



## Minutes of TDC Meeting 35

15 April 2020 | 10:30 – 12:00 | Teleconference

Status of the Minutes: Draft

### MEMBERS PRESENT

Name	Role
John Vinson	Chair
Wendy Monk	Committee member (Retailer)
Martin Mavin	Committee Member (Wholesaler)
Paul Stelfox	Committee Member (Wholesaler)
Dylan Freeman	Committee Member (Wholesaler)
Joseph Fortune	Committee Member (Retailer)
Peter Strain	Committee Member (Retailer)
Neil Pendle	Committee Member (Retailer)
Julian Tranter	Committee Member (Wholesaler)
Lewis McCart	Alternate Committee Member (Retailer)
Tom Daborn	MOSL (Presenter)
Miles Robinson	MOSL (Observer)

### MEMBERS ABSENT

Name	Role
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## 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. MOSL began with a review of the previous meeting minutes and asked Members for comments. With no comments from Members, the minutes were approved.
- 2.2. Action 33\_03 – MOSL confirmed that, following discussions with its internal legal counsel, the Committee would be indemnified to make determinations on Disputes that involved MOSL as a Disputing Party and the action was closed.
- 2.3. Action 34\_01 – MOSL provided an explanation of the Disputes procedure in the Scottish Market and confirmed that it had a similar structure to the process described under CPW092. MOSL added that under the procedure in the Scottish Market, an initial period of 20 Business Days is followed with an expert determination stage as opposed to the Committee stage proposed under CPW092. Due to the similarity of the process proposed in CPW092 and the disputes procedure in the Scottish Market, the Chair asked for this point to be captured under the “Seamless Market” section of the Change Proposal document and the action was closed.
- 2.4. Action 34\_02 – MOSL explained that it would look to provide Members with a summary of the data privacy, security and GDPR aspects of the Kissflow workflow management platform. MOSL added that it was not in the position to close this action at TDC meeting 35 as it was awaiting the arrival of further information. The action was rolled over to be completed at TDC meeting 36.
- 2.5. With no additional comments from Members, the Chair moved onto the next agenda item.

## 3. Update on new and open trading disputes

### PURPOSE: FOR INFORMATION

- 3.1. MOSL confirmed that there were currently no active trading disputes open.
- 3.2. With no additional comments from Members, the Chair moved onto the next agenda item.

## 4. CPW092: Unified Disputes Process and Committee

### PURPOSE: FOR DECISION

- 4.1. MOSL opened the agenda item and provided an update on the progress of the Change Proposal. The document was expected to be published to the MOSL change register in the days following the meeting. MOSL highlighted that the purpose of the discussion at TDC meeting 35 was to clarify the process ready to be drafted as a solution.
- 4.2. At the request of the Chair, MOSL confirmed the next stage of the change was to pass the solution over for legal drafting prior to consultation. The Chair highlighted the need for this change to be delivered swiftly and for members to be aware of the key dates. The Chair requested MOSL produce a timeline for CPW092 at TDC meeting 36. This was recorded as an action for MOSL.

**A35\_01**



- 4.2. MOSL moved on to begin the discussion on the process under CPW092 and the relative stages that this process could be broken down into. It explained that under the stages of the process were several questions and points of clarity that needed to be addressed in order to capture a solution ready to be drafted.
- 4.3. The first question put to Members by MOSL was on the topic of validation criteria and whether it is necessary for the raising Party to confirm that an informal discussion has taken place on the topic of the Dispute prior to being raised. There was agreement amongst Members that only confirmation should be needed at that stage, with one Member adding that evidence should be required later in the process when escalated to the Committee. A Member added that a low barrier to entry would allow for greater visibility of fractious issues in the Market, but caution would be needed to prevent Disputes of a frivolous or vexatious nature.
- 4.4. Another Member commented that several Operational Terms processes have their own dispute resolution procedures, and that these should therefore be incorporated into any proposed validation criteria under CPW092.
- 4.5. MOSL asked Members what needed to be included in terms of validation criteria for the new process under CPW092. It added that the Credit Committee had provided a recommendation to the TDC to ensure that Disputes of a frivolous or vexatious nature could not be labelled a valid Dispute due to the ability for Retailers to withhold payment of settlement charges under Section 9.7.2 of the Business Terms. There was general agreement amongst Members that the validation criteria should be "low bar" and should ask the raising party to confirm that it had attempted to resolve the Dispute outside of the formal process. The Chair asked MOSL to produce this validation criteria for Members to review at TDC meeting 36. This was recorded as an action.

**A35\_02**

- 4.6. MOSL moved on to discuss the "resolution" stage of the Dispute process, whereby Parties were expected to attempt to resolve the Dispute. Members were asked whether they agreed with the codified 20 Business Day timeframe which could be extended if agreed upon by all involved Disputing Parties. With no comments from Members, this point was taken to be agreed.
- 4.7. MOSL then asked Members whether they agreed with the principle of closing a Dispute if no contact had been received 10 Business Days after the Disputing Parties had been provided with a notice which would be issued in instances where no contact had been received upon the passing of the resolution stage timeframe. There was agreement from all Members on this principle.
- 4.8. MOSL then raised the question as to whether an expedited process was necessary in order to deal with Disputes which had been deemed to be urgent. There was general consensus amongst Members that the process needed to be flexible enough to allow for the arrangement of ad-hoc meetings on an urgent basis where deemed necessary.



- 4.9. MOSL asked Members to confirm whether Arbitration should remain as a final step in the process under CPW092. There was general agreement from members that Arbitration as a necessary step in the process and to remain included.
- 4.10 The Chair asked Members for views on whether they wanted to keep the current majority voting arrangements of the Committee or move to a “majority plus one” basis as per the Panel. Members confirmed that the current voting arrangements were satisfactory.
- 4.11. With no additional comments from the Members, the Chair moved onto the next agenda item.

## 5. Member nominations process and Terms of Reference

### PURPOSE: FOR INFORMATION

- 5.1. MOSL confirmed that an Associated Retailer Member had decided to step down from the TDC, and as such the nominations process would shortly begin to seek a new Member.
- 5.2. One Member questioned whether it was necessary that the new member strictly come from an Associated Retailer. MOSL responded that it was currently looking at this point and may look to change the Terms of Reference to allow nominations from any Retailer.
- 5.3. With no additional comments from Members, the Chair moved on to the next agenda item.

## 6. Any other Business (AOB)

### PURPOSE: FOR INFORMATION

- 6.1. The Chair asked Members for any other business items.
- 6.2. With no additional items, the Chair closed the meeting.

### Actions:

**Action 35\_01: MOSL to produce timeline for CPW092**

**Action 35\_02: MOSL to produce tick-validation criteria for ensuring validity of Disputes under new process**

The next TDC meeting is scheduled for: **20 May 2020, 10:30 – 12:30**