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Re: Consultation on Retail Code Consolidation

Dear Rachel,

Thank you for the opportunity to respond to the consultation on Retail Code Consolidation. Our response here focusses on the impacts and consequential changes to the SEC required to support the delivery of REC v2.0.

The majority of required changes to the SEC for REC v2.0 are minor clarification and/or cross reference changes which we support. However, the latest set of drafting has included some new principles into the Modifications process which causes the SEC Panel some grave concerns.

The latest drafting of consequential changes introduces the concept of the Cross Code Steering Group (CCSG). Although detail of this group is not yet developed, it is a welcome prospect considering the issues the SEC has encountered with cross code working recently.

The drafting also seeks to amend the current SEC Modification process to recognise the CCSG. The key changes as we recognise them are:

- Code Administrators can raise and progress Modifications to their Codes if it is established as a cross code issue by the CCSG.
- Where a cross code change is identified, the CCSG establish a 'Lead Code'. The Lead Code is responsible for progressing changes to their own Code and in coordinating the changes to other industry Codes.
- The Lead Code will set a timetable for progression. Modifications to any impacted Code must follow that timetable.
- If the SEC is not the Lead Code then the SEC Change Board does not make a determination on approval or rejection of the SEC Modification. Instead, the Change Board would make a recommendation to the Panel (or decision-making body) of the Lead Code. If the Lead Code Modification is approved by the Lead Code Panel, then the consequential Modifications to other impacted Codes are considered to be approved as well.
- If the SEC is the Lead Code then the Change Board make a decision on the SEC Modification but would also need to consider the reports and recommendations of all impacted Codes when making their determination, since it will result in approval or rejection of those changes as well.

Whilst we understand the scenarios Ofgem are trying to mitigate, we believe the solution put forward is fundamentally flawed and the repercussions have not been fully considered. Removing the ability of an Industry Code to make a determination on a change to its governance framework, could create a number of issues:

- The codes are very different and require different skill sets and knowledge. Despite detail being captured in a report it would be hard for another Code body to understand the subtleties of what is being discussed or the issues raised.
- If a significant change to the SEC were required, it would normally go to Ofgem for determination where further analysis may be requested, or reports sent back if further work is required. Another Code body would not have the power to send a Modification back, nor the resource to undertake an analysis of the change. Therefore, it is likely the Code bodies will merely choose to go with the majority decision in the Modification reports.
- If, during development it is found that changes to a secondary Code are far more significant than first thought, they may require Authority approval. However, if the Lead Code Modification does not meet the criteria for Authority determination, the changes are not sent to the Authority. A Code Panel should not make significant decisions about another Code.
- Although the drafting makes reference to appeals, there is little route for appeal. A SEC Party may not be able to appeal another Code to overturn the decision of the Lead Modification. Certainly, the SEC Panel nor SECAS have such an ability. Equally, the issue may not be with the Lead Modification. It would seem strange for a SEC Party to appeal the decision of another Industry Code Modification to overturn a SEC change decision.
- If several Codes are impacted by a change, and one consequential change is not appropriate to approve, all changes in the package of change would need to be rejected. Since approval or rejection relies on the outcome of the Lead Code Modification this could mean a valid Lead Code modification is delayed or unnecessarily rejected because of a technicality in another Code. We are aware some Codes have restrictions on raising Modifications that have previously been rejected, this could potentially further delay any implementation of an updated Lead Code modification.
- Similarly, if all consequential changes were suitable for approval, but there was an issue with the Lead Modification, then all changes would be rejected despite being fit for purpose. If the Lead Modification was flawed or unsupported from the beginning this could lead to a lot of wasted effort in other Codes.
- Applicable objectives may not allow Code Panels to make the required decisions. Whilst we believe most Panels are pragmatic, it could potentially open up a route of appeal. We would note that a review of Applicable Objectives would be beneficial, regardless of this drafting, to allow for more pragmatic decision-making.

Whilst the scenarios set out above are plausible and should be considered, we currently face a very real example in BSC Modification P379. Under the new regime, if the BSC Panel were to approve P379, the SEC would be required to implement consequential changes that would have significant impacts on the SMIP with no route of appeal. The list above should therefore not be seen as an over-exacting review of drafting but highlighting a very real and critical issue.

Proposed way forward

As noted above, we understand the issues Ofgem are trying to resolve. However, we believe there is a more efficient way to deliver the desired outcome. We would recommend that new drafting is created based upon the following principles:

- Code Administrators are obligated to inform the CCSG of any potential cross code impact once identified. The CCSG establish a Lead Code and inform the relevant Code Administrators of their decision.
- The Lead Code is obligated to create a plan of progression, taking into account the views of the other Code Administrators. Code Administrators are obligated to use reasonable endeavours to follow the agreed timetable. Any delay in progress against the timetable must

be reported to the Lead Code and CCSG. The CCSG members are responsible for sharing agreed timetables and relevant updates with the Industry Code Panels they represent.

- Where the CCSG determines a cross code impact, Code Administrators can raise Modifications to their own Code. In this circumstance, Code Administrators are considered to be Proposers and will progress Modifications as such. This is important as it means the Code Administrators are responsible for driving the Modification forward and are not held accountable by Ofgem/CCSG for changes they cannot control.
- All Modifications that the CCSG determine have a cross code impact must have a Lead Code and that Lead Code shall produce a timetable as described above. This allows for the inclusion of Modifications raised by other bodies where cross code impacts are not identified until later in the process; rather than limiting the process to only changes where cross code impacts are identified from the outset and raised by Code Administrators.
- All Modifications that the CCSG determine have a cross code impact must be issued to the Authority for determination. This step removes any possible confusion or conflict over the determination of Modifications. Any changes will still be progressed as a suite of modifications, coordinated and managed by the Lead Code and the CCSG. However, it provides a clear decision and appeals route based on established principles and processes. Ofgem have noted that they expect most changes which come via the CCSG to meet the criteria for Authority determined Modifications. Therefore, making such a step mandatory is not placing undue, or unforeseen, burden on the Authority and eliminates the complexity and issues with the current drafting.
- Code Administrators must inform the Lead Code and CCSG of recommendations being made to Ofgem by the appropriate governing body, in the case of the SEC, the Change Board.

We have set out in an appendix to this letter a set of drafting that we would support and that would deliver these principles. We also recognise the need for other Codes to adopt these principles so believe there should be the necessary amendments to the proposed text to allow consistency across Codes.

We would also encourage a conversation on this matter at the earliest convenience. We are aware the concern has been raised with yourselves but would like to be able to provide comfort to the SEC governance bodies that the concerns have been acknowledged and resolved. As the drafting currently stands, we do not support or the consequential changes to the SEC for REC v2.0.

If you would like to discuss this further, please do not hesitate to contact myself or the Adam Lattimore on 020 7090 7755 or SECAS@gemserv.com.

Yours sincerely,



Peter Davies

SEC Panel Chair

D MODIFICATION PROCESS

D1. RAISING DRAFT PROPOSALS

Modifications

D1.1 This Code may only be varied in accordance with the provisions of this Section D.

D1.2 Each variation of this Code must commence with a proposal made in accordance with the provisions of this Section D1 (a Draft Proposal) or a direction under Section D9A (Authority-Led Variations).

Persons Entitled to Submit Draft Proposals

D1.3 A Draft Proposal may be submitted by any of the following persons (the Proposer):

- (a) a Party;
- (b) Citizens Advice or Citizens Advice Scotland;
- (c) any person or body that may from time to time be designated in writing by the Authority for the purpose of this Section D1.3;
- (d) the Authority or the DCC acting at the direction of the Authority, but in each case only in respect of variations to this Code which are in respect of a Significant Code Review; and
- (e) the Panel (where all Panel Members at the relevant meeting vote unanimously in favour of doing so), but only in respect of variations to this Code which are intended to give effect to:
 - (i) recommendations contained in a report published by the Panel pursuant to Section C2.3(i) (Panel Duties);
 - (ii) recommendations contained in a report published by the Code Administrator pursuant to Section C7.2(c) (Code Administrator);
 - (iii) Fast-Track Modifications (as described in Section D2.8 (Fast-Track Modifications)); and/or
 - (iv) consequential changes to this Code required as a result of changes proposed or already made to one or more other Energy Codes.

(f) the REC Code Manager and/or other Energy Code administrators where a consequential change to this Code has been identified by the Cross Code Steering Group.

D2 MODIFICATION PATHS

D2B Cross Code Steering Group

D2B.1 The Panel shall ensure that one or more representatives are included in the Cross Code Steering Group, with appropriate skills, knowledge and experience to participate in accordance with the Cross Code Steering Group Terms of Reference.

D2B.2 The Panel may discharge the requirements of Section D2B.1 by ensuring the Code Administrator provides appropriate representatives.

D2B.3 Where the Cross Code Steering Group determines that this Code is to be used as the lead-code for a Modification Proposal, then the Code Administrator shall progress that Modification Proposal in accordance with this Code, and shall coordinate with the code administrators of the other affected Energy Codes so that they can manage the processes under their Energy Codes in parallel with the process under this Code.

D2B.4 Where the Cross Code Steering Group determines that another Energy Code is to be used as the lead-code for a Modification Proposal, then the Code Administrator shall progress that Modification Proposal in accordance with this Code, but subject to the following:

(a) the Code Administrator shall progress the Modification in parallel with the change under the lead-code, and subject to the timetable determined under the lead-code;

(b) the decision in relation to the Modification under this Code shall not be a decision as to whether or not to approve the Modification or as to whether or not to recommend approval to the Authority, and shall instead be treated as a recommendation under the lead-code; and

(c) the Modification shall be approved if the change under the lead-code is approved, and rejected if the change under the lead code is rejected (subject to any appeal mechanism under the lead-code).

D2B.5 Where a Modification is progressed in relation to an Energy Market Message and/or an Energy Market Data Item defined within the Energy Market Data Specification, the relevant Energy Market Meta Data Owner shall be defined as the lead code.

D2B.6 The Code Administrator shall ensure that the meta data for all relevant Energy Market Messages and Energy Market Data Items utilised under this Code are defined within the Energy Market Data Specification administered in accordance with the REC Change Management Schedule.