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## Wholesale Retail Code Change Proposal – CPW052

<b>Modification proposal</b>	Wholesale Retail Code Change Proposal – CPW052 – Improving the transparency of Alternative Credit Arrangements
<b>Decision</b>	The Authority has decided to approve this Change Proposal
<b>Publication date</b>	25 March 2019
<b>Implementation date</b>	29 March 2019

### Background

As an alternative to the provision by Retailers of Eligible Credit Support, Wholesalers and Retailers are able to agree Alternative Eligible Credit Support (“AECS”). Should Trading Parties agree AECS, the Wholesaler is required to publish the details of the arrangement in a prominent place on its website. This obligation is intended to provide transparency to the wider market of the different types of AECS arrangements in place.

The [KPMG review of credit arrangements for the non-household retail market](#) (“the KPMG Report”) recommended that AECS arrangements could be published in a standard format by the Market Operator to ensure full transparency, including the costs of the arrangements. The report suggested that a Change Proposal could be raised to introduce an obligation for Trading Parties to notify Ofwat and the Market Operator of AECS arrangements and to alter the obligation of publication to require the Market Operator to publish all of these arrangements on their website, in a central location.

### The issue

Publication of AECS arrangements seeks to ensure transparency and prevent Wholesalers and Retailers from agreeing arrangements that are too specific to be available to other Retailers and which could be deemed to be anti-competitive and/or discriminatory.

The Panel’s Final Report indicates that AECS arrangements which have been published on Wholesaler websites are often not easy to locate. It also indicated that some Wholesalers appear not to always be publishing these arrangements. Further,

it considered that some AECS agreements are so bespoke that they preclude other Retailers, with similar credit risk, from obtaining them.

## **The modification proposal<sup>1</sup>**

It is proposed that an obligation is introduced for Wholesalers to notify the Authority and the Market Operator in full of any AECS arrangements they enter into with Retailers. The Market Operator will publish details of AECS arrangements on its website within five Business Days of receipt of the notification from the Wholesaler. The intention is to improve the transparency around these arrangements, ensure that there can be an appropriate level of scrutiny and increase the ability for Retailers to compare various AECS agreements.

The following text will be inserted into Schedule 3 of the Business Terms:

“The Market Operator shall publish the agreement on its website within five (5) Business Days, following notification by the Contracting Wholesaler in full of all terms of any Alternative Eligible Credit Support arrangement.”

In addition, the following text will be added into the Schedule 3 Key Terms of the Business Terms:

“Alternative Eligible Credit support shall:

3. be subject to an obligation on the Contracting Wholesaler to notify the Authority and the Market Operator in full, all the terms of any Alternative Eligible Credit Support agreement including the identity of the Contracting Retailer within five (5) Business Days of entering into such agreement as well as all such agreements in effect on [release date] within five (5) Business Days;”

## **Industry consultation and assessment**

### **The Credit Committee**

The Credit Committee Members (“the Committee”) considered that a Change Proposal was required to improve the transparency of AECS arrangements. It was agreed by the Committee that it would be desirable to have a central point of publication to ensure a consistent approach is taken to publication. However, the Committee advised against the publication of AECS arrangements in a standard format as it considered that given the bespoke nature of the arrangements it would

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<sup>1</sup> The proposal and accompanying documentation is available on the Market Operator website at <https://www.mosl.co.uk/market-codes/change/changes>

be difficult to present them in a standard format and could potentially hinder innovation of such agreements in this context.

The Committee agreed that the arrangements should be published in a central place by the Market Operator and that Wholesalers should notify both the Market Operator and the Authority of any such arrangements.

### **Request for Information**

A Request for Information was published on 16 November 2018, it closed on 30 November 2018. There were 21 respondents, 11 Wholesalers and 10 Retailers.

All respondents agreed with the proposed change and recognised the potential benefits. Although, one Trading Party suggested that the proposed change required enforcement or monitoring to have an impact on the market. A Wholesaler respondent suggested that the agreements should be redacted, where appropriate, to maintain commercial confidentiality. This Wholesaler respondent also considered that the requirement to notify the Market Operator and the Authority within five Business Days of entering into an AECS arrangement provides an unnecessarily short timeframe, it suggested the timeframe should be ten Business Days. Conversely, another Wholesaler considered five Business Days to be reasonable.

Most respondents agreed with the red line drafting. One highlighted that the proposed change does not ensure consistency of reporting as recommended by the KPMG Report which suggested that Wholesalers should report AECS agreements in a standard format. However, another Wholesaler respondent welcomed that the change does not require a standard format for publication as this would constrain Wholesaler flexibility when agreeing AECS terms.

It was highlighted by one respondent that the proposed changes are to the Business Terms, which normally refer to rights and obligations of parties to the Wholesale Contract, which does not include the Market Operator. As such, it was suggested that it would be more appropriate to include these items in the Market Arrangements Code. Another respondent enquired why it was necessary for Wholesalers to report these arrangements to the Authority, as this was not an existing obligation and the change was only to improve transparency of arrangements. It was also suggested that Wholesalers could instead provide a link to arrangements on their websites, rather than provide the full terms of the arrangements to the Market Operator to publish.

The majority of respondents also considered that the change furthers the principles and objectives of the WRC. In addition, all considered that the cost of implementation would be low or none.

All respondents agreed with the proposed implementation date. One Retailer considered that implementing the change close to the end of the financial year provides time for Trading Parties to review and update AECS arrangements, as required, ahead of implementation. A Wholesaler stated that it does not request any particular implementation period as all of the information is already available in the required format. A number of Wholesaler respondents enquired as to whether the implementation date could be earlier than 29 March 2019.

## **Panel recommendation**

The Panel considered this Change Proposal at its meeting on 29 January 2019. It recommended, by a unanimous decision, that the Authority approve this proposal on the basis of improving the principles of efficiency, transparency, proportionality, non-discrimination and simplicity, cost-effectiveness and security. The recommended date of implementation is 29 March 2019.

## **Our decision**

We have considered the issues raised by the modification proposal and the supporting documentation provided in the Panel's Final Report. We have concluded that the implementation of CPW052 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 have set out below our views on which of the code principles are better facilitated by the modification proposal.

### **Transparency**

Increasing the accessibility of AECS arrangements by publication of these in a central place on Market Operator's website and introduction of the obligation to notify both Ofwat and MOSL of AECS arrangements furthers the principle of transparency. Whilst increasing the transparency of AECS arrangements will assist Trading Parties in demonstrating compliance with competition law obligations, it remains the responsibility of individual Trading Parties to ensure compliance with all aspects of competition law.

## **Efficiency**

Publication of AECS arrangements in a central location, as opposed to on individual Wholesaler websites, will promote efficiency as these arrangements will be more easily accessible for Retailers.

## **Non-discrimination**

Increasing the transparency of AECS arrangements will further the principle of non-discrimination as these arrangements will be more easily accessible by Retailers for comparison purposes.

## **Proportionality**

This code modification is proportionate to achieving the objective of improving transparency and visibility of AECS arrangements and will have minimal implementation costs.

## **Simplicity, cost-effectiveness and security**

The change is straightforward and cost-effective as it has minimal implementation costs.

## **Decision notice**

In accordance with paragraph 6.3.7 of the Market Arrangements Code, Ofwat approves this change proposal.