

MARKET ARRANGEMENTS CODE CHANGE PROPOSAL

Change Proposal Reference <i>(To be completed by the Panel Secretary)</i>	CPM009	Version No	1.0
Type of Change Proposal:	Code Change Proposal		
Submission Date	9 th January 2018		
Title: of Market Arrangements Code Change Proposal	Further Board Nomination Process Extension		
Summary: of Market Arrangements Code Change Proposal <i>(40 to 50 Words Maximum)</i>	This proposal seeks to further extend the timescale for appointing a Retailer Director to the MOSL Board from 12 to 18 months post 'Go Live'.		
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	Roland.George@mosl.co.uk		
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 urgency (if applicable)	No.		

Related Documents

Reference of any associated Code Panel Market Arrangements Code Change Proposal

N/A

Documents Accompanying Form

- 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

MOSL's Members adopted revised Articles of Association (which took effect from 1st 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.

However, Section 4 of the MAC 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 MAC (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 MAC and Articles of Association is identical.

The original deadline for commencing the Retailer director nominations was 6 months post go live, however the discrepancy was not resolved before this date. As a result, MOSL proposed an urgent change (CPM004) to the Panel on 23rd August 2017, to extend the timescale for commencing the Retailer Director election from 6 to 12 months' post Go-Live). OFWAT agreed to this extension on 11th September 2017. The Wholesaler Director election took place on 22nd September 2017.

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 31st March 2018.

The MOSL Board believes that the issue in relation to the election of a Retailer Director is unlikely to be resolved prior to 1st March 2018 (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 twelve months to eighteen months after Market Opening (which would mean that the Retailer Director nomination process will need to be completed by 30th September 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 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.

The redlined legal drafted text to remove the number 12 preceding the word months and insert “eighteen (18)” is detailed below as follows:

4.4.3 Appointment of Member Directors

(b) ... The first Board Nomination Meeting shall be held within ~~12~~ 18 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).		
Further Information		
Key		
		To be completed by the Market Operator
		To be completed by the Proposer