

Review of MOSL compliance

Final

Market Operator Services Limited
2019/20 NHH market audit
June 2020



Scope and approach

Background and objectives

As part of Market Audit programme of the 2019/20 Market Audit, we have performed our review of MOSL compliance in two phases:

- **Interim review:** over the course of December 2019 and January 2020, we follow up on prior year observations and current management reporting of non-compliance. An interim review to assess the design and operating effectiveness of key controls in support of the relevant obligations; and
- **Final review:** Update testing of operating effectiveness and follow up on observations raised during the interim to cover to the year ended 31 March 2020.

Our approach is risk based, and therefore we have selected certain processes to test as part of our review. This selection is based on a risk assessment that includes prior year observations, known areas of non-compliance, higher impact and 'riskier' processes MOSL deliver. We also included an element of random selection to cover a further sample of processes.

This report includes the results from our final review, with the results of our updated testing from December 2019 to March 2020.

Scope

- We reviewed the current status of the policy and governance processes around MO Compliance, including a review of the impact assessment methodology and scoping activities. This was by interview with the MO Compliance Lead and review of current policy documents and planned processes that are due to be implemented.
- We performed a follow up on our recommendations from the prior year and the interim review to understand progress, validation of any closed actions and plans to complete for those still open. This was by review of current reporting to MPC of status against each finding raised in our current report. Where findings are reported as compliant, we looked to validate this status by review of documentation, interview of process owner and some sample tests where appropriate.
- We tested a sample of business processes and the key controls in place, to assess whether key obligations are being met and core controls are operating effectively. Our detailed scope and approach by business process is outlined in the table to the right.
- We revisited MOSLs current position of non-compliance obligations during our final audit in March, focusing on those higher / medium impact. For the closed non-compliances we gathered and reviewed sufficient evidence to confirm the implementation of the agreed actions.

Service Level / Scope area	Process	Obligations	
Review of MOSL reported non-compliance instances	N/a	N/a	
Update on prior year market audit findings raised	N/a	N/a	
CMOS service management	CMOS releases and updates	23	
Financial settlement	Unplanned settlement runs	12	
	Invoicing	3	
	Market performance charges	10	
	MO charges	21	
Market charges and payments	Non-payment	5	
	Market operator compliance	Legal and compliance	61
	Market operator compliance	MO compliance	4
Market operator compliance	MOSL Board	9	
Market performance and insight	Annual Market Performance Report	1	
Market performance and insight	Market Performance Operating Plan	6	
Panel and market code change	Market code change	14	
Registration and switching	New supply points	36	
Registration and switching	Transfer supply point	39	
Trading Party compliance	Trading Party compliance	36	
Total		280	

Figure 1. Scope areas of 2019/20 MO Compliance review

Summary of observations

Definition of priority ratings

Our findings are categorised by the following priority ratings:

- **High** – An action relating to a significant issue identified that is resulting in (or could result in) non-compliance with the Wholesale Retail Code (WRC) and is important to be addressed by management or to be considered by the market (if impacts multiple parties) as a matter of priority;
- **Medium** – An action addressing a weakness which, although unlikely to lead to a material risk of non-compliance with the WRC, warrants timely action using the existing framework existing either locally or across the market to ensure a formal and effective system of control exists; and
- **Low** – An action which addresses issues where resolution within the normal management framework is considered desirable to improve efficiency or ensure that the business matches current market best practice; or observations relating to market wide scenarios that could be considered for improvement purposes.
- **Advisory** – An improvement recommendation to MOSL to consider going forwards to better manage their processes and reporting obligations. We will not seek to review progress made against any advisory recommendations we make, as it is for MOSL to review and consider next steps, and we consider there to be low impact on their obligations.

Summary of observations

#	Area	Observation	Priority	Impact	Action / recommendation	Management response
1	All <i>Reported at interim</i>	<p>Limited progress made on prior year observations</p> <p>Following our interim review of MO Compliance we reported a high risk finding in relation to we enquired with management progress made on our prior year market audit findings raised. Out of 6 observations and actions made last year, we conclude that only two of the findings are closed at this stage. This finding is in relation to key person dependencies, where we recognise progress made in providing greater depth and new recruitment into the Digital Team, however it will continue to be a general risk to monitor as part of BAU risk management.</p> <p>Since the interim review we obtained sufficient evidence to close one finding: "Compliance - Change Management".</p> <p>Our remaining open findings relate to:</p> <ul style="list-style-type: none"> Progress has been made in relation to the completeness of documentation supporting Market Exit and Volume Transfer but we consider the finding still open due to the lack of quality, completeness and consistency of the process and controls documentation; Strategy of MO compliance, including the nature and extent of internal assurance provided to support compliance with core obligations; Nature and quality of external reporting of MO compliance to participants via the website; and Quality, completeness and consistency of process and controls documentation, including clear linkage to risks, obligations, and evidence. We corroborate this finding with our final review with the two below additions: <ul style="list-style-type: none"> Market Exit and Volume Transfer process documentation (as already highlighted above on the first bullet point) Two key Finance policies appear to be still in draft since the Interim review: "FIN003 - Accounts Receivable - MO Charges" and "FIN004 - Accounts Receivable - MPS Charges". <p>We understand that a Compliance Programme is due during 2020, which will incorporate these observations. We consider that at this point in time, the overall maturity assessment of the compliance effort in MOSL has not materially improved from our prior audits, and the Compliance Programme, as described, will be key to this.</p>	High	<p>Without a clear vision for the future state of compliance and the strategy, the impact and benefits this has on the business, there will be an overall detriment to the quality and maturity of the compliance function within MOSL.</p> <p>Ongoing changes and turnover of staff in the business will have a significant impact on compliance efforts. Without clear, documented processes and linkage to the obligations there will be challenges in the consistency and quality of process and control operation and evidencing compliance on an on-going basis.</p> <p>A clear view on the key controls that operate in a process can provide a much more efficient and effective view on compliance, rather than having to assess each and every underlying obligation. This will support a better quality and more informed internal assurance / self-assessment model.</p>	<p>ACTION</p> <p>Management should focus on addressing the points as outlined in our prior year audit report. In practice we see the Compliance Programme due in 2020 being a key driver in remediating these areas, however the strategic view and clarity of future state, and how the compliance effort will be focussed, should be a priority.</p>	<p>We recognise the importance of establishing a Compliance Programme and this will be a priority in 2020, leading to the closure of the four related audit findings.</p> <p>The programme will focus on establishing a clear internal view of compliance risk, associated controls, internal testing and reporting. We will work with PwC to assess how we adapt the scope of external audit compliance in 2020/21 to reflect and complement progress made and improve overall efficiency over how we gain compliance assurance.</p> <p>We are engaging with the panel audit subgroup to ensure there is timely and transparent reporting of findings on MO compliance, and that the subgroup has the opportunity to review progress made on resolving previous audit findings.</p> <p>We committed in our business plan for 20/21, to review how we best provide market audit value through a strategic approach, and we are looking to tie this in with our move towards a three-year business planning horizon from next year. As part of our developing a longer-term audit strategy we will engage with Audit Committee, Panel Audit sub-group and wider stakeholders (including PwC) to undertake a comprehensive lesson learned exercise to inform our three-year plans.</p>

Summary of observations

#	Area	Observation	Priority	Impact	Action / recommendation	Management response
2	GDPR	<p>Deficiencies in data protection governance, policy and process – update since January 2020 review</p> <p><i>Reported at interim</i></p> <p>Following our interim review conducted in January 2020, we performed following procedures to assess progress against key actions identified. We reviewed additional documentation provided, and conclude that of the eight actions agreed by management, seven are in progress with varying levels of completion.</p> <p>We observed good progress made in areas such as developing an end-to-end process for handling Individuals' Rights Requests; the DPIA undertaken for DAC Beachcroft on market opening; implementing training modules; and steps being taken to update third party contracts and to produce the Records of Processing Activities (RoPA).</p> <p>Our remaining open findings continue to be on corporate documentation and formalised internal processes, specifically relating to:</p> <ul style="list-style-type: none"> Market privacy notice - no evidence seen of an agreed and formalised review process for updating the notice. However, the process for updating the notice is owned by the GDPR Committee and actions have been taken to update the notice in January, 2020 and in June 2020; Data Protection (DP) policy and Data Retention policy - no evidence seen of supporting processes and procedures for updating and reviewing the policy periodically, nor any testing or monitoring of these processes; Privacy by Design - no evidence seen of supporting processes and procedures for embedding Privacy by Design within the Project Lifecycle beyond initial DPIA, nor any testing or monitoring of these processes; and Data Breach Response -no evidence of supporting processes and procedures for regular reporting to the Audit Committee, however, a breach log is in place. <p><i>[Continued on next page]</i></p>	High	<p>Overall, given the type, number and areas of data protection compliance which are in the process of being developed, we consider MOSLs exposure to regulatory, financial, and reputational risk continues to be significant. This increases its likelihood of severe penalties being imposed for failure to meet GDPR's requirements.</p> <p>At a lower level, some of the implications will be as follows (the list below is not exhaustive):</p> <ul style="list-style-type: none"> The RoPA does not currently outline all personal data processing activities which means MO does not have full visibility of the personal data it is processing and its associated risks; it is therefore in breach of Article 30 of the GDPR; The absence of formalised documentation and lack of repeatable procedures means MO cannot ensure or evidence consistent decision making being made; and It also means that certain activities may not take place in accordance with expected compliance parameters e.g. handling data breaches and responding to individual rights requests. <p><i>[Continued on next page]</i></p>	<p>ACTION</p> <p>Management should continue its efforts with addressing the points as outlined below:</p> <p>(1) Purge the CMOS test environments of personal data</p> <p>(2) Digital Support Analyst to review the Sharepoint structure, to note personal data</p> <p>(3) Company Secretary & General Counsel to review all 3rd party contracts for appropriate data protection clauses</p> <p>(4) Company Secretary & General Counsel to update findings into a contract clauses</p> <p>(5) Company Secretary & General Counsel to review Data Protection Policy</p> <p>(6) Company Secretary & General Counsel to update Data Retention Policy</p> <p>(7) Company Secretary & General Counsel to create and maintain a Record of Processing</p>	<p>Good progress has been made over the last 5 months, both on addressing GDPR risks in the market and for MOSL as a company. Having discussed the market data with the ICO, the feedback was that our data is considered low risk – very limited personal data is held (primarily some sole trader details). By the end of June, the work to obfuscate personal data in non-production environments will also be complete, and we are implementing a new, very robust, data subject rights request process (using a secure online tool – Kissflow) as well, that will have Panel approval.</p> <p>We consider our greatest risk is MOSL's own compliance, through human error risks such as accidentally disclosing personal data in an email or file. As evidenced in the reporting to the Audit Committee, we do have a working data breach process in place (and a policy) and there is a data rights request form published on our website.</p> <p><i>[Continued on next page]</i></p>

Summary of observations

#	Area	Observation	Priority	Impact	Management response
2	GDPR	<i>[Continued from previous page]</i>	High	<i>[Continued from previous page]</i>	<i>[Continued from previous page]</i>
	<i>Reported at interim</i>	<p>For the specific duties imposed on MO and Trading Parties (as set out in Schedule 13 and Section 5), we were not provided with any evidence of those duties being executed in practice, nor were we provided with a list of all third parties and the extent to which each of them are operating in a Controller or Processor capacity.</p> <p>We acknowledge management comments at interim regarding the risk and impact of this area given MOSL do not process significant levels of personal data, or sensitive personal data. Further, given it has not received any individual rights requests or suffered any data breaches to date, the risk is lower. However, in the absence of seeing a completed RoPA which describes all personal data processing activities executed by MO, it is not possible to conclude the extent to which this may or may not be the case. Therefore, until MO has successfully completed all of its outstanding actions, we consider that the same level of residual risk as previously stated remains valid.</p>		<p>Until MO has developed an adequate view of the specific nature of each relationship it has with its third party suppliers, and the capacity (e.g. controller, processor or joint controller) within which each party is operating, MO may not be able to demonstrate compliance with relevant articles of the GDPR.</p> <p>Further, if parties lack clarity on their respective roles and responsibilities, they may not be able to adequately and swiftly respond to a security incident in the event of a data breach.</p> <p>Management have suggested that this should be incorporated into the contracts register being developed to capture data sharing agreements.</p>	<p>We are planning on recruitment very soon for the legal team to help with resourcing the outstanding actions. The focus over the next few months will be:</p> <ul style="list-style-type: none"> • Embedding data protection awareness further – training and comms around policies and guidance; • Completing the review of the remaining contracts for adequate data protection provisions; and • Populating the new record of data processing, via input from across MOSL to identify personal data processed, where it's held, how it is stored and shared and the retention periods. <p>Response to specific actions:</p> <p>(1) In progress, currently will be closed by end of June;</p> <p>(2) High-level review of SharePoint structure has been completed; next stages have been delayed due to other commitments;</p> <p>(3) In progress, with the material/higher risk contracts reviewed already for data protection provisions;</p> <p>(4) Action is to populate a contract register. As for action 3, a register has been created, and contains the record of the higher risk contracts;</p> <p>(5) Will be completed following review of the updated DP policy at the Audit Committee on 23 June 2020;</p> <p>(6) Data Retention Policy is in the process of being reviewed and will be signed off by 31 August 2020; and</p> <p>(7) Will be prioritised, as there is a clear need for a record of data processing. Such a record does exist for the market data (i.e. held on CMOS) and has been provided. A basic record of MOSL's own company held personal data has been created, in the interim, but this will take additional time to be fully populated, following consultation across the business.</p>

Summary of observations (continued)

#	Area	Observation	Priority	Impact	Action / recommendation	Management response
3	Unplanned settlement runs <i>Reported at interim</i>	<p>Timely maintenance of data on Kissflow relating to Unplanned Settlement Runs (USR)</p> <p>During our testing of Unplanned Settlement Runs (USR) we inspected and performed analysis over the list of all USRs conducted during the audit period.</p> <p>During our interim review we identified that:</p> <ul style="list-style-type: none"> • USR00215: this run impacts a third party and based on the policy outlined the cost should be absorbed by MOSL. An agreement was reached to absorb 80% of it. Whilst this discussion and agreement processed was evidenced in emails, the 'comments' section in the documentation was not updated to reflect the final position concluded; and • USR00220: we understood that the materiality calculation relating to this run was updated after an initial mistake. Again, whilst we could inspect information relating to the issue, the "materiality calculation" field was not updated to reflect the final position. <p>Update from year end testing:</p> <p>During our update review we identified that:</p> <ul style="list-style-type: none"> • USR00220 materiality amount is displayed in K£, while all other items are displayed in £; and • USR00171 status is displaying "completed" but based on Process Owner comments, we understand that the item is actually "cancelled". <p>We consider all these items to be documentation points and of low risk.</p>	Low	Unproper and untimely housekeeping of the system may cause inefficiencies and loss of time in retrieving key data and may also impact any future data migration to other systems with data loss.	<p>ACTION</p> <p>We recommend to set up an additional review step before "closing" the USR, to ensure that all the information has been properly updated and all the evidence and audit trails have been attached to the platform.</p>	<p>An additional step will be added to the process to ensure that all information has been updated and evidence retained.</p> <p>Enhancements to the Key Control information are captured within the Compliance Programme.</p>

Summary of observations (continued)

#	Area	Observation	Priority	Impact	Action / recommendation	Management response
4	Unplanned settlement runs <i>Reported at interim</i>	<p>Monitoring of USR SLA requirements</p> <p>During our review of obligations as outlined in the Market Terms 4.14.3: " <i>The Contracting Wholesaler and the Contracting Retailer note that the Market Operator shall undertake Post RF Settlement Run(s) within twenty (20) Business Days and will issue a Post RF Settlement Report if, and only if, the Materiality Threshold is met.</i>"</p> <p>Whilst we did not identify a breach in this SLA in our testing, we noted a lack of formal process to regularly monitor the performance of this process and adherence to SLAs.</p>	Low	Without a formal monitoring process in place, there is an increased risk that future breaches in the SLAs defined are not identified and managed in a timely manner.	<p>ACTION</p> <p>We recommend to define, assess and implement a way of tracking this SLA, in order to be able to properly and effectively monitor the effectiveness of the process and compliance to the obligation.</p>	A review of SLAs is conducted monthly, however, this has not yet been formalised. Once this is formalised it will track this SLA.
5	MO Compliance <i>New finding for year end</i>	<p>MO Compliance website page is not regularly updated since Q2 18-19</p> <p>We noted that the MO Compliance website page is not regularly updated and the latest update is from Q2 18-19 (therefore six quarters of reporting missing).</p> <p>As a compensating control, we have validated that non-compliances have been presented to the MPC on the 29th of January 2020 and the 30th of October 2019.</p> <p>CSD0002 - 6.1.1 requires that MO Compliance "(...) reports shall be non-confidential and shall therefore be available to all Trading Parties".</p>	Low	If the compliance website page is not regularly updated there is a risk of a code obligation breach.	<p>ACTION</p> <p>We recommend regularly updating the MO compliance website page with the latest Quarterly reviews and graphs.</p>	<p>All missing quarterly MO Compliance reporting will be added to the MOSL website by the end of July 2020.</p> <p>In addition, a control step will be added to the process to ensure that these are not missed in the future.</p>

Summary of observations (continued)

#	Area	Observation	Priority	Impact	Action / recommendation	Management response
6	Invoices and Charges <i>Reported at interim</i>	Improvement recommendations to use of spreadsheets for MO charges calculations During the walkthrough and the inspection of the supporting evidence provided, we found that that the MO charges calculation process is lengthy and heavily relying on manual activities and linked spreadsheets.	Advisory	In general, the manual process and nature of spreadsheet reliance is time consuming and the risk of manual error is therefore elevated.	RECOMMENDATION We recommend MOSL assessing the possibility to improve the process with automation, in order to minimise the risk of manual errors and improve the efficiency of the process.	MOSL note the recommendation from PWC. MOSL are continually reviewing their processes, including the tools used (such as spreadsheets) and are seeking to ensure that human error is reduced by using more automation within spreadsheets where appropriate.

Summary of observations (continued)

#	Area	Observation	Priority	Impact	Action / recommendation	Management response
7	Market Code changes	<p>Lack of document evidence supporting Legal Review services for changes processed</p> <p>During our sampling of market codes changes, we requested evidence of the review of the code change by legal counsel. We understand that since the beginning of this year, this review is performed by an outsourced Legal Counsel. Whilst we could identify all the draft texts in the Final Recommendation reports of the 10 code changes we sampled, we only obtained supporting documented evidence of legal review for one change.</p> <p>Following completion of update testing in April 2020, we concluded that this finding has now been resolved.</p>	Closed	N/a – this finding was raised at interim and is now resolved.	N/a – this finding was raised at interim and is now resolved.	N/a
	<i>Reported at interim</i>					
8	Market Code changes	<p>Internal Impact Assessments for changes processed not operational until October 2019</p> <p>Based on our understanding of the change management process, a key control is the preparation and documentation of the Internal Impact Assessment (IIA). We found in our prior year testing that this control was not operating, however expected this to be in place for the current audit period.</p> <p>Following our review, we identified that the tracking of IIA started from mid October 2019, and as a result we did have not seen evidence of a documented IIA for any the 10 code changes we sampled for testing (our latest sampled change for interim review was implemented in September 2019).</p> <p>Following completion of update testing in April 2020, we concluded that this finding has now been resolved.</p>	Closed	N/a – this finding was raised at interim and is now resolved.	N/a – this finding was raised at interim and is now resolved.	N/a
	<i>Reported at interim</i>					

Summary of observations (continued)

#	Area	Observation	Priority	Impact	Action / recommendation	Management response
9	MOSL Board	<p>Decision not to publish Board meeting minutes non-compliant with obligation MAC 4.6.3</p> <p>Obligation 4.6.3 in the MAC states: "<i>The Market Operator shall publish the minutes of the Board meetings on its website</i>". During our testing, we confirmed that the Board meeting minutes are no longer being published (due to confidentiality concerns), and this is in discussion regarding potential code change.</p> <p>However, based on the current obligations, this practice is non-compliant and has been since January 2019.</p> <p>Following completion of update testing in April 2020, we have reviewed updated practices to publish summary Board meeting minutes and therefore conclude this finding to be resolved.</p>	Closed	N/a – this finding was raised at interim and is now resolved.	N/a – this finding was raised at interim and is now resolved.	N/a
	<i>Reported at interim</i>					
10	MOSL Board	<p>User Forum notice is not dated to evidence compliance with obligation 8.4.1 in the MAC</p> <p>During our testing of the following obligation 8.4.1 in the MAC: "Any meeting of the User Forum shall be convened by the secretary of the User Forum by notice to each Trading Party and any stakeholder invited to attend the meeting in accordance with Section 8.2.2, setting out the date, time and place of the meeting and (unless the User Forum has otherwise decided) giving at least ten (10) Business Days' notice of the meeting and accompanied by an agenda and such supporting papers as are necessary".</p> <p>Following completion of update testing in April 2020, we concluded that this finding has now been resolved.</p>	Closed	N/a – this finding was raised at interim and is now resolved.	N/a – this finding was raised at interim and is now resolved.	N/a
	<i>Reported at interim</i>					

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This document has been prepared only for Market Operator Services Limited and solely for the purpose and on the terms agreed with Market Operator Services Limited (MOSL) in our agreement dated 26 May 2017. We accept no liability (including for negligence) to anyone else in connection with this document, and it may not be provided to anyone else.

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