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31 May 2016

Dear Ms Gibson

We welcome the opportunity to respond to your May 2016 consultation "Retail Market Opening – further changes to all instruments of appointment".

Our responses to the six consultation questions are set out in the Table below.

We note and accept your likely approach to use your powers under s.55 of the Act. Where we have indicated that we agree below in principle with your proposal, we would draw your attention to the fact that in the event that the change notice is made under s.13 this would require formal approval from our Board.

1	<p><u>New Conditions (Table 1.1)</u></p> <p>We agree with the proposal to apply a new condition placing appointees a regulatory requirement to observe the Market Arrangements Code.</p> <p>We agree with the proposal to apply a new Stapling Condition to place appointees who chose not to separate their non-household retail business to a separate affiliated company to be under similar obligations to observe the Wholesale Access Code as retail licensees.</p> <p>We agree with the proposal for a new condition requiring appointees to comply with the Customer Protection Code of Practice.</p>
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2	<p><u>Amended Conditions (Table 1.2)</u></p> <p>We agree with the proposed changes to the following conditions:-</p> <p>Terminology Condition S Condition R 1-4 Condition F6A.2A Condition Q Condition G Condition I Condition R7-9 Condition F6 Condition R5</p>
3	<p>We agree that it is important that all appointees, including those operating in Wales, small companies and new inset appointees, are subject to the same appointment amendments to ensure a common legal and regulatory framework. We recognise however that the numbers of qualifying non household premises in such companies will be small and do not object to appropriate derogations being applied.</p> <p>We are content for OFWAT to discuss appropriate derogations with such companies and then consult with all appointees and licensees prior to any decision to give them effect.</p>
4	<p>Our preference would be to have two separate forms of appointment applying to those appointees that will or will not exit respectively. We believe that such approach will further the objective of having appointments in the simplest practicable form. We believe that use of sunset and sunrise clauses will detract from that objective by cluttering appointments of companies who are to exit the non-household market with unnecessary text. Would it not be possible to use conditions precedent in the appointment to make clear which would apply dependent upon whether a company exited?</p>
5	<p>We accept that the changes proposed fall within the remit of s55 WA 2014.</p>
6	<p>We are content with the proposed text set out in the Appendices.</p>

Yours sincerely



Phil Wickens
Head of Economic Regulation