

Part 8: Governance

8.1 Scope

This Part 8 sets out the governance process for the Market Code and the change process for the Operational Code. In particular this Part confirms:-

- 8.1.1 the membership of the Board;
- 8.1.2 the role of the Board;
- 8.1.3 the arrangements for meetings of the Board;
- 8.1.4 the mechanism for the Board taking decisions;
- 8.1.5 the Constitution of the TP;
- 8.1.6 the role of the TP;
- 8.1.7 the proceedings of the TP;
- 8.1.8 the processes to be followed by the TP for both Market Code Change Proposals and Operational Code Change Proposals; and
- 8.1.9 various ancillary matters.

8.2 Membership of the CMA

8.2.1 Each Original Applicant shall be a Member of CMA.

8.2.2

- (i) ~~Subject to Section 8.2.2(ii), on~~ a Trading Party (other than an Original Applicant) satisfying the Admission Conditions that Trading Party shall apply to become a Member of CMA and shall sign and deliver to the CMA Secretary ~~a letter of an application for membership in the form required by the Articles of CMA accompanied by payment of the requisite membership dues of one pound sterling (£1).~~
- (ii) A Licensed Provider shall not be entitled to become a Member of CMA where that Licensed Provider is a member of a Licensed Provider's Group where another member of that Group is a Licensed Provider and is already a Member of CMA (but for the avoidance of doubt this shall not prevent such parties from becoming Code Parties in accordance with the provisions of this Market Code).

8.2.3 ~~DELETED [] 2008. On the CMA Secretary receiving those documents required to be delivered under Section 8.2.2, the CMA Secretary shall add such nomination to the agenda for the next Board meeting. At that meeting the Board shall:-~~

- ~~(i) approve the issue of, and issue, a certificate of membership in the CMA to a Trading Party; and~~
- ~~(ii) instruct the CMA Secretary to attend to the formalities of the certificate issue including entering the name of that Trading Party in the register of members.~~

8.2.4 Each Member of CMA agrees with the other Members to exercise its rights as a Member so as to ensure that:-

- (i) CMA fulfils its duties under the Market Code and complies with the Articles of Association of CMA;
- (ii) CMA carries out its duties under the Market Code in accordance with sound business practice and so as to break even in any Year;
- (iii) CMA does not carry out any business or activity other than the duties set out in the Market Code;
- (iv) CMA is independent of the interests of that Member and is not obstructed or interfered with in performing its duties by that Member; and
- (v) the nominated Director of any Member shall take such action as is necessary to discharge any obligation of the Board under the Market Code to the maximum extent permissible provided always that no Director shall be obliged by this Section 8.3.1(v) to take action which would cause a Director to be in breach of any fiduciary or other duty of that Director to the CMA.

8.2.5 ~~DELETED [] 2008. Subject to Section 8.2.6 below, each Member shall have one (1) vote at any Members' meeting.~~

8.2.6 ~~DELETED [] 2008. After the Go Live Date, for the duration of any period when a Licensed Provider does not have any Supply Point(s) Registered to it, that Licensed Provider shall have no vote at any Members' meeting.~~

8.2.7 ~~DELETED [] 2008. A Member shall cease to be a Member of CMA upon that Member ceasing to be a Code Party for whatever reason (with the Board serving notice on the Member notifying it of the termination of membership).~~

8.2.8 ~~DELETED [] 2008. In the event of any conflict between the provisions of this Part 8 and the Articles of Association of CMA from time to time, then the provisions of this Part 8 shall prevail.~~

8.2.9 The provisions of this Part 8 do not constitute an agreement to alter the Articles of Association of CMA.

8.3 Management of CMA

8.3.1 The CMA Board

(i) ~~DELETED [] 2008. The Board shall comprise one (1) Director nominated by Scottish Water in accordance with Section 8.3.1(iii), up to two (2) Licensed Provider Directors who are nominated in accordance with Section 8.3.1(iv), the CEO, the Chairman and at least two (2) non-executive Directors, who shall be nominated in accordance with Section 8.3.1(v) (except for the first three (3) non-executive Directors who shall be nominated by the Commission) having regard to the recommendations of the Nominations Committee provided in accordance with Section 8.3.5.~~

(ii) The Licensed Providers shall nominate up to two (2) Licensed Provider Directors in accordance with Section 8.3.1(iv) below. The number of Licensed Provider Directors shall not exceed two (2) and when there is only one (1) Licensed Provider there shall be only one (1) Licensed Provider Director and Section

8.3.1(iv) shall apply to the appointment of such single Licensed Provider Director, mutatis mutandis.

(iii) On or before the Effective Date Scottish Water shall inform the CMA Secretary of its nominated Director in respect of the Transitional Charging Period. Thereafter Scottish Water shall by no later than 1st March in each year inform the CMA Secretary of its nominated Director in respect of the following Year (which for the avoidance of doubt may be the same individual as was nominated for the preceding year or the Transitional Charging Period). Each such nominated person shall have the requisite skills and experience and such nomination shall contain the name, address and details of the relevant skills and experience of the person to be appointed as a Director.

(iv)

(a) The Licensed Provider Members shall meet during the Transitional Charging Period, on the Indicated Date and thereafter, not later than 1 March every year with a view to nominating the Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate (which for the avoidance of doubt may be the same individuals as nominated for the Transitional Charging Period or the preceding Year).

(b) The CMA Secretary shall, in consultation with all Licensed Provider Members, fix the date of each Nomination Meeting and shall give each Licensed Provider Member not less than twenty (20) Business Days notice in writing of the date of such meeting. Each Licensed Provider Member shall send one

suitably authorised representative to attend each Nomination Meeting.

- (c) Each Licensed Provider Member shall be entitled, by notice to the CMA Secretary given no earlier than ninety (90) days before the date of and not later than twenty four (24) hours before the stated commencement time of the Nomination Meeting, to nominate one (1) individual to be Licensed Provider Director. Such nominated individual shall have the requisite skills and experience and such nomination shall contain the name, address and details of the relevant skills and experience of the nominated individual. Any such proposal to be valid shall be in writing and shall be accompanied by a written statement from the nominated individual stating that he is aware of the proposal and would be prepared to serve as a Licensed Provider Director if nominated.
- (d) At each Nomination Meeting the CMA Secretary shall circulate to each Licensed Provider Member a list of the names of all of the individuals nominated to serve as Licensed Provider Directors. In the event that the number of nominated individuals equals the number of Licensed Provider Directors to be nominated for the Transitional Charging Period or the following Year as appropriate then those individuals shall duly become the nominated Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate. In the event that the number of individuals nominated to serve as Licensed Provider Directors exceeds the number to be elected and the Licensed

Provider Members present at the Nomination Meeting cannot agree unanimously on the identity of the Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate, the following procedures shall be applied in sequence:-

- (i) each Licensed Provider Member shall be given a voting paper with the name of every individual nominated to serve as a Licensed Provider Director on it;
- (ii) each Licensed Provider Member shall rank each nominated individual in order of preference by marking the nominated individual which is its first choice as Licensed Provider Director with the number "1" and continuing numbering sequentially in order of preference;
- (iii) the CMA Secretary shall prepare a list ranking the nominated individuals in order according to the number of votes cast for each with the individual with the greatest number of votes at the head of the list;
- (iv) the nominated individual whose name appears last on the list shall be removed from that list and shall take no further part in the nomination process. The CMA Secretary shall transfer the votes of all those Licensed Provider Members who voted for the nominated individual excluded in accordance with this Section 8.3.1(iv)(d)(iv) to the second preference

nominated individual on the voting paper. The CMA Secretary shall then prepare a revised voting list and the procedure set out in this Section 8.3.1(iv)(d) shall be repeated as often as may be necessary until the number of nominated individuals equals the number of Licensed Provider Directors to be nominated at the Nomination Meeting;

- (v) if, at any point in the procedure set out in Section 8.3.1(iv)(d) the votes cast in favour of nominated individuals at the bottom of the voting list are equal then reference shall be made to second preferences and repeated in relation to each subsequent preference until either a nominated individual can be eliminated or the preferences are exhausted. In the event that preferences are exhausted the nominated individual to be removed from the voting list shall be decided by the drawing of lots in a manner to be determined by the CMA Secretary;
- (vi) if the next preference expressed on a voting paper is for a nominated individual who has already been excluded then the next preference again shall be referred to;
- (vii) once the procedure set out in this Section 8.3.1(iv)(d) results in a number of nominated individuals in the voting list equal to the number of Licensed Provider

Directors to be nominated for the Transitional Charging Period or the following Year as appropriate then these individuals shall duly become the nominated Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate.

- (e) A Nomination Meeting may consist of a conference between Licensed Provider Members who are not all in one place but who are able to speak to each of the others and to be heard by the others simultaneously unless it is necessary to apply the procedures set out in Section 8.3.1(iv)(d)(i)-(vii) to select the nominated Licensed Provider Directors for the Transitional Charging Period or the following year as appropriate in which case each Licensed Provider Member must send one suitably authorised representative to attend the Nomination Meeting in person.
- (v)
 - (a) With the exception of the first three (3) non-executive Directors, who shall be nominated by the Commission, non-executive Directors shall be nominated by the Chairman, having regard to the recommendations of the Nominations Committee.
 - (b) The Nominations Committee shall provide its recommendations to the Chairman in accordance with [Section 8.3.5 Regulation 8.4 of the Articles of Association of CMA](#).
 - (c) Non-executive Directors shall be appointed for a fixed term not exceeding 3 years and shall be eligible for re-

appointment following expiry of their initial or any subsequent term.

(d) A person appointed as a non-executive Director shall hold office for the period of his term of appointment unless he resigns or is removed from office in accordance with the Articles of Association of CMA.

(e) The Chairman shall ensure that there are at least two (2) non-executive Directors on the Board at all times. There shall be no limit on the number of non-executive Directors who may be appointed to the Board at one time.

(vi) ~~Upon the CMA Secretary receiving confirmation of the nomination of the Scottish Water Director and the Licensed Provider Directors and any non-executive directors the CMA Secretary shall add such nominations to the agenda for the next Board Meeting. At that meeting the Board shall approve t~~The appointment of any person nominated under Section 8.3.1(iii), ~~8.3.1(iv) or 8.3.1(v) to the Board until such decision can be ratified at the next Members' meeting.~~ as the Director nominated by Scottish Water shall take effect on commencement of the Year for which they are so nominated at which time the person previously nominated as the Scottish Water Director shall cease to hold office. The appointment of any person to be a Licensed Provider Director under Section 8.3.1(iv)(d) shall take effect on commencement of the Year following such nominations under Section 8.3.1(iv)(d). Any person nominated under Section 8.3.1(v) to be a non-executive Director shall be appointed for such term as is determined pursuant to Sections 8.3.1(v)(c) and 8.3.1(v)(d).

- (vii) ~~DELETED [] 2008. The Board may delegate any of its powers to committees of the Board consisting of such persons (whether or not being Directors) as the Board may resolve from time to time.~~

8.3.2 **Directors**

- (i) ~~DELETED [] 2008. The Members shall ratify the appointment of:-~~
- ~~(a) any person to the Board under Section 8.3.1(iii) or Section 8.3.1(iv);~~
 - ~~(b) the CEO as a Director under Section 8.3.4(iii);~~
 - ~~(c) the Chairman as a Director under Section 8.3.3(ii); and~~
 - ~~(d) any non-executive Director as a Director under Section 8.3.1(v),~~
- ~~at the next Members' meeting held following such appointment.~~

(ii) **Removal of Directors**

- (a) Scottish Water may elect to remove and replace the Director nominated by it by giving notice to the CMA Secretary, such notice must contain that Member's replacement nomination in accordance with Section 8.3.2(iii) below.
- (b) The Licensed Providers may by unanimous agreement between themselves elect to remove and replace any Director nominated by them by giving notice to the CMA Secretary, such notice must contain the Licensed Providers' replacement nomination(s) in accordance with Section 8.3.2(iii) below.
- (iii) Where a Director nominated by Scottish Water or the Licensed Providers ceases to be a Director by reason of resignation, removal (including under Section 8.3.2(ii)(a) or (b)), death, incapacity or any other reason in accordance with the provisions of the Articles of

Association of CMA or the UK Companies Acts (as shall be amended from time to time), Scottish Water or the Licensed Provider Members (as appropriate) shall nominate a replacement Director (such nomination to include the name, address, date of birth and relevant skills and experience of such nominee) in accordance with Section 8.3.1(iii) or 8.3.1(iv) (as appropriate) ~~and the Members shall approve the appointment of such a replacement Director in accordance with Section 8.3.1(v).~~

8.3.3 INTENTIONALLY NOT USED **CMA Chairman**

- ~~(i) — The first Chairman will be selected and appointed by the Commission. Such appointment will not be from among the Directors. Subsequent to such appointment the Chairman will be selected, appointed, reappointed, removed and replaced by the Directors by voting in accordance with Section 8.5.4 provided always that before ratification of the appointment of any new Chairman or reappointment of the existing Chairman notice of such proposed appointment or reappointment shall be given to the Commission and such appointment or reappointment may only be ratified where the Commission has not directed that such appointment or reappointment may not be made within twenty (20) Business Days of receipt of such notice.~~
- ~~(ii) — The Chairman shall be appointed as a Director by the Board.~~
- ~~(iii) — The Chairman will be entitled to attend and vote at any Board meeting.~~
- ~~(iv) — The term of office of the Chairman will be a period of three (3) years. The Chairman will be eligible for reappointment on expiry of his term of office. Unless reappointed, he will cease to hold office on expiry of his term of office. He will also cease to hold office if:-~~

- ~~(a) he resigns from office by notice delivered to the CMA Secretary;~~
- ~~(b) the Board resolves that he should cease to hold office;~~
~~or~~
- ~~(c) he ceases to be a Director.~~

~~The Chairman will preside as chairman at every meeting of the Board at which he is present. If he is unable to be present at a meeting, he may appoint an alternate to act as the chairman of that meeting.~~

~~The Chairman, or any person appointed to chair a meeting in accordance with Section 8.3.3(v), shall not have any additional or casting vote.~~

8.3.4 ~~DELETED [] 2008~~ **Chief Executive Officer**

~~(i) The first CEO will be selected and appointed by the Commission. Subsequent to such appointment the CEO will be selected, appointed, removed and replaced by the Directors by voting in accordance with Section 8.5.4.~~

~~(ii) The CEO must not be appointed from among the Directors.~~

~~(iii) The person appointed as CEO under Section 8.3.4(i) from time to time shall be appointed as a Director by the Board.~~

~~(iv) The CEO shall be entitled to attend and vote at any Board meeting.~~

~~(v) The CEO shall have such delegated authority from the Board as the Board determines and shall be responsible for the day to day running of the CMA. The Reserved Matters and those matters listed in Section 8.4 are reserved to the Board and may not be delegated to the CEO.~~

~~The CEO will provide such regular reports to the Board as the Board requires.~~

8.3.5 ~~DELETED [] 2008~~ **Nominations Committee**

~~(i) There shall be a Nominations Committee, the membership of which shall comprise the Chairman and all non-executive Directors.~~

~~(ii) The quorum of the Nominations Committee shall be three (3).~~

~~(iii) The Nominations Committee shall be responsible for identifying and nominating candidates to assume the role of non-executive Director of CMA to replace existing non-executive Directors whose term of appointment is due to expire or who have resigned or been removed from the role.~~

~~(iv) The Nominations Committee shall meet at least three (3) months in advance of the date on which an existing non-executive Director's term of appointment is due to expire in order to recommend a replacement to the Chairman.~~

~~The Nominations Committee shall meet as soon as is reasonably practicable after the Chairman is made aware that an existing non-executive Director intends to resign or has been removed from his role.~~

8.4 **Role of the CMA Board**

The Board shall carry out any activities within the scope of the Market Code Objectives and consistent with the Market Code Principles including the following activities:-

- 8.4.1 authorise the appointment, removal and remuneration of the Market Auditor and agreement of an audit plan by the CMA with the Market Auditor;
- 8.4.2 approve the CMA Budget and proposed CMA Charges;
- 8.4.3 review and approve any Market Audit Reports;
- 8.4.4 confirm satisfactory completion of Market Assurance Processes by any Trading Party;
- 8.4.5 provide a forum for discussion among Code Parties regarding the operation and development of the Central Systems and the Market Code;
- 8.4.6 report to the Commission and the Market Auditor on the activities of the Board;
- 8.4.7 authorise enforcement action in respect of a Trading Party or authorise the issue of a Termination Notice to a Trading Party; and
- 8.4.8 approve reports and the release of data in accordance with the Market Code.

8.5 ~~DELETED [] 2008~~ **Proceedings of the CMA Board**

~~Proceedings of the Board shall be conducted in accordance with the Articles of Association of CMA and the provisions of this Part 8.~~

~~8.5.1~~ **Board Meetings**

- ~~(i) Meetings of the Board will be held at regular intervals and at least once every three (3) Months, at such time and place in Scotland as the Board **may decide**.~~
- ~~(ii) If any Director wishes to hold a Board meeting additional to the regular Board meetings under Section 8.5.2(i), he will request the CMA Secretary to convene a Board meeting. Such a request must be accompanied by the name of one (1) other Director who supports such additional Board meeting and detail the matters the Director wants to be discussed at the Board meeting. The CMA Secretary will promptly convene the requested Board meeting as soon as practicable but not less than five (5) Business Days after the request.~~
- ~~(iii) Any meeting of the Board will be convened by the CMA Secretary by notice to each Director. Notice will be given by electronic mail at least five (5) Business Days before the date of the meeting, accompanied by an agenda of the matters for consideration at the meeting and any supporting papers available to the CMA Secretary at that time. Supporting papers received late will be circulated as and when received.~~
- ~~(iv) Any Director may notify matters for consideration at a meeting in addition to those notified by the CMA Secretary by notice to all Directors not less than three (3) Business Days before the date of the meeting.~~
- ~~(v) The proceedings of a meeting of the Board will not be invalidated by the accidental failure to send notice of the meeting or accompanying papers to, or non-receipt of the same by, any person entitled to receive such notice and papers.~~

- ~~(vi) — Where any matter not contained in the agenda and not notified under Section 8.5.2(v) is put before a meeting of the Board, and in the opinion of the Board it is necessary, in view of the urgency of the matter, that the Board resolves upon it at the meeting, the Board may resolve upon the matter.~~
- ~~(vii) — A meeting of the Board may consist of a conference between Directors who are not all in one place but who are able to speak to each of the others and to be heard by each of the others simultaneously. In this case, there is no requirement that the Directors are in Scotland.~~
- ~~(viii) — Meetings will be open to attendance by any person invited by a Director. The Chairman may invite that person to speak at the meeting (but that person will have no vote).~~
- ~~(ix) — As soon as practicable after each meeting, the CMA Secretary will prepare and send to Directors) the minutes of the meeting (including confirmation of all decisions taken in accordance with Section 8.5.4), which will be approved (or amended and approved) at the next meeting of the Board.~~
- ~~(x) — The Directors may, by unanimous decision, decide to dispense with the requirements of Section 8.5.4 as to the notice required for convening a meeting in relation to any particular Board meeting.~~

8.5.2 — CMA Board - Quorum

- ~~(i) — Subject to Section 8.5.3(ii) below, the quorum necessary for the transaction of business of the Board may be fixed from time to time by the Directors and, unless so fixed at any other number, will be four (4) Directors present.~~
- ~~(ii) — If at any time, and for so long as, there is only one (1) Licensed Provider Director the quorum for transacting business shall be two (2) Directors.~~

~~(iii) If, within half an hour after the time for which the meeting of the Board has been convened, a quorum is not present or, if during a meeting such a quorum ceases to be present, the meeting will be adjourned to the same day in the following week (or, if that day is not a Business Day, the next Business Day following that day) at the same time. The CMA Secretary will give notice of the adjourned meeting as far as practicable. If at the adjourned meeting there is not a quorum present within half an hour of the time for which the meeting was convened, those present in person will be a quorum.~~

~~8.5.3 CMA Board - Voting~~

~~(i) At any meeting of the Board any matter to be decided will be put to a vote upon the request of the Chairman or any Director.~~

~~(ii) Subject to Section 8.5.4(iii) below, in deciding any matter at any meeting of the Board, each Director will be entitled to only one (1) vote.~~

~~(iii) In deciding any matter concerning enforcement action against a Trading Party, or concerning the issue of a Termination Notice to a Trading Party, any Director who is also employed by or acts under a contract for services with that Trading Party or a member of that Trading Party's Group shall not be entitled to any vote relative to such decisions.~~

~~(iv) If a Director, is not present at a meeting, he may lodge a written proxy vote with the CMA Secretary before the meeting is held, and on a vote being taken on any matter at the meeting, that proxy vote will be counted as if it was a vote cast by the Director concerned at the meeting.~~

~~(v) No decision of the Board put to a vote shall be taken unless it is voted for by a simple majority of the votes cast at the meeting (and an abstention shall not be counted as a cast vote).~~

~~(vi) Any resolution in writing signed by or on behalf of all Directors will be valid and effectual as if it has been passed at a duly convened and quorate meeting of the Board. The resolution may consist of several instruments in like form signed by or on behalf of one (1) or more Directors.~~