
Market Arrangements Code Change Proposal – Ref CPM010

Modification proposal	Market Arrangements Code change proposal CPM010 – Amendments to the Retailer Board Nomination Process
Decision	Ofwat has decided to accept this change proposal
Publication date	23 May 2018
Implementation date	31 July 2018

Background

The Market Arrangements Code (MAC), amongst other things, sets out the arrangements for how the retail market will operate.

The process for appointing both retailer and wholesaler board members is set out in both the MAC and in Market Operator Services Limited's (MOSL) Articles of Association (Articles).

MOSL adopted revised Articles which came into effect on 1 April 2017. Following implementation of the revised Articles, a discrepancy between the MAC and MOSL's Articles regarding appointing a Retailer Director was identified.

The original deadline for commencing the Retailer Director nominations was six months post Go Live. However, the discrepancy between the MAC and MOSL's Articles was not resolved before this date. In September 2017, MOSL received legal advice that it should not proceed with the Retailer Director nomination process without resolving the inconsistency between its Articles of Association and the MAC. As a result, in September 2017, Ofwat approved [CPM004](#) which extended the deadline for this process to 12 months post Go Live. A further six month extension was sought, and approved by Ofwat, on 9 March 2018 ([CPM009](#)).

The options for resolving the discrepancy have now been considered and this change proposal presented to Ofwat.

The issue

MOSL's Articles are not consistent with the MAC regarding the process for nominating and electing a Retailer Director. MOSL's previous Articles prevented companies "associated" with Undertaker Members from being Members completely. The revised Articles included a new, non-voting membership class – Associated Retailer.

The definition of "retailer" in the MAC does not distinguish between the two classes of Members (Retailer Member and Unassociated Retailer Member) for the purposes of the voting process. Section 4 of the MAC provides that although a 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 makes no distinction between the two classes of "Retailer" Member for these purposes.

With the exception of the above, the procedures provided within the MAC and the Articles of Association relating to appointing a Retailer Director are identical.

The modification proposal¹

To ensure consistency between the MAC and MOSL's Articles, the following changes have been proposed:

- Creation of a third class of membership for "Associated Retailer" Members, who will be afforded full voting rights, not rights limited to voting in the Retailer Director nomination process; and
- Create an additional position on the MOSL Board for an Associated Retailer Member (to ensure that MOSL's membership composition is in line with both MOSL's funding mechanism and the composition of the Panel.

Changes will also be made to MOSL's Articles to incorporate the above.

¹ The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

Industry consultation and assessment

A consultation was issued to MOSL's members on 26 October 2017. The consultation sought views on the below options to resolve the conflict between MOSL's Articles and the MAC:

- A. Change MOSL's Articles to reflect the MAC;
- B. Change the MAC to reflect MOSL's Articles;
- C. Create an Associated Retailer Director position; or
- D. Create an additional class of membership for Associated Retailers with full voting rights and to create a board position for an Associated Retailer Director while retaining the existing protected rights for Unassociated Retailer and Wholesalers.

There was a clear preference from Members for Option D.

Panel recommendation

The Panel considered this change proposal at its meeting on 27 March 2018. It recommended, by a unanimous decision, that the Authority approve this proposal on the basis of improving the principles of efficiency, proportionality, transparency and barriers to entry.

Our decision

We have carefully considered the issues raised by the modification proposal and the supporting documentation provided in the Panel's recommendation report. We have concluded that the implementation of CPW010 will better facilitate the principles and objectives of the Wholesale Retail Code detailed in Schedule 1 Part 1 Objectives, Principles and Definitions and is consistent with our statutory duties.

Reasons for our decision

We set out below our views on which of the applicable Code principles are better facilitated by the modification proposal.

Efficiency

Introduction of an additionally elected Board position for an Associated Retailer will assist in ensuring the efficient discharge by the Retailer Director of its obligations.

Transparency

We consider that the proposed change furthers the principle of transparency as clarity will be provided to existing and prospective market participants.

Barriers to entry

Barriers to entry will be reduced as the change ensures that the rights of new entrant Retailer Members will be clearer.

Decision notice

In accordance with paragraph 7.2.8 of the Market Arrangements Code, Ofwat approves this change proposal.

Emma Kelso

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