

MARKET ARRANGEMENTS CODE CHANGE PROPOSAL

Change Proposal Reference <i>(To be completed by the Panel Secretary)</i>	CPM028	Version No	2.0
Type of Change Proposal:	Code Change Proposal		
Submission Date	15 June 2020		
Title: of Market Arrangements Code Change Proposal	Aligning MOSL Board Governance with the Articles of Association		
Summary: of Market Arrangements Code Change Proposal <i>(40 to 50 Words Maximum)</i>	This MAC Change Proposal seeks to align the MAC to four upcoming changes to the Articles of Association, which propose to change Board Quorum and Alternates to a more workable limit, modernise Voting Arrangements, remove the five-year restriction of industry experience for the MOSL Board Chair, and increase the maximum term of MOSL Board Directors from two to three years. It also seeks to permit the MOSL Board to publish its minutes in a summary format.		
General Details of the Proposer			
Name of Proposer	Oliver Robins		
Capacity (on behalf of a Trading Party, as a Panel Member, as the Customer Representative or the Market Operator).	Market Operator		
Contact Email	change@mosl.co.uk oliver.robins@mosl.co.uk		
Telephone Number	07948 466 726		
The Proposer recommends that this Change Proposal should: <i>(delete as appropriate)</i>	Proceed to Assessment		
	Proceed to Consultation		
	Proceed to Recommendation		
	No – but will need to be expedited to align with forthcoming changes to the Articles of Association		

Is the change Urgent (Yes/No)? If yes, please provide reason for urgency (if applicable)	
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Related Documents

Reference of any associated Code Panel Market Arrangements Code Change Proposal	MAC Section 4.4.1 MAC Section 4.4.3 MAC Section 4.5 MAC Section 4.6.3
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Documents Accompanying Form	
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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).

The MOSL Board have agreed to progress a series of governance changes to the Company’s Articles of Association for discussion at an Annual General Meeting (AGM), to be held in July 2020. Four of these resolutions, set out below, require corresponding changes to the MAC should they be approved. This MAC Change Proposal also seeks to address the provision in the MAC that unrealistically obliges the Market Operator to publish minutes of its Board Meetings in full.

Board Quorum and Alternates

The Articles currently require all three of the elected directors to be present for the Board to be quorate. This is inflexible if a director is unexpectedly unavailable or delayed. Whilst the Articles do permit directors to appoint alternate directors, the delegation of responsibility to individuals who will be unfamiliar with the business of the Board is considered to be sub-optimal governance.

Voting Arrangements

The Articles currently stipulate that proxy voting forms used for any general meeting are only valid if submitted 48 hours prior to the meeting. This artificial deadline has frequently led to proxy forms not being valid, due to their arriving too late. Furthermore, the current process for the election of new industry directors is via a nomination meeting, which does not explicitly permit video conference attendance, uses paper voting forms, allows nominations for industry directors to be submitted as late as five business days before the meeting, but also only permits circulation of the candidate details in the last 24 hours before the meeting, leaving little time for consideration of the candidates.

Five-Year Industry Restriction for the Board Chair

The Articles and MAC Section 4.4.1 set out that the Board Chair must not have been employed by a member company in the past five years. The employment agency advisor to the MAC Panel has already begun recruitment for a new Board Chair, a view that the successful candidate

would begin from 1 September 2020. However, this requirement would significantly reduce the eligibility of candidates based on applications currently received. With the Panel also proposing to separate the roles of Board and Panel Chairs, the Board has proposed to amend the Articles to remove this five-year restriction. This should ensure that a breadth of high calibre candidates with relevant experience can be considered and will not exclude an excellent and independent minded candidate as Chair just because he or she had connections to the industry four years ago.

Term of the Elected Directors

References in the Articles of Association and the MAC Section 4.4.3 state that the elected directors may serve only a two-year term on the Market Operator Board. This does not align with the other independent board directors, who each serve the standard three years until they need to stand for re-election. Two-year terms are unusually short and negatively impact Board continuity by creating an increased level of Board turnover.

Board Minutes

Section 4.6.3 of the MAC sets out that “The Market Operator shall publish the minutes of the Board meetings on its website”. This requirement places an unrealistic obligation on MOSL and does not serve the best interests of the industry where the publication of minutes in full would require significant redactions to preserve confidentiality. It is also inconsistent with other code bodies including Elexon, Xoserve and the National Grid.

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)

Sections 4.4.1, 4.4.3, and 4.5 will be modified to ensure that the changes proposed to the Articles of Association align to the MAC. The resolutions are being introduced as conditional on the MAC being aligned, to manage the period between the change to the Articles, and the final Ofwat approval of the MAC changes. MAC Section 4.6.3 will also be amended to ensure that the current working practice of publishing summary minutes of Board Meetings, which is consistent with other code bodies, will be in full compliance with the MAC.

Reduce Board Quorum and remove Alternates

The resolution to the Articles would allow the Board to still be quorate provided at least two of the elected directors is present and remove the provision for alternates. This is common practice with many company boards. The Board operates to a high standard of governance, with all directors' views being sought, and meetings are arranged to ensure the maximum possible attendance. In the unlikely event that a director was unable to attend a meeting, where a matter was due to be discussed that they had strong views on, the decision would be deferred to ensure they could participate. MAC Section 4.4.3 will need to be amended to provide for the reduced board quorum, whilst MAC Section 4.5 will need to be amended to state that directors will not be permitted to appoint alternates.

Modernise Voting Arrangements

The resolution to the Articles proposes to accept proxy forms up until one hour before the general meeting. It would also make it explicit that electronic/digital proxy forms are valid, on which the Articles are currently silent. This resolution will also permit a nomination meeting to be by video conference, using electronic voting forms, with nominations to be submitted no later

than ten business days before the meeting, and circulation of the candidates' details permitted five business days before the meeting date. This will make the election process far less bureaucratic to administer, allow greater participation of the members, and give adequate time for members to consider which candidates they wish to vote for. MAC Section 4.4.3 will need to be amended to permit Nomination meetings for elected directors to be by videoconference and for proxy forms to be electronic.

Remove the Five-Year Industry Restriction for the Board Chair

The Articles of Association have been considered a more appropriate place for the Board Chair arrangements to sit as a matter for industry members rather than the Market Authority. Therefore, the preference is to remove references to selection and appointment of the Chair from the MAC where possible, and instead simply set out in Section 4.4.1 the fact that "there shall be a Chairman to the Market Operator who shall be appointed by the Market Operator".

Increase the Term of the Elected Directors

References in Articles 12 of the Articles of Association will be amended to permit the Board Directors to serve a term of up to 36 months. The MOSL Board currently has two elected directors due to complete their two-year terms in September 2020, and one in September 2021, so this resolution will also include a transition provision whereby any of the three existing elected directors could stay on for a further year (and so complete a three-year term) if they desire. However, it will not be made compulsory for incumbents to serve an additional year and all elected directors will retain the option to resign at any point. MAC Section 4.4.3 will need to be amended accordingly to provide for this.

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	Y	This change will improve the continuity and effectiveness of the board going forward and therefore promote the efficient administration of the Market Terms by the Market Operator.
Proportionality	Y	The three changes described in this proposal are simple and consistent with arrangements in similar markets. The change will benefit the Market by ensuring efficient administration of the Market Terms by the Market Operator.
Transparency	Y	This change moves Board Chair arrangements to sit as a matter for industry members and aligns the MAC to provisions set out by other code bodies. Furthermore, the potential for a conflict of interests is reduced if the

		eligibility of Board Chairman is expanded, and the informativity of Board minutes is maintained by permitting the Board to publish its minutes as summaries than as full, redacted versions.
Barriers to entry	N	
Non-discrimination	N	
Customer participation	N	
Seamless markets	N	
No limit on upstream competition	N	
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).		
No consultation necessary. Industry Members to vote on changes to the Articles of Association in July 2020.		
Further Information		
The following sections of the Market Arrangement Code would be updated: MAC Section 4.4.1 MAC Section 4.4.3 MAC Section 4.5 MAC Section 4.6.3		

Key	
	To be completed by the Market Operator
	To be completed by the Proposer