

MARKET CODE / OPERATIONAL CODE CHANGE PROPOSAL

Form
version 3.0

Change Proposal reference
(To be completed by the TP Sec.)

MCCP299

Version No.

D.1

PART A — SUBMISSION

A.1. GENERAL DETAILS

A.1.a. TITLE Market Data Confidentiality

A.1.b. COMPANY Central Market Agency

Change Proposals must be authorised by the person designated by the signatory to the Market Code Framework / Accession Agreement

A.1.c. AUTHORISED SIGNATURE NAME Damian Sharp

A.1.d. CONTACT NAME CONTACT EMAIL;
TEL/MOB. Damian.sharp@cmascotland.co.uk

A.1.e. ASSOCIATED
MCCP / OCCP

A.1.f. ASSOCIATED
DOCS. Annex A – Guidance Note

A.1.g. PROPOSED
URGENCY NON-URGENT

A.1.h. REASONS FOR
URGENCY

The CMA CEO will review this information and make a decision as to whether to take this MCCP / OCCP forward as urgent as defined under Market Code Part 8.9.1

A.2. MCCP / OCCP DETAILS

A.2.a. ISSUE OR DEFECT WHICH THIS MCCP / OCCP SEEKS TO ADDRESS
 Required under Market Code Parts 8.7.1 (ii) (b) and 8.8.1 (ii) (b)

In December 2022 CWS raised concerns about a third-party price comparison site at the Market Participants Forum. In January 2023, the CMA hosted a follow-up discussion among Trading Parties of issues arising from the provision of Market data to third parties including but not limited to price comparison sites and Third Party Intermediaries (TPIs).

Although it was recognised that some of the issues raised either could not be resolved through, or did not need amendments to, the Market Code, there was consensus among Trading Parties that the data confidentiality obligations in the Market Code should be strengthened to clarify the principle that it was acceptable for Trading Parties to share Market data with:

- Sub-contractors who carry out Market obligations on behalf of the Trading Party
- Contractors who provide added-value services to the Trading Party

Both sub-contractors and contractors may work with more than one Trading Party and with other organisations, but the Market data shared by a Trading Party may only be used to provide services to that Trading Party.

A.2.b. DESCRIPTION OF THE NATURE AND PURPOSE OF THE MCCP / OCCP AND HOW IT MEETS THE MARKET CODE / OPERATIONAL CODE OBJECTIVES AND PRINCIPLES FOR THE MARKET DOCUMENTS
 Required under Market Code Parts 8.7.1 (ii) (c) and 8.8.1 (ii) (c)

General Description

The proposed changes to the Market Code would:

- create a specific obligation on LPs, Scottish Water and the CMA not to use any Confidential Information (including the MDS) except for implementing the Market Code or as allowed by the Market Code
- clarify that LPs, Scottish Water and the CMA can share Confidential Information with contractors and sub-contractors to operate in the Market and carry out the normal functions of those organisations
- clarify that LPs, Scottish Water and the CMA must ensure that any third party they share Confidential Information with does not use that information for wider commercial benefit
- clarify that LPs, Scottish Water and the CMA must ensure that any third party they share Confidential Information with does not claim to have access to market data in any of its promotional activities

The changes to the Market Code would be accompanied by a Guidance Note from the CMA to the Market that would clarify some specific examples. A draft of the Guidance Note is attached at Annex A.

Principles and Objectives affected
 CMA Guidance Note GN009 may be referred to for assistance with this section

PRINCIPLE	AFFECTED (Y/N)	DESCRIPTION
Proportionality	N	
Transparency	Y	Clarification of Code Party obligations in relation to Market data

Simplicity, Cost-effectiveness, and Security	Y	Clarification of steps to be taken by Code Parties to maintain security of Market data
Non-exclusivity	N	
Barriers to Entry	N	
Customer Contact	N	
Non-discrimination	N	
Non-detrimental to SW Core Functions	N	
MC / OC OBJECTIVES	Y	

A.2.c. IMPACT Required under Market Code Parts 8.7.1 (ii) (d), (f) and (g), and 8.8.1 (ii) (d) and (f)		
CONFIGURED ITEM	IMPACTED (Y/N)	DESCRIPTION
MC / OC	Y	Amendments to Part, Section 10.5
CSDs	N	
Wholesale Services Agreements	N	
Licences	N	
CMA Central Systems	N	
CMA business processes	N	
Trading Party systems	N	
Trading party business processes	N	

A.2.d. DRAFT LEGAL TEXT
Required under Market Code Parts 8.7.1 (ii) (d) and 8.8.1 (ii) (d)

The Market Code would be amended as shown below in red:

10.5.1 Confidentiality Obligation

The Code Parties shall each secure that all confidential information which comes into their ownership, possession or control, or the ownership, possession and control of an Affiliated Company, pursuant to or in the course of the negotiation, implementation or performance of this Market Code relating to the affairs of any other Code Party or its operation or management, or otherwise in connection with or in anticipation of the performance of this Market Code or any Customer, Eligible Premises or otherwise ("Confidential Information") shall not be disclosed during the continuance of this Market Code to any third party except insofar as this may be required for the proper operation of this Market Code or except where disclosure is otherwise expressly permitted by the provisions of this Market Code.

10.5.1A Use of Confidential Information by Code Parties

Any receiving Code Party shall not use Confidential Information or permit the use of Confidential Information for any purpose other than as required for the purpose of the implementation or performance of the Market Code or as otherwise expressly permitted by the Market Code.

10.5.1B Confidentiality Obligation in Relation to Contractors and Sub-Contractors

The Code Parties shall be permitted to disclose Confidential Information to contractors and sub-contractors for the purpose of:

- (i) advising or supporting the relevant Code Party in its normal functions as a Licensed Provider, Scottish Water or the CMA in the case of contractors; or
- (ii) carrying out those normal functions on behalf of the relevant Code Party in the case of sub-contractors.

10.5.1C Return or destruction of Confidential Information by third parties

The Code Parties shall each take all reasonable steps to secure that third parties to which they have properly disclosed Confidential information in accordance with this Part 10 do not retain that Confidential Information longer than is necessary. In any event, the Code Parties shall each secure that all Confidential Information they have disclosed to a third party is returned or destroyed on termination of the agreement with that third party.

10.5.1D Prohibition on disclosure for a third party's benefit

Except as permitted by Section 10.5.1B, it is expressly prohibited for a Code Party to disclose Confidential Information to a third party for that third party's commercial benefit. Code Parties shall also take all reasonable steps to secure that no such disclosure takes place by any contractor or sub-contractor to whom it has disclosed confidential information in accordance with Section 10.5.1B.

10.5.2 Code Parties

Where Confidential Information is disclosed by any receiving Code Party as permitted under this Market Code, the receiving Code Party shall (subject to Section 10.5.3(iv) and without prejudice to its obligations under this Section 10.5) take all reasonable steps to secure that the person to whom the information is disclosed:-

- (i) is aware of the receiving Code Party's obligations under this Part 10 in relation thereto; ~~and~~
- (ii) does not use or disclose the information other than as is permitted of such Code Party in accordance with this Part 10; ~~and~~

(iii) does not purport to have access to the Market Dataset or any other Confidential Information in the course of promoting their business activities.

If changes are identified for CSD0301 Data Transaction Catalogue Annex, these will not be provided in this MCCP, but will be provided following the deployment of the associated system updates. This is because the majority of CSD0301 Annex is system generated automatically and can only be updated after associated changes have been incorporated into the relevant system.

A.3. IMPLEMENTATION DETAILS

A.3.a. PROPOSED IMPLEMENTATION DATE OR LEAD TIME

Timescale must not overlap with the period of consultation with the Commission and should take account of the impacts identified in Section A.2.c. Any quoted lead time should commence from date of Approval.

2023-09-21

A.3.b. ANY LIMITATIONS OR DEPENDENCIES FOR IMPLEMENTATION

It is proposed to make these changes at the same time as other changes to the Market Code come into force alongside the September 2023 release.

These changes are additional to those in MCCP297 which would be considered at the same Technical Panel meeting.

A.4. ANY OTHER COMMENTS

This is a documentation-only change with no change to the Central Systems required.

PART B — TP ASSESSMENT

B.1. ASSESSMENT PROCESS

B.1.a. ASSESSMENT START DATE	2023-08-17	ASSESSMENT END DATE	2023-08-17
B.1.b. IMPACT ASSESSMENT REQUIREMENT	IA NOT REQUIRED		
B.1.c. CONSULTATION REQUIREMENT	TP CONSULTATION NOT REQUIRED		
B.1.d. ASSOCIATED DOCUMENTS (TO THIS PART B)			

B.2. ASSESSMENT DETAILS

B.2.a. CHANGE SPEC AND IMPACT (IF DIFFERENT FROM THAT ORIGINALLY SUBMITTED)

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B.2.b. CMA INTERNAL SYSTEMS IMPACT

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B.2.c. DRAFT LEGAL TEXT (IF DIFFERENT FROM THAT ORIGINALLY SUBMITTED)

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B.2.d. CUSTOMER IMPACT (TO BE COMPLETED BY LPS)

Customers' data would be protected more strongly by the improved wording in the Market Code and accompanying Guidance Note.

B.2.e. TP ASSESSMENT
Taking into account complexity, importance and urgency, and having regard to whether or not such proposal is within the relevant Objectives and Principles as required under Market Code Parts 8.7.1 (v) and 8.8.1 (iv)

Impact on Principles and Objectives
(if different from that originally submitted)

Cost Estimate

Benefit Estimate
(L: < 10k, M: £10k to £100k, H: > £100k)

B.3. TP DECISION

TP APPROVED

B.4. FINAL TP VIEWS

Unanimously approved by the TP on 2023-08-17

B.5. PLANNED IMPLEMENTATION DATE

2023-09-21

WITHDRAWN BY PROPOSER?	NO
COMMENTS	
DATE OF WITHDRAWAL	

PART C — COMMISSION APPROVAL

C.1. DATE FINAL REPORT ISSUED TO COMMISSION	2023-08-28
C.2. APPROVAL STATUS	APPROVED CHANGE
C.3. DATE OF APPROVAL STATUS	2023-09-12
C.4. COMMISSION RESPONSE REFERENCE	

PART D — IMPLEMENTATION

D.1. IMPLEMENTATION DATE	Sept 2023
D.2. IMPLEMENTATION DETAILS (MC version, CSD versions, CMA Central Systems release number, etc.)	
Market Code v51	