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## Wholesale Retail Code Change Proposal – Ref CPW069

<b>Modification proposal</b>	Wholesale Retail Code Change Proposal – CPW069 – Right of a Retailer to appoint and Accredited Entity
<b>Decision</b>	The Authority has decided to reject this Change Proposal
<b>Publication date</b>	1 February 2021

### Background

The Operational Terms set out processes and obligations in relation to repair or replacement of faulty meters.

Process B5 of the Operational Terms provides Wholesalers with a service level agreement of 22 Business Days (“SLA”) to repair or replace a faulty meter following receipt of a notification from a Retailer that action is required. If a Wholesaler does not complete the meter repair or replacement within the SLA it will incur a Market Performance Standard Charge of £40.

The Operational Terms also provide Process B6 – repair or replacement of a faulty meter by an Accredited Entity. Process B6 sets out the steps that must be followed where a Wholesaler has an Accredited Entity that can undertake meter repair or replacement work. The final recommendation report highlights that at present there are a limited number of Wholesalers that operate an Accredited Entity scheme for meter repair or replacement works. Retailers are required to submit Form B/02 metering activity carried out by an Accredited Entity where process B6 is used. The Form must be submitted either in advance of or after completion of the work dependent on the requirements under the Wholesalers accreditation scheme.

### The issue

The Proposer has indicated that once a Wholesaler has missed the SLA for meter repair / replacement under Process B5 and has incurred the Market Performance Framework (MPF) Standard Charge for this, there is no incentive to expedite the works.

The final recommendation report states that there is currently no alternative process to pursue in the codes where a Wholesaler has been unable to repair or replace the meter within the SLA. It is stated that this can result in long waiting times for customers.

## The Change Proposal<sup>1</sup>

It is proposed that an amendment is made to the Operational Terms so that Wholesalers would be required to appoint at least one Accredited Entity to undertake meter replacement or repair work in their respective areas (unless there is no Accredited Entity operating in the wholesale Area).

### Proposed amendments to process B5

It is proposed that process B5 is amended so that where a Wholesaler determines that it would be unable to repair or replace a meter within the SLA they would be obliged to inform the Retailer as soon as reasonably practicable and in any event at least five Business Days prior to the expiry of the SLA.

In addition, where a Wholesaler advises a Retailer that it is unlikely to meet the SLA, or has failed to meet the SLA, an option would be available to that Retailer to commence Process B6, after giving notice of two Business Days to the relevant Wholesaler.

### Proposed amendments to process B6

It is proposed that Process B6 is amended so that Wholesalers are encouraged to offer use of Accredited Entities for meter repair and replacement work as a first choice to Retailers. Should Wholesalers wish to do this, they could set out the amount that would be recoverable (their contribution fee) by Retailers that choose to use this option from the start in their Wholesale Tariff Documents.

The proposal includes that where a Wholesaler's accreditation scheme requires that a Form B/02 (Metering activity carried out by an Accredited Entity) is submitted before any Metering Activity can proceed, then the Wholesaler would be required to notify the Retailer within one Business Day of receiving the form or where the form is received after 3pm on a Business Day, the Wholesaler shall notify the Retailer within two Business Days of receipt.

Where a Retailer initiates process B6 as a result of a Wholesaler's failure to meet the SLA, that Retailer would be able to claim back the full cost of the Accredited Entities work from the Wholesaler. It is proposed that Form B/02 is amended to incorporate this.

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<sup>1</sup> 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

This Change Proposal was consulted on twice. A consultation on the original solution was published in August 2019. The responses to that consultation can be viewed on the MOSL website. The original solution was taken to the Panel on 29 October 2019 and it was agreed that further work would be undertaken by the Proposer and MOSL to address their concerns. Section 3 of the [final recommendation report](#) sets out the Panel's questions in relation to the original version of the change proposal.

The Change Proposal was revised in response to the first consultation and feedback from the Panel. A subsequent consultation was then undertaken from 2 April 2020 to 30 April 2020. There were 23 respondents, 12 Wholesalers, 10 Retailers (seven of which were self-supply Retailers) and the Consumer Council for Water ("CCW").

The below sets out a summary of the responses to the consultation undertaken in April 2020. A more detailed summary of the consultation responses can be found in the Panel's [final recommendation report](#).

### Agreement with the Proposal

14 respondents agreed (five Wholesalers and nine Retailers) with the proposed solution and nine disagreed (seven Wholesalers, one Retailer and one other).

One Wholesaler said that it agreed on the basis that no bulk uploads were permitted as these do not provide sufficient time for Wholesalers to meet the SLA.

A Wholesaler agreed with the proposal if there is no alternative to manage the performance of the minority of Wholesalers that have let customers down by not carrying out meter repairs or replacements within the time set out in the codes. Three Wholesalers considered that the change was not proportionate to the issue, most Wholesalers have performed well against the B5 standard and it was highlighted that performance against this standard is improving.

The Proposer considers that the number of Retailers that are supportive of the proposal indicates that the assertion that the issue is not evidenced is unfounded. The Proposer acknowledges that the issue may be more acute in some Wholesaler Areas but suggested that this could change over time and highlighted that any Wholesaler could experience short-term resourcing challenges or short-term spikes in demand. The Proposer considers that the codes should be drafted to cover all eventualities. Regarding the suggestion that this issue is more relevant to a single pairing, the Proposer said that the codes should take account of potential future developments in the market as over time competitive forces will diminish the significance of pairings.

A Wholesaler respondent that broadly supported the solution said that it has potential to improve settlement and provides opportunities for third parties to operate in the market.

One Retailer respondent who was supportive of the proposal thought that the revised proposal sensibly utilises both the B5 and B6 processes to best effect, providing more options and routes to expedite change for the customer. They considered that incentives for Wholesalers would be sharpened by the proposal. This respondent suggested some drafting clarifications.

Seven self-supply Retailer respondents considered that the proposal is thorough and should cover all eventualities. They thought that the proposal sounded feasible and somewhat fair to all parties, however expressed some concerns which have been detailed in the section below which outlines disagreement with the proposal.

Another Retailer expressed that it often experiences long delays in Wholesalers carrying out meter rectifications with no real options available to them other than to chase the Wholesaler, which it said increases the administration time. This respondent considered that the Change Proposal would provide options and increases the incentive for Wholesalers to improve their performance in this area. However, it expressed concerns about the administrative process, it did not consider that a Wholesaler would know within two Business Days of receiving the request whether or not it would be unable to meet the SLA and considered that 15 Business Days would be a more appropriate timeframe. This Retailer also expressed concern that where a Wholesaler currently employs an Accredited Entity to complete this type of activity there may be a risk that Retailers experience very poor response times.

### **Disagreement with the proposal**

The seven self-supply Retailers that thought the proposal was thorough and fair also expressed apprehension about taking on a new piece of relatively ad-hoc administrative work, stating that managing bilateral transactions is already tricky across a number of Retailer portals for various Wholesalers. The self-supply Retailers cautioned against moving so much of this Wholesaler task over to Retailers. Meter accuracy is to the benefit of the Wholesaler for accurate settlement and Retailers bear a lot of the responsibility for ensuring data accuracy in the market.

A Retailer did not agree with the proposed solution as they considered that Wholesalers that are failing to meet their B5 obligations should be held to account by the Market Operator. This respondent thought that the proposal could result in Wholesalers feeling that they do not need to meet the obligations set out in section B5 of the Operational Terms which could result in deterioration of performance meaning that they expect

Retailers to use the B6 process. They also expressed concern about the number of Wholesalers that have Accredited Entities which could restrict use of the B6 process.

One Wholesaler that did not agree highlighted that the Accredited Entity scheme was designed to give Retailers alternative choice, reducing provision of services from monopoly providers, it was not intended to manage underperformance. This respondent and one other suggested that underperformance should be managed through the MPF instead. One Wholesaler suggested that consideration should be given to increasing the penalty for failing to meet the SLA as an alternative solution. CCW also suggested that consideration could be given to use of the MPF as an alternative option to incentivise Wholesalers to improve the customer journey.

The Proposer considers that there is an over reliance on the MPF to resolve market issues. The Proposer's view is that evidence suggests the MPF is not delivering and that alone it is not enough to drive outcomes through incentivising performance. The Proposer highlighted that the Change Proposal is focused on achieving a solution for each individual meter rectification rather than treating customers overall as a class when measuring the performance of a Wholesaler. The Proposer states that the change should be viewed in combination with the relevant Operational Performance Standards, not as a substitute for those measures. Therefore, the Proposer rejects the suggestion that the MPF alone is a sufficient solution as the MPF framework serves a different purpose. It does not guarantee an outcome for an individual service request for a meter repair or replacement and does not confer rights on Retailers to take actions where a Wholesaler has failed. The Proposer considers that over time the Change Proposal would drive better performance.

Another Wholesaler considered that use of Accredited Entities should remain at the Wholesalers' discretion. This respondent argued that it is not appropriate that Wholesalers could be forced into a contract with a third party that they have had no part in appointing. Concern was also raised about the administrative fee that Retailers would be able to charge, it was suggested that this should be published annually. Another Wholesaler, whilst broadly supporting the solution, called for further clarity around the contractual relationship between the Wholesaler, Retailer and the Accredited Entity.

The proposal had however been amended from the original solution prior to the second consultation so that the solution did not involve the Accredited Entity directly invoicing the Wholesaler for work undertaken at the Retailers request. The Accredited Entity would invoice the Retailer, the Retailer would then invoice the Wholesaler.

A Wholesaler expressed concern that using Accredited Entities may not necessarily result in the service improvements that are anticipated as they would likely face the same delays as Wholesalers, given the complex nature of meter repairs and

replacements. It also suggested that the process of procuring Accredited Entities is very slow and costly and they did not consider that the costs would outweigh the benefits for customers. Another suggested it would be impractical and illogical to appoint an Accredited Entity when there are currently no external companies with the capability to undertake this work. They expressed concern that this would result in it being difficult for Wholesalers to competitively source Accredited Entities to complete low and uncertain volumes of metering work without sacrificing quality standards.

The seven self-supply retailer respondents said that they envisage Disputes with Wholesalers for work done or waiting to be done, whether it's over payment of administrative costs or scheduling the actual work. It could create a new bottleneck in the process of this service. These respondents said that they would potentially prefer to see enforcement for Wholesalers to appoint an Accredited Entity in order to deliver on their market obligations. They suggested that the Market Operator need to govern this well and present strict codes around it.

A Wholesaler expressed concern about large scale requests which it highlighted require a planned approach. Whilst this Wholesaler did not support the solution they suggested an obligation could be introduced for Wholesalers to advise if they will be unable to meet the SLA.

CCW stated that it agreed that delays or failures to abide by the Operational Terms for meter repairs or replacement can be detrimental to customers. However, CCW questioned whether this was the best approach. CCW highlighted that use of Accredited Entities does not guarantee shorter SLAs than those currently being achieved. CCW said it would be concerned if there was little to no improvement in length and quality of service for customers and had yet to be convinced that the issue is an industry wide one.

In response to concerns that the proposal may not reduce timescales for example because of complex network arrangements. The Proposer said that the solution will not address every instance of meter rectification not being delivered within the SLA. The Proposer considers that the solution would provide more options for Retailers to try to reduce timescales where for example the Wholesaler has specific resource or stock challenges. Competition from Accredited Entities and incentives will force Wholesalers to 'up their game'. The Proposer acknowledges that some factors will be outside the control of the Wholesaler however, other factors which contribute to delays are within their control such as management of stock and hardware. The improved communication that CPW069 would result in though introduction of obligations on Wholesalers to inform Retailers when the SLA will not be met would also bring benefits as it would encourage the parties to discuss options.

A Wholesaler respondent did not consider that the revised solution had addressed concerns raised by respondents to the previous consultation. One Wholesaler said that the proposal does not identify the root cause of SLA failures, and suggests that this is often because of bulk or 'volatile' requests by Retailers. The Proposer responded to this concern to clarify that it is envisaged that bulk submission is no more likely to occur should the Change Proposal be implemented than as it stands currently – there is no increased incentive for this situation to occur as a result of this proposal. The Proposer said that the only change is that there are additional tools for these jobs to get processed quicker than current timescales. This improves the customer journey. If a Retailer were to bulk upload then the same delays would be likely to occur even if an Accredited Entity was used.

### **Impacts on systems and business processes**

There was agreement amongst Wholesaler respondents that implementation of the proposal would result in changes to processes and most considered that amendments to systems would also be required. Some had not yet determined what the costs of the amendments would be.

One Wholesaler considered that this proposal would fundamentally change the current arrangements requiring significant changes in both process and systems, both at the bilateral level but also within its back office management system which is directly integrated with the processes. It suggested that such changes would have high cost implications and would require long project lead times given the limited number of systems releases each year. This respondent also questioned how the change would impact Operational Performance Standard Charges given that the Wholesalers would have lost sight of the work that Accredited Entities undertake.

Another Wholesaler (that had not investigated the potential costs at the time of its response) said that the Accredited Entity processes in its Retail portal would require work incurring further investment whilst we are fast approaching its successor through the bilaterals solution. It would likely be viewed as a potentially expensive regret spend for little benefit to the market or customers.

A Wholesaler said that it would need additional processes. It highlighted that due to the level of risk to the wider network in allowing a third party to change larger meters, an operational presence would be necessary in any case. Another Wholesaler respondent also expressed concern about who would be liable for incidents or damage. Another Wholesaler highlighted that quality assurance and monitoring would be required.

The Proposer considered that arguments about risk to the wider network are invalid as the codes already make provision for Accredited Entities. Accredited Entities must be properly accredited and must operate according to the same high-quality standards.

Although CPW069 proposes that accreditation of entities should be mandatory, it does not seek to relax the accreditation process, nor the attainment levels prescribed. Therefore, the Proposer considers that concerns regarding safety, increased risks, quality of work, and wellbeing are unfounded highlighting that some Wholesalers already recognise the WIRSAE scope for meter changes.

Seven self-supply Retailers said that their systems would be able to cope with the change. These Retailers considered that an additional processes would be required. They considered that the new processes could potentially result in an additional eight hours work each week.

A Retailer highlighted that there would be no change to its system unless it chose to use the B6 process. If it did decide to use the process then it considered that the changes to its process could be significant. Another Retailer suggested that there would be no initial changes to its systems. It said that its business processes would need to be updated to reflect the revised B5 and B6 processes but it envisaged that these changes would not involve a significant investment of either time or money.

One Retailer considered that the biggest change would be management of an Accredited Entity, it did not yet know what the associated costs would be.

### **Benefits vs costs**

Eight Wholesalers did not agree that the benefits outweigh the costs.

One of the respondents that did not agree said that the costs of implementation would be high and the potential benefits to customers are low, it has seen limited evidence that customers are dissatisfied with the current arrangements.

Another Wholesaler that did not agree suggested that Retailers should instead be working with WIRSAE and Wholesalers to achieve the best customer solution. One Wholesaler highlighted that the proposal would be used to step in where there has been underperformance by the Wholesaler but does not resolve the core issues of underperformance. A Wholesaler said that it would not benefit customers in its Area as it adhered to the required timeframes for meter repairs/replacements however, it highlighted that there could be benefits for customers in wholesale Areas where Wholesalers are not currently managing their performance.

Two Wholesalers said that the costs would not outweigh the benefits highlighting that they completed approximately 97% of B5 meter exchange/repair tasks within the SLA. One of these respondents said that the additional water quality risk, implementation costs and scope for conflict and inefficiency feel disproportionate to the performance benefit/improvement in customer outcomes that would be achieved. The other said

that with the exception of a minority of Wholesalers, it believes the position across the industry is largely positive and therefore the proposal is aiming to implement a radical change that will only be of benefit to the minority.

The Proposer responded to concerns about the extent of the issue and indications that Wholesaler performance against the SLA has been improving over the past 12 months. It said that any improvement in performance is welcome and suggested that in some Wholesaler Areas the proposal does not go far enough. The Proposer considers that these arguments deny the issue and the reality that performance could deteriorate. The Proposer considers that drafting the codes for a 'happy path' is dangerous and insufficient, they should not assume compliance or 'stellar performance'.

Some respondents did not confirm whether they considered that the benefits outweighed the costs. One Wholesaler said that the benefits have not been evidenced and that there were no guarantees that the change would improve the timeframe for meter repairs and replacements. This respondent argued that it could result in additional inefficiencies. Another Wholesaler considered that the costs of the change are currently unknown and there is a degree of uncertainty over the uptake of this option meaning it is very difficult to accurately assess the benefit. However, this Wholesaler respondent said that the costs could potentially outweigh the benefits where the timeframe for meter repair/replacements are improved. A Retailer suggested that whether the benefits outweighed the costs would need to be assessed once the costs of implementation were known. However, this Retailer expected that the benefits would outweigh the costs.

CCW acknowledged that the costs to Trading Parties may vary. CCW urged Trading Parties to consider whether there is enough evidence that this would fully deliver the stated intentions of the proposal, and result in tangible benefits to customers.

### **Proposed implementation date**

The proposed implementation date at the time of consultation was 20 August 2020. The date that was consulted on was no longer achievable at the time of the Panel Meeting and an implementation date of 8 January 2021 was subsequently proposed if the Authority's approval was received by 21 October 2020. The final recommendation report states that this would allow Wholesalers over two months to engage an Accredited Entity.

One Retailer said that it would ideally want an earlier implementation date but acknowledged that other priorities have taken precedence.

Another Retailer supported the proposed implementation date. Seven self-supply Retailers said that given the suspension of Wholesaler visits to sites (because of the

Covid-19 pandemic) there would be increased workflows therefore, it considered that it would be less appropriate to postpone implementation. Another Retailer supported the proposed implementation date which it said would not impact it as it did not envisage using this change.

One Wholesaler could not guarantee that its systems would be ready for the proposed implementation date but suggested that it might be able to find a workaround. Another Wholesaler did not support the proposal and therefore did not agree that it should be implemented.

Eight Wholesalers did not support the proposed implementation date. Two Wholesalers did not support implementation but in the event of approval, they suggested a later implementation dates (April 2021 and November 2021). One of the two Wholesalers that called for an extension to the proposed implementation date said that Wholesalers would need time to prepare their contribution schemes/metering supplies. Another Wholesaler said that whilst it was not supportive of the proposed change it would be able to accommodate the implementation date. One Wholesaler highlighted that Wholesalers would need time to update their Wholesale Charging Tariffs. Several of the consultation responses made reference to the impact that the response to Covid-19 has had on the feasibility of the proposed implementation date.

## **WIRSAE**

The Proposer engaged with WIRSAE during the development of the Change Proposal. The final recommendation report indicates that WIRSAE supports increased use of Accredited Entities to further encourage competition in this market. WIRSAE would prefer that Retailers employ Accredited Entities as an alternative to using the Wholesaler, it acknowledges that the proposal does provide an alternative solution in circumstances where a Wholesaler cannot meet the SLA.

## **Panel recommendation**

The Panel considered this Change Proposal at its meeting on 25 August 2020.

## **Panel deliberations**

In advance of the Panel meeting a number of observations and clarifications were raised by Panel members. These are detailed in section 10.3 of the final recommendation report.

A Panel Member noted that the draft recommendation report provided to Panel appears to suggest that the issue of Wholesalers not meeting the B5 SLA is wide spread, based on the data provided within it. However, they noted that there was no visibility of the reasons for the SLAs not being met.

One Panel Member expressed concern that there may be a lack of Accredited Entities available to carry out the work. In addition, they had some concerns regarding the cost of implementation for Trading Parties, for example the costs to amend IT systems which could be significant.

Another Panel Member considered that the proposal was a 'step in the right direction' to provide greater options for Retailers and allowing innovation and competition. Panel Members noted that the existing performance mechanisms provided by the codes would continue to apply and that the appointment of an Accredited Entity would be complementary to existing rules.

### **Amendment to the proposed solution**

A Panel Member noted that the legal drafting did not require a Wholesaler to explain their reasons where it has failed or will fail the SLA under process B5. They highlighted that this information might assist Retailers in deciding whether or not to pass the work on to an Accredited Entity. The Proposer agreed that amending this solution would promote a dialogue and explanation. Some other minor amendments to the legal drafting were noted ahead of the Panel vote.

### **Vote**

A majority of Panel Members supported the recommendation that Ofwat approve CPW069 for implementation. 11 Panel Members were in favour of the recommendation to implement, and one voted against. The recommended date of implementation was 8 January 2021 if the Authority decision was received by 21 October 2020.

The Panel Members that supported the change agreed with the rationale and case for change set in the final recommendation report and thought that implementation of the proposal would better facilitate and support the objectives and principles of the WRC. These Panel Members considered that the proposal would support improvements to the customer journey within the market, by addressing the area of delays to meter rectification.

The Panel Member that disagreed with implementation of the proposal did not believe the SLA element of the proposal was proportionate or efficient or workable in practice. Their view was that it could make the delivery of the processes in the code (i.e. B5 and

B6) worse and that ‘passing’ jobs to an Accredited Entity at that stage of the process would not deliver the right outcome.

## Our decision

We have considered the issues raised by the Change Proposal and the supporting documentation provided in the Panel’s final recommendation report and have decided to reject the proposal.

We are supportive of the intention behind the proposed change which is seeking to achieve better outcomes for customers. However, we do not consider that the proposal furthers the principles and objectives of the Wholesale Retail Code. The MPF exists to drive performance improvements through monitoring and imposition of fines for non-compliance with SLAs. The MPF is designed to be flexible and risk-based so that it can be focussed on the areas which are judged to be of greatest market impact at any point in time. Initial Performance Rectification Plans and Performance Rectification Plans can be put in place to improve Trading Party performance if required.

Data provided by the Market Operator indicates that performance against the B5 SLA may have improved since the original assessment of the issue was completed for this Change Proposal<sup>2</sup>. In addition, the evidence which has been made available to Ofwat does not suggest that poor performance against the B5 SLA is a market wide issue. Where it is evident that performance in one or more wholesale Areas is an issue, CSD0002 sets out steps that MOSL and the Panel can take to drive performance improvements, in addition Ofwat is also able to take enforcement action.

Given that there are existing processes which could be more effectively utilised, including in wholesale Areas that are consistently underperforming, we do not consider that the proposal would be a **proportionate** or **efficient** resolution to the issue.

If it were to be established that performance against the B5 SLA is a market wide issue, it remains that the proposed solution does not appear to be **proportionate** to address the issue. Insufficient evidence has been presented to demonstrate that the intended efficiencies could be realised through use of Accredited Entities for this work and also

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<sup>2</sup> The evidence included in the final recommendation report to demonstrate poor performance against the B5 SLA covers the January 2019 – December 2019 timeframe. This data suggested an overall failure rate of approximately 20% against the B5 SLA. We requested more up to date evidence as some time had elapsed since the initial review of the issue had been undertaken. The Market Operator provided data covering January 2020 to October 2020, this data indicated that performance against the B5 SLA had improved, the overall failure rate had reduced to approximately 10%. However, it should be noted that the number of tasks being completed during this timeframe had reduced significantly, therefore it is not clear if this has contributed to improved performance.

therefore, whether the associated implementation and ongoing operational costs would be justified. Noting that some Wholesalers' performance against this SLA is good, more effective use of the MPF would provide a more balanced and targeted approach to addressing poor performance and delivering better outcomes for customers. Improvements to the current MPF and the resultant charges for failing to meet the B5 SLA could instead be strengthened to achieve the desired outcome of improving performance against this standard to benefit customers.

It is an existing option under Process B6 of the Operational Terms for a Retailer to request that an Accredited Entity undertakes meter repair and replacement work (where the relevant Wholesaler has appointed an Accredited Entity). We acknowledge that not all Wholesalers have appointed Accredited Entities to undertake meter repair and replacement works and therefore, this option will not be available in all wholesale Areas. We would however, encourage Wholesalers to consider appointing an Accredited Entity to support their delivery against the B5 SLA where this would achieve more timely performance.

We note that the proposal includes suggested amendments which could potentially improve communication between Wholesalers and Retailers. The Market Operator is reviewing process B5 as part of the bilateral solution, any process improvements which might better communication between Trading Parties in relation to process B5 should be considered by MOSL as part of the Bilateral solution.

Consistent with our recent review of incumbent company support for effective markets, we consider that Wholesaler support for effective markets is an important component of overall Wholesaler performance. We think it is important that Wholesalers are effectively incentivised to perform well against the B5 SLA and agree that underperformance can have a detrimental effect on customers. We therefore strongly encourage industry to consider how this and other relevant aspects of Wholesaler performance can be improved through stronger incentives and a more effective MPF.

### **Decision notice**

In accordance with paragraph 6.3.7 of the Wholesale Retail Code, the Authority rejects this Change Proposal.

**Georgina Mills**  
**Director, Business Retail Market**