



Minutes of TDC Meeting 31

16 December 2019 | 10:30 – 12:00 | Teleconference

Status of the Minutes: Final

MEMBERS PRESENT

Name	Role
Elsa Wye	Chair
Wendy Monk	Committee member (Retailer)
Martin Mavin	Committee Member (Wholesaler)
Paul Stelfox	Committee Member (Wholesaler)
Cleo Acraman	Committee Member (Retailer)
Dylan Freeman	Committee Member (Wholesaler)
Joseph Fortune	Committee Member (Retailer)
Julian Tranter	Committee Member (Wholesaler)
Patrick McCart	Committee Member (Retailer)
Neil Pendle	Committee Member (Retailer)
Tom Daborn	MOSL (Presenter)
Miles Robinson	MOSL (Observer)
Hannah Allardice	Meeting Secretary (MOSL)
John Vinson	Guest – Chair designate



1. Welcome and Introductions

PURPOSE: FOR INFORMATION

- 1.1. The Chair welcomed members to the Trading Disputes Committee (TDC) meeting.
- 1.2. With all Members welcomed the Chair proceeded with the meeting.

2. Outstanding actions and review of previous meeting minutes

PURPOSE: FOR DECISION

- 2.1. The Chair asked whether Members had any comments regarding last month's meeting minutes. A Member raised a question on how section 2.9 of the comments was phrased. MOSL confirmed that this section was in relation to a point raised relating to the prevention of re-raising disputes. With no additional comments from Members, TDC 30 meeting minutes were therefore approved subject to an action for MOSL and the member to agree offline what the clarification would be updated to in section 2.9. The TDC moved onto discussing outstanding actions.

A31_01

- 2.2. Action 29_04: MOSL informed the Committee that while preparing the paper for this TDC meeting, MOSL identified that the paper still had a number of issues that needed further clarification and some additional analysis to be carried out. The Chair asked whether the analysis that was being carried out was largely internal discussions and analysis within MOSL. MOSL confirmed this would be internal analysis carried out between the Operations and the Market Design Teams at MOSL. A Member requested clarity on when the paper would be presented. MOSL confirmed that the paper would be submitted for discussion at the TDC meeting in January 2020. MOSL took an action to produce a draft paper to be circulated to members ahead of the next TDC meeting for committee review.

A31_02

- 2.3. Action 30_01: MOSL noted that the in-depth analysis around pre-query disputes would be presented in the unified disputes paper, which will be submitted ahead of the January TDC meeting.
- 2.4. Action 30_02: To provide the TDC with an analysis on queries for pre-disputes, MOSL had organised a summary to explain the following features:
 - Slide 5 - What data was recorded by MOSL when receiving disputes.
 - Slide 6 – Data demonstrating the number of queries that could have been escalated to Trading or MAC/Non-trading disputes.

The sample of the data provided by MOSL (based on queries from November 2018 – November 2019) showed approximately 18.4% (33) queries that related to disputes that were received by the Operations Team at MOSL. Further examination of the 33 queries showed a 12/21 split of potential Trading and MAC/Non-Trading Dispute queries received. 18 of these queries were escalated to formal disputes while 15 were not. This would indicate that the current query process did assist in both resolving formalised disputes and preventing escalation to the TDC. The Chair asked for the clarity on the amount of MAC/Non disputes currently open. MOSL confirmed that five MAC/Non-Trading were active and had been for a long period. MOSL stated that it was due to these five disputes that inspired these unified



disputes process, based on the success from the new Trading Disputes guidance that allowed for the closure of long open disputes.

- 2.5. A Member asked whether disputes from other potential entry points were logged with operations, for example enquiries raised with Portfolio Managers (PfMs). MOSL confirmed that that enquiries from PfMs were fed into the Operations Team and added to the database. However, it was also noted by MOSL that there was a gap in the queries process, due to the amount of e-mails the MOSL had for different departments and subject matter experts. MOSL confirmed that they were currently working on a project incorporating the various query channels so that all communications were received through one central platform. Another Member also asked whether all disputes raised had queries raised before escalation. MOSL confirmed that not all had queries raised because this part of the process was only codified in the Trading Disputes process and not the MAC/Non-trading process. A unified disputes process could facilitate an increase in queries from MAC/Non-trading disputes.
- 2.6. A Member also highlighted that there are potentially thousands of disputes that remain undocumented under certain sections of code, such as section 9.7.2 in the Business Terms. MOSL confirmed that this concern had also been raised internally, as 9.7.2 states that retailers may withhold payment if the invoice is subject to question. A Member raised a concern in relation to the amount of energy going towards overcomplicating a process, unless there was specific concern that had been raised that needed to be addressed, other Members of the committee agreed with this point. Members also agreed that while there may be no need to formalise the process, it would be beneficial to have visibility of this data, to see how it's impacting the market. The Chair also noted that similar discussions in relation to this section had also been discussed under the Credit Committee. MOSL also confirmed this point, explaining that the Credit Committee was currently looking at this section in two parts. One belonging with issues around credit and defaults and the second path relating to disputes. MOSL also confirmed that no formal change proposal had yet been raised but if these types of disputes were to be formalised in code, it would be beneficial to make sure a robust and efficient process was in place to account for these escalations. The Chair also enquired whether MOSL had an overview of these informal disputes. MOSL confirmed that they had no oversight currently but were working with their Market Design Team and the Credit Committee to obtain this information.
- 2.7. Another Member disagreed with the above comments from Members, stating that the lack of information around this topic was due to poor data and overall view of the market. They believed the process should be formalised, so that MOSL were aware of the details of these disputes and their impact. Other Members expressed concerns that formalisation of the process may slow down resolution but agreed visibility of data was required to highlight the underlying problems of the market. It was suggested to MOSL to request the PfMs to find out this information, in order to record and track. Another Member also referred to the fact that without data, is hard to say whether there were thousands of this type of disputes between trading parties. Another member also expressed that section 9.7.2 wasn't very clear and open to interpretation from Trading Parties. MOSL commented that they were aware of concerns of ambiguity around this section of the Code, based on the fact that the mention of disputes was not capitalised and therefore subject to interpretation around whether any dispute that resulted in monies being withheld should have been formalised via the relevant process. However, it was noted that a further section helped to prevent avoid trading parties abusing this process. Members pointed out that since two Committees were interested in this section of code, it is important that they made sure both committees were communicating effectively. The Chair took an action with the Chair designate to organise a meeting with the Chair of the



Credit Committee, in order to ensure the two Committees are aligned in their approach on this issue.

A31_03

- 2.8. Action 30_3: Since the last meeting MOSL submitted questions to TDC members, to obtain their initial thoughts surrounding some points of the unified process. This discussion was to continue under a later agenda item, Unified Disputes Process and was deferred until this point.
- 2.9. With no additional comments from the TDC, the Chair moved onto the next agenda item.

3. Update on new and open trading disputes

PURPOSE: FOR DECISION

- 3.1. Based on the TDC's decision to close the open trading disputes last meeting, MOSL confirmed that there were currently no active trading disputes open.
- 3.2. With no additional comments from the TDC, the Chair moved onto the next agenda item.

4. Unified Disputes Process

PURPOSE: FOR INFORMATION

- 4.1. MOSL provided the Committee with a summary of the key points that initially inspired the unified disputes process.
 - Delays to dispute resolution
 - Lack of alternative solutions for Non-Trading/MAC Disputes
 - Variation in processes
 - No joined-up oversight of dispute resolution in the market.

On the first point, MOSL highlighted that delays in the resolution of a dispute may affect the end customer and that corrections in the process were required in order to avoid this. Furthermore, the lack of a Committee escalation step in the current MAC/Non-trading Disputes process, forced parties to escalate their dispute to arbitration whereas Trading Parties had the TDC to escalate to for Trading Disputes. The third point, relating to the variation in processes, MOSL would be looking to simplify the process and asked if Members believed if this was the correct way to proceed. The fourth point highlighted as MAC/Non-trading Disputes were not currently in the Committee's remit, meant there was a lack of Committee oversight for these types of disputes. Therefore, MOSL would be looking to standardise the treatment of disputes into one process. MOSL asked the Committee if Members had any other concerns of the current processes that MOSL should be looking to rectify. With no comments from the Members, the meeting proceeded to the next slide.

- 4.2. Slide 10 echoed most of MOSL comments from the previous slide on how MOSL were proposing to address the issues with the unified process.
 - Faster resolution of issues impacting customers
 - Quicker third opinion on MAC/Non-Trading disputes which have reached an impasse



- Simpler and more streamlined process, easier to follow
- Holistic view of all areas of market Dispute resolution.

MOSL asked Members for comments on the listed items. The Chair referred to the five MAC/Non-Trading Disputes currently open and asked what type of updates MOSL received for these. MOSL confirmed that, while they did request updates regularly, limited feedback was received. Due to the current process, MOSL are unable to escalate these disputes. In relation to the five active disputes, MOSL established that the most recent updates were that Trading Parties were still resolving the disputes between themselves and would not be looking to escalate.

- 4.3. A summary was presented by MOSL to establish the initial outline for the unified disputes process to the committee. The current process was modelled on the active Trading Disputes process currently used.
1. A Trading Party identifies an issue and discusses with the other disputing Trading Party during 'informal' dispute stage
 2. The initiating Trading Party raises a query with MOSL in order to potentially clarify areas of code
 3. If the issue remains unresolved, the initiating Trading Party raises a formal Dispute through KissFlow app
 4. Disputing Parties have 10 Business Days to hold an initial dispute meeting and 20 Business Days in which to agree to a resolution to the dispute
 5. If no resolution has been reached within the specified timeframe, the dispute will be escalated to the Disputes Committee for determination
 6. The Disputes Committee will discuss the dispute and decide on what rectification needs to occur and which of the disputing parties is responsible for which actions
 7. Following the decision of the Disputes Committee, the Disputing Parties have 20 Business Days in which to disagree with the decision of the Committee. If the Disputing Parties disagree with the decision of the Disputes Committee or if the Committee fails to reach a majority decision, the dispute can be taken to arbitration
 8. If referred to Arbitration, the dispute then follows the arbitration process as detailed in Section 19 of the Business Terms. If no arbitration referral, the decision of the Disputes Committee is to be final and binding.
- 4.4. A member asked what the relation between Panel and the current TDC process was and whether Panel should be included as part of the process. The Chair queried whether this question related to the Panel as an escalation body if the TDC failed to reach a decision or as an appeal mechanism if a Trading Party disagreed with the decision of the TDC. The Chair confirmed that currently the Chair reported regular updates (such as escalations and active disputes) to the Panel. The committee agreed that these issues should be considered in the draft paper to, but that the main objective should be to help create a simple but robust process. A member also noted that 'what if' scenarios should be considered with the draft paper, to help test the process. The Chair suggested that the no contact policy be included and referred to the Trading Disputes guidance document for substance.
- 4.5 With no additional comments from Members, the Chair moved onto the next agenda item.



5. Any other Business (AOB)

PURPOSE: FOR INFORMATION

- 5.1. MOSL notified members that the Operations Team were in the process of conducting internal reviews of their processes, to create a more collaborative and streamlined approach to market processes. Additionally, MOSL commented that it may be useful to book a face to face TDC meeting to discuss some of these changes in the New Year.
- 5.2. The Chair designate raised a question as to whether it was possible to create a SharePoint site for TDC material similar to that for the Panel, MPC and GDPR committees. MOSL took an action to investigate and report back.

A31_04

No additional items raised from TDC members.

- 5.3. With no additional comments, the Chair closed the meeting.

Actions:

- A31_01 MOSL to agree on rectification for 2.9. TDC 30 minutes.**
- A31_02 MOSL to submit unified disputes paper by 3 January 2020.**
- A31_03 TDC Chair/Chair designate to organise meeting with Chair of the Credit Committee to discuss section 9.7.2 of the Business Terms.**
- A31_04 MOSL to investigate setting up a SharePoint space for TDC materials**

The next TDC meeting is scheduled for: **15 January 2020, 10:30 – 12:30, teleconference**