh.nair@mosl.co.uk (Legal Analyst)		
Telephone Number	0208 616 7444		
The Proposer recommends that this Change Proposal should: <i>(delete as appropriate)</i>	Proceed to Assessment		
	Proceed to Consultation		
	Proceed to Recommendation		
Is the change Urgent (Yes/No)? If yes, please provide reason for	Yes The purpose of the Board Nomination Meeting is to provide Retailer and Wholesaler Members an opportunity to nominate, and appoint a Retailer Director and a Wholesaler Director to the MOSL Board.		

urgency (if applicable)	<p>Section 4.4.3(b) of the Market Arrangement Code requires that the first Board Nomination Meeting to held within 6 months of the Go Live Date.</p> <p>It has been noted that there is a discrepancy between MOSL's Articles of Association and the MAC in relation to the process for the appointment of a Retailer Director.</p> <p>In consideration of the sensitivities surrounding this topic, MOSL have sought substantive legal advice on this matter; however, it is unlikely that this matter will be resolved prior to 1 September 2017 (which is the latest date that the Board Nomination process for a Retailer Director can commence in order to meet the MAC deadline for the Nomination Meeting).</p> <p>It has been proposed by the MOSL Board that this process be delayed in order to enable the matter to be resolved. The amendment will ensure that MOSL's Retailer members will not be in breach of their licence obligations for failure to complete the nomination process in accordance with the timescales set out in the MAC (their licence conditions state that they must be compliant with the terms of the MAC).</p> <p>The MOSL Board believes that an extension of the above mentioned 6 months to 12 months will provide the Board with the opportunity to resolve the inconsistencies described above.</p>
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Related Documents

Reference of any associated Code Panel Market Arrangements Code Change Proposal	N/A
Documents Accompanying Form	<ul style="list-style-type: none"> Initial Written Assessment Report Proposed MAC Legal Drafting

Market Arrangements Code Change Proposal Details

Description of the issue or defect which this Market Arrangements Code Change Proposal seeks to address, as required under the Market Arrangements Code Section 7.1.2(b).

BACKGROUND

Both the Market Arrangements Code and MOSL's Articles of Association govern the composition of the MOSL Board.

The process for appointing both Retailer and Wholesaler Directors is set out in both the Articles of Association of MOSL and the Market Arrangements Code. In December 2016, MOSL's Members

adopted revised Articles of Association (to take effect from 1 April 2017). In contrast to the previous MOSL Articles of Association, which prevented companies "associated" with Undertaker members from being Members completely, the revised Articles of Association included a new, non-voting membership class – Associated Retailer.

However, Section 4 of the Market Arrangements Code provides that although the Retailer Director can only be an employee of an Unassociated Retailer Member, each Retailer Member can nominate, and vote in the process for appointing the Retailer Director to the Board of MOSL. This is because the definition of Retailer Member in the Market Arrangements Code (which is used in Section 4) makes no distinction between the two classes of Members for these purposes.

Aside from this voting discrepancy, the procedure for appointing a Retailer Director in the Market Arrangements Code and Articles of Association is identical.

In light of the sensitivities surrounding this topic, MOSL have sought substantive legal advice on how best to resolve this matter.

Description of the Market Arrangements Code Change Proposal, its nature and purpose and how it is consistent with the Market Arrangements Code Principles and required under the Market Arrangements Code Section 7.1.2(c)

PROPOSAL

The Market Arrangements Code requires that a Retailer Director (and Wholesaler Director) election take place within six months of Market Opening, i.e. by no later than 1st October, 2017.

The MOSL Board believes that the issue in relation to the election of a Retailer Director is unlikely to be resolved prior to 1st September 2017 (which is the last date upon which the Retailer Director Board Nomination process can commence).

To allow for any of the above options, MOSL propose that a change be made to the Market Arrangements Code that extends the time period for the election from six months to twelve months after Market Opening (which would mean that the Retailer Director nomination process will need to be completed by 31st March 2018).

In the view of the MOSL Board, this change will give:

- (a) the MOSL Board an opportunity to obtain clear legal advice on this issue;
- (b) MOSL's Members an opportunity to time to consider the issue at hand and consider the implications of any potential change; and
- (c) time to achieve consistency between the Articles of Association and the Market Arrangements Code, taking account of the legal advice and consultation with MOSL's Members.

Making this change is in the best interests of MOSL Members because it will ensure that they will not be in breach of their licence obligations for failure to complete the nomination process in time (their licence conditions state that they must be compliant with the terms of the Market Arrangements Code).

The proposed change will ensure the efficient discharge by Retailers of their Licence obligations – this fulfils the Efficiency, Proportionality, Transparency and Barriers to Entry Principles set out in the Wholesale Retail Code.

Although the code change will also apply to the Wholesaler Director Board Nomination process, that election will proceed before 1 October 2017.
 The redlined legal drafted text to remove the number 6 preceding the word months and insert “twelve (12)” is detailed below as follows:

4.4.3 Appointment of Member Directors

(b) ... The first Board Nomination Meeting shall be held within ~~6~~ 12 months of the Go Live Date. Each subsequent Board Nomination Meeting shall be held no later than 1 March in every second year thereafter.

Principles

Description of the principles affected by the Change Proposal on the items below (if applicable) as detailed under Schedule 1 Market Arrangements Code Principles and Definitions

Principles	Affected (Y/N)	Description
Efficiency	YES	The proposed change will ensure the efficient discharge by the Retailer of its obligations.
Proportionality	YES	The amendment makes the simplest change to the Market Arrangements Code.
Transparency	YES	The proposed change will be readily accessible to existing and prospective Retailers.
Barriers to entry	YES	The change allows time to ensure that the rights of new entrants Retailer Members will be clearer.
Non-discrimination	NO	The proposal would have no influence against this principle.
Customer participation	NO	The proposal would have no influence against this principle.
Seamless markets	NO	The proposal would have no influence against this principle.
No limit on upstream competition	NO	The proposal would have no influence against this principle.

Description of any consultation carried out in advance of the Market Arrangements Code Change Proposal being made (if any), as required under the Market Arrangements Code Sections 7.1.2(f).

The Proposer has classified this Market Arrangements Code Change Proposal as urgent and as such it is proposed there is no formal consultation with the industry.

Further Information

Key	
	To be completed by the Market Operator
	To be completed by the Proposer