

# Implementation of the revised Payment Services Directive (PSD2): Approach Document and final Handbook changes

**Policy Statement**

PS17/19

September 2017

## This relates to

Consultation Papers: CP17/11 and CP17/22 which are available on our website at [www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Overview

## Introduction

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- 1.1** In CP17/11 and CP17/22 we consulted on a number of new or amended rules, directions and guidance intended to implement the revised Payment Services Directive (PSD2). This included a revised Approach Document which set out the FCA's approach to applying the Payment Services Regulations 2017 (PSRs 2017) and the amended E-Money Regulations 2011 (EMRs) in a single document. This will replace the existing Payment Services and E-Money Approach Documents. As well as the changes necessary as a result of PSD2, we amended the Approach Document following responses to our February 2016 Call for Input on the FCA's current approach to the payment services regime.<sup>1</sup>
- 1.2** This Policy Statement (PS) confirms the revised Approach Document and Handbook changes following consultation feedback.<sup>2</sup> It is important to note that at the time of publication, elements of PSD2 implementation are ongoing at the EU level. As a result, we will need to make further changes to the Approach Document and Handbook.

## Who does this affect?

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- 1.3** This Policy Statement (PS) affects existing Payment Service Providers (PSPs), who will be subject to the PSRs 2017, e-money issuers who will be subject to the amended EMRs, and their customers. It also affects firms not currently authorised or registered with the FCA that carry out (or intend to carry on) payment-related activities. Firms that will be affected include:
- banks, building societies and credit unions;
  - e-money issuers;
  - non-bank card issuers;
  - money remitters;
  - merchant acquirers;
  - firms that provide services that consolidate customers' payment account data (account information services or AIS);

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1 The Call for Input can be found here: [www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime](http://www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime) The Feedback Statement (FS16/12) was published in November 2016 and can be found here: [www.fca.org.uk/publication/feedback/fs16-12.pdf](http://www.fca.org.uk/publication/feedback/fs16-12.pdf)

2 The confirmed revised Approach Document can be found here: [www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf](http://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf)



- firms that provide online services that allow users to initiate payments (payment initiation services or PIS);
- firms issuing gift cards or travel cards; and
- firms that provide electronic communication networks or services, such as mobile and fixed line network operators.

**1.4** This PS is also relevant to businesses that are subject to regulation by the Payment Systems Regulator. These are:

- operators of payment systems;
- direct participants in Bacs, Faster Payments Services and CHAPS, who provide other PSPs with indirect access to those payment systems;
- independent ATM deployers.

#### **Is this of interest to consumers?**

**1.5** Most consumers and firms are users of payment services. The topics discussed in this PS, including those relating to consumer protection in paragraph 1.18-1.19, will affect those consumers who use payment services or e-money. There are certain services that consumers currently use that will come under regulation.

#### **Context**

**1.6** Directive (EU) 2015/2366 (PSD2) was published in the EU's Official Journal on 13 January 2016.<sup>3</sup> PSD2 updates and replaces the original Payment Services Directive (PSD).<sup>4</sup>

**1.7** PSD2 brings about a number of significant changes, in particular the introduction of new regulated services: account information services (AIS) and payment initiation services (PIS). It also introduces a number of new requirements for PSPs and e-money issuers.

**1.8** The majority of the requirements introduced under PSD2 must be implemented by 13 January 2018. As PSD2 is maximum harmonising European legislation, there is limited discretion for member states (and competent authorities such as the FCA) to depart from or add to its provisions in areas within its scope.

**1.9** The Treasury is implementing PSD2 through the Payment Services Regulations 2017 (PSRs 2017), which were published in July 2017.<sup>5</sup> It is important to note that most PSD2 requirements will be implemented in the UK through these regulations. As such, most of the guidance we provide is about the application of these regulations.

**1.10** Certain requirements under PSD2 are to be further elaborated by Regulatory or Implementing Technical Standards (RTS/ITS) and Guidelines drafted by the European Banking Authority (EBA). The EU and EBA have not yet adopted a number of these

<sup>3</sup> Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance), OJ L 337, 23.12.2015, p. 35–127

<sup>4</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance), OJ L 319, 5.12.2007, p. 1–36

<sup>5</sup> The PSRs 2017 can be found here: [www.legislation.gov.uk/ukksi/2017/752/pdfs/ukxi\\_20170752\\_en.pdf](http://www.legislation.gov.uk/ukksi/2017/752/pdfs/ukxi_20170752_en.pdf)

measures. We appreciate that firms need the content in these measures confirmed, as this is important to help them plan with certainty. We provide updated information on the progress of these measures in Annex 2 and will continue to provide updates on our website.

**1.11** We note in particular that at the time of publication the RTS on Strong Customer Authentication and Common and Secure Communication had yet to be adopted. To address some of the questions related to these issues, the Treasury and FCA issued a short publication in July 2017.<sup>6</sup>

### **Outcome we are seeking**

**1.12** PSD2 was introduced to bring regulation up-to-date with developments in the market for payment services, as well as promote further innovation. It also aims to improve consumer protection, make payments safer and more secure, and drive down the costs of payment services

**1.13** The changes we are making are intended to ensure that the aims of PSD2 are achieved in the UK and we can meet our obligations under the PSRs 2017 and EMRs, as the UK competent authority. These changes will allow us to advance, where relevant, the FCA's objectives of:

- securing an appropriate degree of protection for consumers; and
- promoting effective competition in the interest of consumers.

### **Effective competition**

**1.14** The most significant initiatives in PSD2 that could improve competition are those relating to AIS and PIS, and access to banking services.

**1.15** PSD2 requires all providers of online payment accounts to allow PSPs, such as third parties providing AIS or PIS, to have access to customers' online payment accounts (with the customer's consent). One way of making this access possible could be through the Competition and Markets Authority (CMA)'s Open Banking remedy. Under this, nine retail banks are required by the UK Competition and Markets Authority<sup>7</sup> to develop application programming interface standards (APIs).

**1.16** The option to use AIS could open up new ways for consumers to manage their money and find products that are right for them. This could ultimately enhance competition in the retail banking market.

**1.17** PSD2 also seeks to address de-risking, where PSPs, such as money remittance firms, have their access to bank account services withdrawn or refused because of the perceived risk or cost that they pose to the account provider. PSD2 increases transparency around account provision and ensures that decisions regarding access are made on a proportionate, objective and non-discriminatory basis. This should help ensure the decisions about access for PSPs are appropriate and enhance competition.

### **Consumer protection**

**1.18** PSD2 brings about a number of important changes to the ways that all payment services firms will have to treat their customers. The security of payments will be enhanced by new requirements on PSPs. These requirements seek to mitigate the

<sup>6</sup> FCA and HM Treasury, Expectations for the third party access provisions in PSD2, July 2017, [www.gov.uk/government/consultations/implementation-of-the-revised-eu-payment-services-directive-psdii](http://www.gov.uk/government/consultations/implementation-of-the-revised-eu-payment-services-directive-psdii)

<sup>7</sup> [www.gov.uk/government/news/open-banking-revolution-moves-closer](http://www.gov.uk/government/news/open-banking-revolution-moves-closer)



risks that can arise as a result of new technology. Strong Customer Authentication (SCA – also known as two-factor authentication), once introduced, has the potential to protect consumers accessing their payment accounts from the risk of fraud or abuse.

**1.19** Where things do go wrong, customer complaints under PSD2 will now have to be resolved more quickly than is currently required. Customers' exposure to liability will also be reduced where they have suffered losses.

**Summary of feedback and our response**

**1.20** We received 77 responses to CP17/11, including submissions from e-money institutions (EMIs), payment institutions (Pis), banks and building societies, trade associations and prospective AIS and PIS providers, and consumer representatives. CP17/22 closed on 18 August 2017 and we received nine responses to this consultation, both from representatives of affected firms and consumers.

**1.21** In broad terms, the majority of respondents welcomed the changes brought about by PSD2 and our proposals. We have amended our approach in some areas in light of feedback. In particular, this concerns our perimeter guidance, guidance on the new AIS and PIS services, complaints handling and reporting and conduct of business requirements.

**1.22** In this PS we confirm our guidance on access to payment account services requirements, which we are issuing jointly with the Payment Systems Regulator. The Payment Systems Regulator also confirms its approach to the elements of the PSRs 2017 for which it is solely responsible in Chapter 10 of this PS.

**1.23** The table below summarises the areas where we are responding to feedback, and which stakeholders are affected by each chapter of the PS:

**Stakeholders affected by areas where we respond to feedback**

PS chapter	Area of feedback	Who should read this chapter
2 – Perimeter guidance	<p><b>Perimeter changes:</b> we make some amendments to our perimeter guidance, including that relating to the newly regulated services, in response to consultation feedback.</p> <p><b>Notifications for excluded providers:</b> we respond to feedback on the new notifications that businesses will need to follow if they wish to rely on certain exclusions.</p>	Businesses offering or wishing to offer payment-related activities
3 – Authorisation and registration	<p><b>Authorisation:</b> we respond to feedback on our proposed approach to authorisation and registration under PSD2, including requirements for existing Pis and EMIs.</p> <p><b>Change in control:</b> we confirm our approach to changes in qualifying holdings of authorised Pis, and also highlight changes for small Pis in light of the final PSRs 2017.</p>	Pis and EMIs, and those looking to acquire control in an authorised PI or small PI.

<p>4 – Complaints handling and reporting</p>	<p><b>Complaints handling:</b> we respond to feedback on our proposed complaints handling rules to implement PSD2. This includes changes which affect the compulsory and voluntary jurisdiction of the Financial Ombudsman Service.</p> <p><b>Complaints reporting:</b> in response to consultation feedback we make some amendments to the new reporting requirements we proposed for PSPs.</p>	<p>All PSPs and e-money issuers</p>
<p>5 – Conduct of business</p>	<p><b>Conduct of business:</b> we make some amendments to our guidance in light of feedback, and confirm our Handbook rules related to the conduct of business of retail banking firms not subject to the PSRs 2017.</p> <p><b>Monthly statements:</b> we make some changes to our approach in light of changes to the final PSRs 2017.</p>	<p>All PSPs and e-money issuers, and other providers of retail banking services.</p>
<p>6 – Regulatory reporting, notifications and record keeping</p>	<p><b>Fraud reporting:</b> we confirm our approach to collecting data on payment services fraud, as required under PSD2.</p> <p><b>Changes to existing reporting:</b> we confirm revisions to the regular reporting required from PIs and EMIs.</p> <p><b>Controllers and close links report:</b> we confirm that authorised PIs will be required to submit the annual controllers report and close links reports.</p> <p><b>Incident reporting:</b> we respond to feedback received on our proposal regarding how PSPs notify us of major incidents</p> <p><b>Credit institutions conducting AIS or PIS:</b> we confirm that credit institutions will need to notify us before carrying out AIS and PIS, and will need to keep records of business undertaken.</p>	<p>All PSPs and e-money institutions</p>
<p>7 – Account information services, payment initiation services and confirmation of availability of funds</p>	<p><b>Our approach to AIS and PIS:</b> we make some amendments to our guidance on AIS, PIS, and card based payment instrument issuers (CBPIIs) in light of consultation feedback.</p> <p><b>Notification where AIS or PIS is denied:</b> our response to feedback on the notification required when access is denied for the purposes of AIS or PIS.</p>	<p>Providers of payment accounts, AIS providers, PIS providers and CBPIIs</p>
<p>8 – Payment service providers' access to payment account services</p>	<p><b>Access to payment account services:</b> we respond to feedback on our expectations on access to payment account services being provided by credit institutions; we are jointly competent with the Payment Systems Regulator for this aspect of PSD2.</p>	<p>Credit institutions and firms that need access to payment account services</p>
<p>9 – Consequential changes and over revisions to the Approach Document</p>	<p><b>Consequential changes:</b> we confirm minor changes to the Handbook necessary to implement PSD2</p> <p><b>Wider revisions to the Approach Document, and our supervision approach:</b> we confirm the wider revisions to the Approach Document.</p> <p><b>Safeguarding:</b> we respond to feedback received on clarifications we made to our guidance on safeguarding.</p>	<p>All PSPs and e-money issuers</p>



<p>10 – The Payment Systems Regulator’s approach</p>	<p><b>Access to payment systems:</b> The Payment Systems Regulator responds to feedback on its proposals regarding access to payment systems for PSPs.</p> <p><b>ATM withdrawal charges:</b> The Payment Systems Regulator responds to feedback on its proposed guidance about information on ATM withdrawal charges to be provided by Independent ATM providers</p> <p><b>Powers and procedures:</b> The Payment Systems Regulator confirms its approach to enforcing the requirements of the PSRs 2017 for which it is responsible.</p>	<p>Independent ATM deployers, operators of payment systems, and direct participants in Settlement Finality Directive (SFD) designated payment systems which provide indirect access to those payment systems for other PSPs</p>
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### Equality and diversity considerations

**1.24** We have considered the equality and diversity issues that may arise from the proposals in this PS in light of feedback received to our consultations.

**1.25** We do not consider that the proposals in the PS will have a negative impact on any of the groups with protected characteristics - age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender re-assignment.

### Next steps

**1.26** We will publish the final registration and authorisation forms on our website before applications open on 13 October 2017.

**1.27** We have published changes to our Handbook to reflect fees changes in our Handbook Notice, following on from the Fees Policy Statement we published in July 2017.<sup>8</sup>

**1.28** As the remaining RTS, ITS and EBA Guidelines are expected to be finalised in late 2017 and early 2018, we will seek to update our Approach Document and Handbook. Of particular note are the forthcoming EBA Guidelines on operational and security risk, and the EBA Guidelines on fraud reporting, which will have a direct impact on firms.

**1.29** As noted above, we will also keep our approach under review more generally in 2018.

### What do you need to do next?

**1.30** Firms need to continue with their preparations for the application of PSD2. The majority of the changes introduced by the PSRs 2017, and by amendments to our directions, Handbook and revised Approach Document, apply from 13 January 2018. PSPs should read the PS and our revised Approach Document to understand the requirements that apply later than January. Firms should also be aware that elements relating to authorisation and registration, including professional indemnity insurance (PII) requirements, apply earlier, from 13 October 2017, when we open for applications.

**1.31** Certain firms should be aware of the particular regulatory deadlines that they will have to meet in order to continue to operate:

- Firms that need to become authorised or registered as a result of PSD2 can apply to be authorised or registered under the PSRs 2017 or the amended EMRs from 13 October 2017. Firms that are unregulated and carrying out AIS or PIS and are new to

<sup>8</sup> Our Fees Policy Statement can be found here: [www.fca.org.uk/publication/policy/ps17-15.pdf](http://www.fca.org.uk/publication/policy/ps17-15.pdf)

the market will have to be authorised or registered if they wish to carry on business from 13 January 2018.

- Existing authorised PIs, authorised EMIs and small EMIs have until 13 April 2018 to apply for re-authorisation or re-registration.
- Existing small PIs have until 13 October 2018 to apply for re-registration.
- Any existing authorised PI or authorised EMI will have to submit a variation of authorisation form if it wishes to provide AIS or PIS services.
- Firms operating under the electronic communications exclusion will have to notify us by 13 January 2018, or before they commence the provision of such services. Those operating under the limited network exclusion will have to notify us from 13 January 2019.

**1.32** Firms should also continue to engage with consultations issued by the EBA. We set out the current status of Guidelines, RTS and ITS in Annex 2.

## 2 Perimeter Guidance

### Who should read this chapter

Firms carrying out payment-related activities, including exempted and unregulated firms, and authorised or registered firms that may need to check whether the PSRs 2017 apply to currently unregulated parts of their business.

- 2.1** In this chapter we summarise and respond to the feedback we received to our proposed changes to chapter 15 and chapter 3A of the Perimeter Guidance Manual (PERG) and the revised Approach Document (Chapter 3 in particular).

### Draft guidance in CP17/11 on exclusions from regulation as a payment service and notifications for excluded business

- 2.2** PSD2 makes changes to some of the activities excluded from the PSR 2017 (previously referred to as 'exempted'). These are listed in full in Part 2 of Schedule 1 of the PSRs 2017. They include the commercial agent exclusion, limited network exclusion and electronic communications exclusion. We proposed guidance in CP17/11 to reflect the changes in excluded activities under PSD2.

#### Commercial agent exclusion

- 2.3** Under PSD2 the commercial agent exclusion (CAE) has been amended so that it will not apply where a commercial agent acts on behalf of both parties in a transaction (payer and payee). Additionally, permission to act on behalf of either party must now be given via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee but not both.
- 2.4** In CP17/11 we proposed perimeter guidance (in PERG 15) on the CAE to help firms understand whether they may fall under the exclusion.

*In CP17/11 we asked:*

**Q1:** *Do you agree with our interpretation of the commercial agent exclusion and its application to the business models as set out in the draft PERG text? If not, please explain why not and suggest an alternative approach.*

- 2.5** Of those who responded to this question, most supported the FCA's position, although there were some comments:
- Concern was raised that the third paragraph of Q33A of PERG 15, which cites the regular occupation or business activity test, implies that e-commerce platforms are excluded from the scope of the PSRs 2017;

- Suggestions were made that we should clarify that only agents who come into possession of funds on behalf of a payer/payee are captured by the CAE. They also requested clarification that the CAE only applies if funds are handled on behalf of one party;
- Suggestions were made that the FCA state that non-profit fundraising platforms benefit from the exclusion; and
- Some respondents asked for more examples of when firms would be subject to the exclusion, and clarification was sought that references to 'the sale or purchase of goods and services' (determining whether CAE applies) should not include employment services.

### Our response

We have made changes to Q33A of PERG to clarify that it is not our view that the regular occupation or business activity test will remove all e-commerce platforms from the scope of regulation. We have added more information on which activities might fall within the scope of the CAE.

We have not changed our guidance in some areas:

- The CAE only applies to payment transactions 'through' a commercial agent. We therefore consider that it is already clear that the CAE only applies where an agent comes into possession or control of funds.
- We believe that it was the intention of the PSRs 2017 to include professional (but not-for-profit) fundraising platforms within the scope of regulation and so are not changing our guidance to suggest that these services are excluded from the scope of regulation.
- We considered whether it would be possible to add examples of business models to our guidance on CAE but have decided that this would not be feasible as it would depend on how each particular business model is structured.

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### Limited network exclusion

**2.6** Under the PSRs 2009, a firm that offers a payment service may be excluded from regulation if its service is based on instruments that can be used only in a limited way to acquire goods or services in certain limited circumstances e.g. some gift or store cards. This is often called the 'limited network exclusion' (LNE).

**2.7** PSD2 aims to standardise the application of the LNE across the EU. It makes changes to clarify how widely the exclusion should be interpreted. The exclusion is articulated in terms of different elements, which we refer to as 'limbs'.



**2.8** One limb of the exclusion's application is amended so that it relates to instruments used to acquire a 'very' limited range of goods and services (rather than the 'limited range' set out previously in PSD). A new limb excludes certain instruments provided for social or tax purposes from regulation under the PSRs 2017. We proposed amendments to Q40, and proposed to delete Q41, in PERG 15 to give guidance on the scope of the amended exclusion.

**2.9** PSD2 also introduces a notification requirement for firms that are providing, or intend to provide, services that benefit from the LNE. These firms must notify the FCA where the value of payment transactions executed through these services was more than €1 million in the previous 12 months. We included proposals in CP17/11 to direct the form, content and timing of this notification. PSD2 also requires a description of the activity notified to be made publicly available on a register.

*In CP17/11 we asked:*

**Q2:** ***Do you have any comments on our proposed limited network exclusion guidance in the draft PERG text?  
Do you have any comments on the proposed limited network exclusion notification?***

**2.10** Of those that responded to the question, most were supportive, but there were some questions about the guidance and suggested amendments:

- Respondents asked whether services that don't come under the definition of e-money, such as 'closed loop' gift cards – cards that are issued and redeemed only by the retailer, would come under the limited network exclusion.
- Comments were made about the text of Q40 in PERG 15.5, including the changes we proposed to it. For example:
  - It was suggested that we incorporate guidance provided in PERG 3A.5 Q27 about the use of pre-paid cards in shopping malls within Q40;
  - We were asked to replace 'petrol cards' with 'fuel cards';
  - We were asked about which limb of the exclusion fuel cards could come under in different circumstances.
- With respect to the narrowing of the exclusion, i.e. the addition of the word 'very', we were asked us to confirm that excluded products that are currently regarded as excluded (under PSD) will continue to be excluded under PSD2.
- We were asked what information the Financial Services Register will show and whether inclusion on the Register as a limited network will mean a programme can qualify as excluded in another member state.
- We also received a number of comments about the form and timing of the notification and the process by which the FCA will assess notifications and respond to notifying firms. A number of respondents were concerned that the requirement to notify annually (where a provider's total transactions exceeds €1 million) would create uncertainty and suggested notifications only be required when a business model changes.

## Our response

We have considered the comments and amended our guidance where necessary, as we explain below. We also explain why we have not made some changes that were suggested.

### Closed loop gift cards

We amended Q40 in PERG to clarify that 'closed loop' gift cards are in scope of the LNE.

### PERG 15.5 Q40 – mall cards

We have added guidance that was in PERG 3A.5 Q27 into Q40. This guidance is on the use of cards limited to a particular shopping mall. We have also replaced references to 'mall' with 'shopping centre'.

### PERG 15.5 Q40 - fuel cards

We have replaced the term 'petrol card' with 'fuel card'. This is to make clear that instruments used to purchase petrol, diesel and other fuels may be in scope of the LNE where one or more of the tests in limbs (a) to (c) is met.

Q40 already notes that excluded instruments falling within limb (b) include petrol cards (now fuel cards) "where these are issued for use at a specified chain of petrol stations". We do not propose a change to this. We do however note that a fuel card could come under limb (c) if it is only possible to purchase a very limited range of goods or services where the scope of use is effectively limited to a closed number of functionally connected goods or services. We have amended Q40 to clarify this.

### Narrowing of the exclusion

The exclusion has been modified under PSD2 and therefore firms should consider their business models in light of the PSRs 2017 and our amended perimeter guidance. We do not intend to provide additional guidance on 'very limited range of goods and services' as we have already given guidance using fuel cards and store cards as examples and referencing Recital 13 of PSD2.

### Financial Services Register and non-UK services

Details of services notified under the LNE will be publicly available on the Financial Services Register.<sup>9</sup> The Register will display the name and registered address of each excluded firm as well as a description of the services that they carry out that fall within the LNE, and the specific exclusion being used.

We will limit our assessment to services provided in the UK as we are only requiring a description of services provided in the UK in notifications submitted. It will be for competent authorities in other member states to work out whether services provided in their state can operate under the LNE.

9 The Financial Services Register can be found here: <https://register.fca.org.uk/>



The EBA will also maintain a register which will include the information covered in the Financial Services Register, together with information provided by the competent authorities in other EEA States. The EBA has consulted on regulatory technical standards (RTS) regarding this register.<sup>10</sup>

### **The notification requirement and assessment of the notification**

We have directed how notifications should be submitted to the FCA – see Appendix 2. From October 2017, the final Direction and links to our Connect Portal (where notifications can be submitted) will be available on our website.<sup>11</sup>

The FCA will aim to assess the information notified, provide a written response and publish the exclusion to the Financial Services Register, within 20 working days.

As we note in the Direction in Appendix 2, if the FCA considers that any part of the notified services do not fall within the exclusion, it will notify the service provider. If the service provider disagrees with the FCA's determination it may refer the matter to the Upper Tribunal (an independent judicial body established under section 132 of FSMA).<sup>12</sup> Depending on the outcome of the referral, the firm may need to seek authorisation or cease providing its service. It will be able to discuss this with the FCA.

### **Frequency of the notification**

We do not propose to change the frequency of the notification. Regulation 38(1) of the PSRs 2017 requires a service provider to notify the FCA of their use of the LNE if the provider exceeds the monetary threshold in "any period of 12 months" except for a period in respect of which it has already notified. To lessen the burden on firms, we are not requiring a provider to describe the services in new notifications, if they have done this previously. A provider should not wait until the next notification is due to notify the FCA if it believes the services it provides no longer fall within the exclusion.

### **Timing of the first notification**

We have made changes to the direction (see Appendix 2) so that notifications will not have to start being made until 12 months after the implementation of PSD2 i.e. from January 2019. This change is intended to avoid firms having to apply the new requirements to services provided in the period before PSD2 came into effect. A service provider can still submit a services notification before 13 January 2019 if they wish to. They can do this from 13 October 2017.

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10 The EBA's consultation on the EBA Register under PSD2 can be found here: [www.eba.europa.eu/-/eba-consults-on-the-future-eba-register-under-the-payment-services-directive](http://www.eba.europa.eu/-/eba-consults-on-the-future-eba-register-under-the-payment-services-directive)

11 The final LNE Direction will be available here: [www.fca.org.uk/firms/limited-network-exclusion](http://www.fca.org.uk/firms/limited-network-exclusion)

12 Details of the Upper Tribunal can be found here: [www.gov.uk/courts-tribunals/upper-tribunal-tax-and-chancery-chamber](http://www.gov.uk/courts-tribunals/upper-tribunal-tax-and-chancery-chamber)

### Electronic communications exclusion

- 2.11** PSD exempted certain transactions executed through telecommunication, digital or IT devices where the goods or services are delivered to and used through such a device (the 'digital download exemption').
- 2.12** Under PSD2 the digital download exemption has been replaced by the electronic communications exclusion (ECE) (referred to in CP17/11 as the electronic communication network (ECN) exclusion). The ECE excludes payment transactions by a provider of electronic communications networks or services where these are provided in addition to electronic communications services provided to a customer. An example of an excluded transaction could be the purchase of digital services such as apps charged to a mobile phone bill.
- 2.13** The ECE is limited to the purchase of digital content and voice-based services. It also includes charitable giving and the purchase of tickets but only via electronic devices, charged to the subscriber's bill.
- 2.14** PSD2 amends the equivalent digital download exemption in 2EMD to the same effect so that the ECE also applies to firms that would otherwise need to be regulated for e-money services.
- 2.15** PSD2 also introduces value limits for transactions that are within the ECE. Transactions are only excluded if they do not exceed €50 per single payment transaction or €300 cumulative value for an individual subscriber per month ('transaction limits').
- 2.16** In CP17/11 we proposed perimeter guidance to help firms understand whether they are likely to be able to use ECE, including guidance on what a subscriber is.
- 2.17** PSD2 also introduces a notification requirement for providers of electronic communications networks or services (such as mobile network operators) that are providing, or intend to provide services under the ECE. We included proposals in CP17/11 to direct the form, content and timing of this notification. PSD2 requires the description of the activity notified to be made publicly available on a register.
- 2.18** Providers of electronic communications networks or services relying on the ECE must also provide the FCA with an audit opinion that the transactions to which the service relates are within the transaction limits on an annual basis. We proposed to direct how the auditors opinion should be submitted.
- 2.19** The implementation of the ECE in the PSRs 2017 differs in two respects from the proposals set out in in the Treasury's February 2017 consultation (which was the basis of our consultation in CP17/11):
- the definition of the exclusion has been amended to ensure that it 'cascades' to include intermediaries that facilitate the transfer of money to merchants;
  - the transaction limits have been set out in sterling, rather than euro (so that for UK firms, the limits are £40 and £240 respectively).



In CP17/11 we asked:

**Q3:** *Do you have any comments on our proposed electronic communications network exclusion guidance in the draft PERG text? Do you have any comments on the proposed electronic communications network exclusion notification?*

**2.20** Respondents had a number of questions and concerns about our approach to the ECE:

- Concerns were raised that firms would need to make costly systems changes in order to ensure the transactions they provided for their customers did not exceed the transaction limits;
- They argued that only a small proportion of their customers currently exceeded the limits, so the costs to monitor these customers would be disproportionate. It was requested that we deal with instances of the limits being exceeded proportionately;
- Some providers of directory enquiry services were concerned that requirements under the ECE may contradict requirements under the Universal Service Directive and Ofcom's regulatory provisions to allow customers access to direct enquiry services. Such might be the case, for example, if a telecommunication provider chose to stay within the transaction limits by introducing a cumulative spend limit for its customers, after which customers would be cut off;
- They asked whether mobile network operators would actually need to consider the ECE and whether they might not actually be providing payment services. It was argued that the application of EU VAT rules to telecommunications companies demonstrated that in some circumstances the acquisition of third party products by the subscriber would not involve a payment transaction;
- We were asked to clarify the PSD2 term 'individual subscriber' given the transaction limits are based on the transactions of individual subscribers. Respondents asked whether this would refer to the account holder, even if this included multiple phone lines (for example, a single account holder for office landlines or mobile phones). Respondents also noted it could be difficult for a telecommunication provider to track transactions made on office extensions;
- We were asked to clarify whether electronic communication intermediaries are merchant acquirers and whether they benefit from the ECE;
- We received a number of comments on the proposed notification form, requirement for an auditor's opinion and the direction on when to notify.

### Our response

#### **Monitoring transaction limits for individual subscribers**

We recognise the concerns about firms monitoring their customers' transactions to ensure they can continue to benefit from the ECE. The limits have been put in place to protect consumers and to ensure that providers facilitating significant payment transactions are properly regulated.

Under the PSRs 2017 each provider can only benefit from the exclusion by not exceeding these limits. They must also submit an auditor's opinion testifying that the transaction limits are being met. Providers whose subscribers are exceeding the transaction limits will not be permitted to operate these services under the exclusion. We will expect such providers to seek authorisation under the PSRs 2017 or EMRs as appropriate. If they do not, they risk committing a criminal offence under Regulation 138 of the PSRs 2017.

We recognise concerns about the consequences of limits being exceeded unintentionally or in a small number of cases. We will assess auditor's opinions on a case-by-case basis. We are likely to discuss different options with a provider, including authorisation, where limits are exceeded. Information about our enforcement approach can be found in Chapter 14 of the revised Approach Document.<sup>13</sup>

### **Access to directory enquiries**

ECE providers are responsible for ensuring they comply with other legislative or regulatory requirements (including Ofcom rules) and should consider these in light of the requirements in the PSRs 2017.

### **Provision of payment services**

The ECE is only relevant where the service provided would be a payment service if it weren't excluded. We are clarifying our guidance in PERG 15 Q18 and 41A to make clear that where a provider of a network or service sells subscribers additional goods or services itself (i.e. where it is acting as principal) no payment service is being provided by the provider of the network or service, even if the payment is charged to the related bill. The VAT law and guidance cited has no relevance to the application of the PSRs 2017 and so we are not amending the guidance to reflect comments about tax treatment.

### **'Individual subscriber'**

We have amended our guidance in Q41A in PERG to clarify that for the purposes of the application of the transaction limits, the FCA will expect notification based on individual telephone numbers or SIM cards, rather than account holders being individual subscribers. We acknowledge that there may be practical difficulties for ECE providers in monitoring transactions where individual telephone numbers have virtual extension numbers with multiple users, for example, in a hotel or office. We will continue to engage with telecoms providers to understand these difficulties.

### **Intermediaries in ECE transactions**

The PSRs 2017 have the effect of allowing intermediaries in transactions that fall within the ECE transactions to also benefit from the exclusion. This includes firms that acquire carrier billing transactions on behalf of merchants. We have amended our perimeter guidance (PERG 15 Q41A) to take account of this change. We will not expect intermediaries to notify us. We would note that intermediaries should consider whether any other activities they undertake constitute regulated payment services.

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13 Our revised Approach Document can be found here:  
[www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf](http://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf)



### Notification requirement

We have directed when and how notifications should be submitted to the FCA – see Appendix 2. From October 2017, the final Direction and links to our Connect Portal (where notifications can be submitted) will be available on our website.<sup>14</sup>

The FCA will aim to assess the information notified, provide a written response and publish the exclusion to the Financial Services Register, within 20 working days.

We have made changes to the ECE direction and form (see Appendix 2) taking into account that ECE providers will not need to convert transaction values into euro.

### Timing of the first notification

Firms may submit notifications at any time after 13 October 2017. Those providing a service falling within the ECE before 13 January 2018 must submit the notification on or before 13 January 2018.

### Financial Services Register

Details of services notified under the ECE will be publicly available on the Financial Services Register.<sup>15</sup> The Register will display the name and registered address of each excluded firm as well as a description of the services that they carry out that fall within the ECE, and the specific exclusion being used.

The EBA will also maintain a register which will include the information covered in the Financial Services Register, together with information provided by the competent authorities in other EEA States. The EBA has consulted on RTS regarding this register.<sup>16</sup>

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## Account Information Services (AIS) and Payment Initiation Services (PIS)

### 2.21

PSD2 aims to bring regulation up to date with developments in the market, and to capture new types of payment services. Under PSD2, AIS and PIS come under regulation for the first time. Firms intending to provide these services from 13 January 2018 will likely need to apply to be authorised or registered. The Treasury has included an exception to this in the PSRs 2017 (see transitional provisions at Regulation 154). Firms providing AIS or PIS before January 2016 will be able to operate without authorisation or registration, should they wish to do so, until 18 months following the adoption of the EBA's regulatory technical standards on strong customer authentication and common and secure communication under article 98 of PSD2 (SCA RTS).<sup>17</sup> This is likely to be after mid-2019.

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14 The final ECE Direction will be available here from October 2017: [www.fca.org.uk/firms/electronic-communication-network-exclusion](http://www.fca.org.uk/firms/electronic-communication-network-exclusion)

15 The Financial Services Register can be found here: <https://register.fca.org.uk/>

16 The EBA consultation on the EBA Register can be found here: [www.eba.europa.eu/-/eba-consults-on-the-future-eba-register-under-the-payment-services-directive](http://www.eba.europa.eu/-/eba-consults-on-the-future-eba-register-under-the-payment-services-directive)

17 The latest information on the SCA RTS can be found here: [www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/regulatory-technical-standards-on-strong-customer-authentication-and-secure-communication-under-psd2](http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/regulatory-technical-standards-on-strong-customer-authentication-and-secure-communication-under-psd2)

**2.22** In CP17/11 we proposed guidance to help firms understand whether they may be carrying out AIS or PIS. We provide feedback in relation to other aspects of these services below in Chapter 7 of this PS.

*In CP17/11 we asked:*

**Q4:** *Do you agree with the proposed guidance related to the definition of AIS and PIS in PERG 15.3? Are there any business models which you believe could be inappropriately viewed as in or out of scope in light of our guidance? If so, please provide us with details of these business models.*

**2.23** The majority of respondents who answered this question supported the proposals, though they suggested a number of amendments to the current draft guidance and raised questions, including:

- Respondents asked for more clarity on whether firms accessing and processing customer data, but not interacting directly with a customer (sometimes known as 'fourth parties'), should be authorised or registered. Some suggested that they should be, whereas others stated that only one firm involved in the provision of AIS or PIS to a particular customer should be required to apply for authorisation or registration. Concerns were expressed about the involvement of businesses in the provision of AIS or PIS that were not regulated.
- More guidance was requested on which business models would be likely to involve the provision of AIS or PIS. A number of examples were provided, with respondents questioning whether they might be covered by the regulations, including firms providing services to another firm within a group (intra-group services).
- Clarity was requested on whether firms providing consolidated account information to customers using data from accounts that are not 'payment accounts' would be providing AIS.
- Guidance was sought on how the requirement to apply for authorisation or registration applied to firms providing AIS or PIS prior to 12 January 2016.

## Our response

### **'Fourth parties' or outsourcers**

We have sought to provide clarity on who needs to be authorised or registered, in particular where multiple firms are involved in the provision of AIS. This is particularly relevant, for example, where certain firms obtain and process account data and pass this on to other firms. We have added to PERG to clarify which firms will require authorisation or registration to provide AIS.

Related to this, we have provided guidance in the Approach Document to clarify that an authorised or registered AIS or PIS provider will be responsible for the arrangements put in place with other (potentially unregulated) firms for the provision of AIS or PIS, including outsourcing arrangements.



### **Business models that may involve the provision of AIS or PIS**

We had already included examples of business models that may be carrying out AIS in our draft guidance. We have now clarified our guidance in relation to business models or activities we consider unlikely to be within the perimeter.

We highlight that the regular occupation or business activity test is relevant for AIS, as with other payment services, by adding an example in Q9 in PERG of a power of attorney business model that is unlikely to be carrying out AIS as a regular occupation or business activity.

We are also providing more guidance in PERG on group treasury models. This may be relevant to firms providing services to other firms within a group which are considering whether AIS or PIS is being carried out.

We would remind firms that AIS and PIS relate only to payment accounts, and not, for example, fixed term deposit accounts, which are outside the scope of the PSRs 2017. We are not amending PERG to reflect this because we believe this is already clear.

We have also added guidance in Q25A of PERG 15 on what processes have to occur for a business to be carrying out AIS. We state that there must have been access to an account, the information must have been consolidated in some way, and must have been provided to a user.

We considered other business models that may be inside or outside the perimeter with respect to AIS and PIS. However, we concluded that these models are still evolving, that there is not enough certainty at present on how they would work in practice and that we should maintain some flexibility. We will continue to monitor developments in the market and consider the merits of providing further guidance in future, as our understanding of AIS and PIS business models develops.

### **AIS providers (AISPs) and PIS providers (PISPs) operating prior to 12 January 2016**

To reflect Regulation 154 of the PSRs 2017 we have amended PERG and Chapter 3 in the Approach Document. We have clarified that firms providing AIS or PIS prior to 12 January 2016 and continuing to do so immediately before 13 January 2018 do not need to be authorised or registered to continue operating after 13 January 2018 until 18 months following adoption of the SCA RTS. We have also added guidance to Chapter 17 of our Approach Document to highlight that firms that are not authorised or registered for the provision of AIS or PIS will not be subject to the rights of access to account information or obligations in the PSRs 2017. We would encourage businesses not to wait until the end of this transitional period to become authorised.

All businesses that started to provide AIS or PIS on or after 12 January 2016, or are planning to do so, will have to be appropriately authorised or registered from 13 January 2018 if they wish to continue operating in the market.

## Other Perimeter guidance

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**2.24** PSD2 introduces additional changes to the perimeter. We asked respondents to provide any comments they had on the additional proposed changes to PERG.

*In CP17/11 we asked:*

**Q5:** *Do you have any other comments on the perimeter guidance we propose? If you disagree with any of the guidance we have proposed, please explain why.*

**2.25** The majority of respondents did not provide any other comments on the proposed perimeter guidance but a few suggested amendments. The main comments were:

- the FCA's guidance on the regular occupational and business activity test (Q9 in PERG 15) is interpretative and does not come from PSD2;
- clarity was sought on our amended perimeter guidance on non-payment accounts, and there were some comments that Individual Savings Accounts (ISAs) should never be considered payment accounts because they were not originally intended to be (Q16 in PERG 15);
- clarity was requested on Q20 in PERG 15 in relation to mobile applications and mobile wallets;
- the FCA should reconsider guidance which states that a payment institution (PI) cannot hold funds unless accompanied by a payment order (Q5 in PERG 15.2);
- the FCA should provide guidance on the maximum length of time funds could be held on account by a PI;
- guidance should be provided on the meaning of 'execution' when describing a payment transaction;
- guidance should be provided to clarify that PSPs may be providing consumer credit;
- clarification should be provided that the payment instruments permission is needed if a PSP provides payment instructions securely online; and
- that our draft perimeter guidance on merchant acquiring (Q21 in PERG 15) deviated from the PSD2 definition and captured too many business models.

### Our response

We have considered the comments received and amended our guidance where clarification is needed, as we explain below. We also explain where we do not believe a change is needed.

#### **Regular occupation or business activity**

The PSRs 2017, like the PSRs 2009, apply only to activities carried out as a regular occupation or business activity – this is set out in the definition of 'payment service' in Regulation 2. We do not believe we should



therefore remove references to regular occupation or business activity in our guidance.

### **Non-payment accounts**

We are not changing our position on cash ISAs contained in our draft perimeter guidance. The PSRs 2017 clearly indicate that whether the regulations apply depends on an account's functionality and how an account is used in practice, in particular whether payments are made from an account. It does not depend purely on how it is marketed to customers or treated for tax purposes. Given the functionality of ISAs has evolved since we implemented PSD, the updated guidance seeks to acknowledge that a cash ISA could be a payment account.

### **Mobile applications and mobile wallets**

We have added some clarifications to our guidance on the issuance of payment instruments, including clarification which is relevant to mobile wallets.

### **Holding of funds without a payment order**

We do not intend to amend Q5 in PERG 15.2 in the way suggested as we believe our guidance correctly reflects that any payment accounts held by an authorised PI must only be used in relation to payment transactions.

### **Maximum time funds can be held on account**

We have added guidance in Q5 in PERG 15 which clarifies that funds cannot be held indefinitely by a PI.

### **Meaning of 'execution' of a payment**

To clarify Q18 we have added guidance on what constitutes execution of a payment transaction.

### **Consumer credit**

We have added further guidance to help businesses understand when they may need consumer credit permissions.

### **Payment instruments permission**

We do not intend to add further guidance regarding the payment instruments permission. We believe the current guidance is clear. The issuing of a payment instrument does not require there to be a payment account.

### **Merchant acquiring**

We do not propose to change our overall approach as we believe our guidance reflects the new definition of acquiring which is in the PSRs 2017. However, to address potential misunderstanding we are making a small change to clarify how this might affect master merchants or payment facilitators.

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## 3 Authorisation and registration

### Who should read this chapter

Businesses looking to be authorised or registered by the FCA in order to conduct payment services business or issue e-money, as well as payment institutions (PIs) and e-money institutions (EMIs) seeking to keep their current authorisation or registration. This chapter is also relevant to persons looking to acquire control in an authorised PI or small PI.

- 3.1** In this chapter we summarise and respond to the feedback received to our proposed approach to authorisation and registration, and change in control. We consulted on this in CP17/11, and then on some further matters, including draft re-authorisation and re-registration forms, in CP17/22. We have considered respondents' feedback to both consultations together and set this out below. We will publish the final authorisation and registration forms on our website before opening for applications on 13 October 2017.
- 3.2** Our proposals reflected the changes that PSD2 makes. Compared to today, they mean that businesses will need to provide additional information and meet new conditions when seeking authorisation or registration to become a PI or EMI. Existing PIs and EMIs will need to supply additional information by the deadlines set out in the PSRs 2017 and must meet the new conditions for authorisation or registration if they wish to continue providing services after the relevant transitional period has ended.
- 3.3** A new registration process is also available for businesses only providing account information services. These businesses can become registered account information service providers (RAISPs).
- 3.4** There are also changes in the PSRs 2017 for authorised PIs and small PIs regarding change in control.

### Our approach for businesses that want to become authorised PIs, authorised EMIs or RAISPs, and those looking to be re-authorised

- 3.5** In CP17/11, we set out our proposed procedures for the authorisation of PIs and EMIs and the registration of RAISPs in Chapter 3 of the revised Approach Document. We proposed that applicants provide the information set out in the 'EBA Guidelines under Directive (EU) 2015/2366 (PSD2) on the information to be provided for the authorisation of payment institutions and e-money institutions and for the registration of account information service providers' (EBA Guidelines on authorisation) in support of their application.<sup>18</sup>

<sup>18</sup> The EBA Guidelines on authorisation can be found here: [www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-authorisation-and-registration-under-psd2](http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-authorisation-and-registration-under-psd2)



**3.6** In CP17/22 we consulted on draft re-authorisation forms. This was in line with our proposal in CP17/11 to seek the information from authorised PIs and authorised EMIs that is specified in the PSRs 2017 and the EBA Guidelines on authorisation.

**3.7** Under the PSRs 2017, authorised PIs and authorised EMIs must make their applications by no later than 13 April 2018 if they intend to continue providing payment services or issuing e-money on or after 13 July 2018.

*In CP17/11 we asked:*

**Q6:** *Do you agree with the proposed approach to implementing the new authorisation requirements for authorised PIs, and authorised EMIs, and the registration requirements for RAISPs? If not please explain why not and suggest an alternative approach?*

*In CP17/22 we asked:*

**Q4:** *Do you agree with our proposed approach to re-authorisation, including the re-authorisation form? If not, please explain why not and suggest an alternative approach.*

**3.8** Most of those who responded to Q6 in CP17/11 agreed with our proposals. We received a number of comments. These included:

- queries over why existing PIs and EMIs are being required to apply for re-registration or re-authorisation under PSD2;
- requests for more information about the re-authorisation process;
- requests for more clarity on transitional provisions;
- concerns were raised about the difficulty of obtaining professional indemnity insurance (PII);
- requests to provide more information about our expectations of businesses seeking to become authorised or registered to provide AIS or PIS; and
- some respondents arguing for a real-time machine-readable Financial Services Register.

**3.9** The majority of respondents to CP17/22 agreed with our proposed re-authorisation forms under PSD2. Respondents did though:

- raise concerns about the level of information required by EBA Guidelines on authorisation and the potential burden on firms in order to provide this;
- raise concerns that some existing firms may not be able to successfully obtain re-authorisation; and
- request clarity about the timing of variation applications for existing authorised firms looking to provide AIS or PIS.

## Our response

As we proposed in our consultation, we intend to comply with the EBA Guidelines on authorisation. This is relevant to currently authorised PIs and authorised EMIs which will need to be re-authorised under PSD2, as well as prospective firms looking to be registered as a RAISP.

### **Requirement to be re-authorised and level of information required**

PSD2 seeks to ensure that all regulated firms meet the same new standards, whether they are newly authorised or not. As such, the PSRs 2017 sets out that all firms must submit the additional information required and meet the new conditions for authorisation. We have issued communications to firms to let them know they need to apply for re-authorisation.

We recognise concerns about the burden of providing information to the FCA in re-authorisation applications. We have re-worded the re-authorisation forms to be clearer that firms do not need to resubmit information which they have previously provided to us. We have also removed some questions which we believe will not be relevant to existing authorised PIs and authorised EMIs.

### **Clarity on transitional provisions**

We have clarified in Chapter 3 of our Approach Document that existing PIs and EMIs will need to comply with the new requirements of PSD2 (introduced through the PSRs 2017 and our Handbook) from 13 January 2018, prior to becoming re-authorised or re-registered. This includes the changed conduct of business requirements, new complaints handling timeframes and new reporting and notification requirements. There are a few exceptions. PIs and EMIs should refer to our Handbook, Approach Document and the PSRs 2017, to find out the start date of each requirement. The main exception relates to change in control, which we consider below as part of our response to Q9 in CP17/11.

### **Professional Indemnity Insurance (PII)**

In relation to AIS and PIS providers, we intend to comply with the EBA Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee under Article 5(4) of Directive (EU) 2015/2366 (EBA PII Guidelines).<sup>19</sup> In the Approach Document we direct the minimum amount of cover that must be held by firms providing AIS or PIS. Those seeking authorisation or registration to carry out PIS or AIS will need to demonstrate they have this cover in place.

In terms of the commercial availability of PII, alongside the Treasury, we have engaged with insurers and brokers to understand the PII cover that will be made available to firms. We understand that insurers are currently developing PII policies and that some have come to market. AIS and PIS providers will have to determine whether PII policies provide the

19 The final EBA PII Guidelines can be found here: [www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-the-criteria-on-how-to-stipulate-the-minimum-monetary-amount-of-the-professional-indemnity-insurance-under-psd2](http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-the-criteria-on-how-to-stipulate-the-minimum-monetary-amount-of-the-professional-indemnity-insurance-under-psd2)



required cover. They can also meet the requirements of the PSR 2017 by obtaining a comparable guarantee.

### **Expectations of prospective AIS and PIS providers**

We have made some small additions to Chapter 3 of our Approach Document to explain what we would expect to see in documentation from prospective AIS and PIS providers around outsourcing arrangements, security risks, business models, how consent will be obtained and how data will be used.

We have also clarified that existing authorised PIs and authorised EMIs will need to be re-authorised in order to provide these new services. An application to provide AIS or PIS can be made alongside the re-authorisation application.

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## **Our approach to firms looking to register as small PIs/small EMIs, and to those looking to become re-registered**

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- 3.10** Under the PSRs 2017, small EMIs must make their applications for re-registration no later than 13 April 2018 if they intend to continue providing payment services or issuing e-money on or after 13 July 2018. Small PIs must make their applications no later than 13 October 2018 if they intend to continue providing payment services on or after 13 January 2019.
- 3.11** Small PIs and small EMIs cannot provide AIS or PIS; they must apply to be authorised (instead of registered) if they intend to provide these services.
- 3.12** In CP17/11 we proposed to require some further information from prospective small PIs and small EMIs applying for registration to reflect new PSD2 requirements. We asked for views on the extent to which we should apply the EBA Guidelines on authorisation to small PIs and small EMIs.
- 3.13** In CP17/22 we consulted on draft forms that small PIs and small EMIs will need to submit when applying for registration. We proposed to take a proportionate approach, given the smaller size of small PIs and small EMIs, and not to apply the EBA Guidelines on authorisation in full.
- 3.14** The information that we proposed to require for re-registration was the same as the additional information that we would require in our draft registration form.

*In CP17/11 we asked:*

- Q7:** *Do you agree with our proposal to require small PIs and small EMIs to provide us with information relating to security, fraud and sensitive payments data?*
- Q8:** *Which parts of the EBA Guidelines on authorisation and registration (currently in draft form) do you believe should be applied to applicants to become small PIs or small EMIs? Is there anything else we should consider?*

*In CP17/22 we asked:*

**Q5:** *Do you agree with the proposed approach to registration, including the registration forms and revised Approach Document text? If not, please explain why not and suggest amendments.*

**Q6:** *Do you agree with our approach to re-registration, including the proposed re-registration form and revised Approach Document text? If not, please explain why not and suggest amendments.*

**3.15** Most agreed to our proposed approach to small PI and small EMI registration, in response to question seven in CP17/11. We received a few comments in response to question eight in CP17/11 which included requests only to apply those parts of the EBA Guidelines on authorisation which would likely have a bearing on the outcome of the application.

**3.16** In CP17/22 most of those who responded to question five and six agreed with our proposed registration and re-registration forms. One respondent commented that the FCA should prevent firms that pose a risk to consumers from entering the market.

### Our response

The forms we consulted on in CP17/22 only requested information we believed would be relevant to the outcome of an application. As these were broadly supported by consultation respondents we are proceeding with the proposed approach.

## Variation of authorisation and registration

**3.17** We currently have variation forms which PIs can submit to us when they wish to change the payment services that they provide. In CP17/22 we proposed an updated PSD2 variation form for PIs to reflect PSD2, including the newly regulated activities – AIS and PIS. We also proposed an EMD variation form to allow authorised EMIs to apply to remove requirements preventing them from providing these services.

*In CP17/22 we asked:*

**Q7:** *Do you agree with our proposed variation of permission forms for PIs and EMIs? If not, please explain why not and suggest amendments.*

**3.18** All of those who responded to this question agreed with our proposals. We did not receive any comments about the forms.



### Our response

As there was support for the variation forms and we did not receive any comments we are proceeding with them as proposed. We are making some small additions to ensure we obtain the right information on an applicant's PII or comparable guarantee from authorised PIs or authorised EMIs looking to provide AIS or PIS.

As noted above, we have also added some guidance in Chapter 3 of our Approach Document. This is relevant for existing authorised firms looking to vary their activities to provide AIS or PIS.

## Change in control

- 3.19** PSD2 introduced new requirements for changes in qualifying holdings in an authorised PI. To implement these changes, and to align the position for authorised and small PIs with EMIs, the Treasury is applying (with modification) Part 12 of FSMA.
- 3.20** To reflect these changes, we proposed to take the same approach for authorised PIs as we currently take for EMIs. This is set out in Chapter 11 of the Supervision manual in the FCA Handbook.

*In CP17/11 we asked:*

**Q9:** *Do you agree with our proposed approach to change in qualifying holdings for authorised PIs including that authorised PIs use the change in control forms already used by EMIs and FSMA firms? If not, please explain why not and suggest an alternative approach.*

- 3.21** Most of those who responded to this question agreed with our proposed approach. One respondent questioned whether the process is consistent with other listing processes. Some respondents asked for clarification of the timeline and process for making change in control notifications.

### Our response

We have made no changes to our proposed approach. However, given the changes in the final PSRs 2017 we are also implementing this approach for small PIs.

We note a comment about the listing process and our change in control process. The purpose of the change in control regime is to allow us to check the suitability of persons who may be taking control of firms we regulate. These persons will need to seek and obtain approval before they take control. This is separate from the listing rules which require shareholders of listed companies to report change in ownership.

We note that some respondents asked for further information about the change in control process that will apply. We provide guidance on the change in control process in Chapter 4 of the Approach Document.

PIs should note that the new change in control requirements do not apply until they are re-authorized or re-registered. During the transitional period authorised PIs and small PIs which have not been re-authorized or re-registered will continue to submit a notification rather than prospective controllers.

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## 4 Complaints handling and reporting

### Who should read this chapter

Payment service providers (PSPs) and e-money issuers.

- 4.1** In this chapter we summarise the feedback we received to the proposed amendments to complaints handling requirements to reflect PSD2 and the extension of complaints reporting to all PSPs. We also set out our response to this feedback.

### Complaints handling – time limits for responding to complaints

- 4.2** PSD2 creates new requirements for dispute resolution, including new time limits for PSPs' handling of payment services complaints. PSPs will be required to respond to these complaints within 15 business days (and 35 business days in exceptional circumstances).
- 4.3** In CP17/11 we proposed to reflect these changes in our Handbook in the Dispute Resolution Sourcebook (DISP) for complaints from eligible complainants concerning rights and obligations under Parts six and seven of the PSRs 2017. We defined this in the Handbook glossary as 'PSD complaints'. We also proposed applying these time limits to complaints concerning rights and obligations under Part five of the EMRs. We defined these in the glossary as 'EMD complaints'.
- 4.4** We consulted jointly with the Financial Ombudsman Service, which proposed to mirror these changes in its voluntary jurisdiction and complaints handling rules.
- 4.5** The PSRs 2017 implement the changes to complaints handling for non-eligible complainants.

*In CP17/11 we asked:*

**Q12:** *Do you agree with our proposed Handbook changes to implement the PSD2 complaints handling requirements? If not, please explain why not and suggest an alternative approach.*

- 4.6** Of those who responded to the question the majority neither agreed nor disagreed but provided comments. Just under half were supportive, and one respondent disagreed. There were a number of suggestions for changes to our approach, including:
- addressing concerns about the operational challenges of handling payment services complaints in a reduced timeframe, and requests for an extended period for implementation;

- changing our approach to multi-faceted complaints (where part of the complaint is 'PSD' or 'EMD', and so subject to the new PSD2 timeframes, and part is not) as firms may choose to handle such complaints in parts, which may lead to a poor consumer experience;
- applying the current Handbook definition of 'business day' in relation to the new complaints handling timeframes rather than using that provided in PSD2, because of the impact the new definition would have on firms;
- a request for clarity on which complaints can be considered 'exceptional' complaints;
- clarity was sought on what disclosure should be provided to non-eligible complainants about alternative dispute resolution (ADR);
- a request for further guidance on how to handle complaints received in error; and
- requests for clarity on how complaints could be made to the FCA about infringements of PSD2.

## Our response

### Operational challenges and the customer experience

We recognise that PSPs and e-money issuers will face challenges implementing the changes to complaints handling requirements introduced by PSD2. As these changes are required to properly implement PSD2, we have no scope to delay their application beyond 13 January 2018. We have however delayed the introduction of our complaints reporting proposals (see below).

We also note that PSPs and e-money issuers resolve the majority of complaints within three days and we will continue to allow them to use the Summary Resolution process in DISP to do this.

We are conscious that PSPs will have to consider how to handle multi-faceted complaints, where part of the complaint is a 'PSD complaint' or 'EMD complaint', and part is not a 'PSD complaint' or 'EMD complaint'. We are maintaining the guidance we proposed in our Handbook which states that PSPs may handle the whole complaint within 15 business days (or 35 in exceptional circumstances) should they wish to, rather than handling parts under separate timeframes.

We would encourage PSPs to consider the interests of customers when designing changes to their processes that will affect the customer journey, so that their customers benefit from the new requirements. We have added guidance in DISP 1.6.1R (keeping the complainant informed) to state that where the respondent has chosen to deal with a complaint in parts that they should inform the complainant that this is the approach they will take.

### Exceptional circumstances

We looked at questions about what constitutes the 'exceptional circumstances' under which complaints can be dealt with within



35 business days. We considered giving examples in DISP but do not believe that this would be appropriate, since what constitutes 'exceptional circumstances' will need to be determined on a case by case basis.

### **Business day**

The definition of business day for the purpose of handling 'PSD complaints' and 'EMD complaints' is driven by PSD2. We are not able to deviate from this. However, we have amended the definition in the Handbook to be consistent with how the PSD2 definition of business day is implemented in the PSRs 2017.

We have added guidance to highlight the definition of business day in Chapter 11 of the Approach Document.

### **ADR for non-eligible complainants**

We have added some guidance to Chapters 8 and 11 of the Approach Document to clarify what information on ADR rights should be provided to non-eligible complainants, in light of changes in the final PSRs 2017.

### **Complaints made in error**

In response to comments about what PSPs should do where complaints are made in error, we would encourage PSPs to consider the existing forwarding rules and guidance in DISP, and do not propose to make any changes at this time.

### **Complaints to the FCA about breaches of PSD2**

The EBA Guidelines on procedures for complaints of alleged infringements of PSD2 have yet to be finalised.<sup>20</sup> Subject to the final EBA Guidelines, we expect to comply with these Guidelines and will update our website in due course to reflect the process for complaining to the FCA to reflect this.

It is important to note that this does not affect complaints by customers seeking redress from PSPs or e-money issuers.

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## **Complaints handling – Financial Ombudsman Service referrals**

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- 4.7** In CP17/11 we proposed changes to our rules to align with the new PSD2 complaints handling timelines. We proposed that eligible complainants would have the right to refer their complaint to the Financial Ombudsman Service 35 business days after the PSP has received their complaint, or 15 business days if no holding response has been sent.
- 4.8** Consumers would still be able to refer such complaints as soon as a final response has been received (even if this final response is received within 15 business days).

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20 The latest information on the EBA Guidelines on procedures for complaints of alleged infringements of PSD2 can be found here: [www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-procedures-for-complaints-of-alleged-infringements-of-the-psd2](http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-procedures-for-complaints-of-alleged-infringements-of-the-psd2)

**4.9** This was a joint consultation with the Financial Ombudsman Service on changes to our Dispute Resolution sourcebook (DISP) which affect both the compulsory and voluntary jurisdiction of the Financial Ombudsman Service.

*In CP17/11 we asked:*

**Q13:** *Do you agree with our proposed changes to the timeline for referrals to the Financial Ombudsman Service? If not, please explain why not and suggest an alternative approach.*

**4.10** Just over half of the respondents were supportive of our proposals. A minority neither agreed nor disagreed. We received a number of requests, including:

- confirmation of the number of times Financial Ombudsman Service rights and leaflets need to be issued;
- more guidance on the treatment of micro-enterprises; and
- further guidance on the Financial Ombudsman Service's approach to complaints about account information service providers (AISPs)

### Our response

We have considered respondents' comments about referrals to the Financial Ombudsman Service. This includes questions about whether leaflets should be issued twice when there is a multifaceted complaint and the PSD element of a complaint is responded to in advance of the non-PSD element. We do not propose to make any changes in response to this point, as we believe that customers could benefit from information about the Financial Ombudsman Service each time they receive a final response about a complaint.

We are not proposing to make changes to DISP on referrals to the Financial Ombudsman Service as a result of feedback to CP17/11, but have changed how some of the new guidance is presented to make it clearer.

We note comments about the Financial Ombudsman Service's approach to complaints about AISPs. This will be in line with its general approach. In deciding what is fair and reasonable in all the circumstances of a case, the Financial Ombudsman Service will consider the relevant laws and regulations, the regulator's rules, guidance and standards, as well as codes of practice, and what is considered to be good industry practice at the relevant time.



## Complaints reporting

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**4.11** In CP17/11 we proposed to extend the complaints reporting to payment institutions (Pis) and e-money institutions (EMIs) in order to help monitor complaints handling. We proposed that 'The Payment Services Complaints Return' be completed by all PSPs and e-money issuers to allow us to monitor complaints across the payment services and e-money markets.

**4.12** The draft return required 'PSD complaints' and 'EMD complaints' (complaints that relate to the rights and obligations under Parts six and seven of the PSRs 2017 and Part five of the EMRs) to be separated from other payment services complaints. It also asked for complaints to be broken down by categories and for contextualisation data to be provided.

**4.13** In CP17/11 we asked:

**Q15:** *Do you agree with our proposal to extend complaints reporting to payment institutions and e-money businesses and to introduce a new reporting form for all PSPs? If not please explain why not and suggest an alternative approach.*

**4.14** The majority of respondents were supportive of our proposals but they suggested:

- changing the start of the reporting period to mid-2018 because of the significant challenges of implementing new complaints handling changes alongside the proposed reporting requirements;
- not requiring 'PSD complaints' and 'EMD complaints' to be separated out from other payment services complaints for the purposes of reporting given the cost of implementing processes and systems;
- clarifying how to report multi-faceted complaints (where part of the complaint is about payment services and part is about another type of service); and
- we avoid complaints being double-counted in any data that is published; on the other hand, it was suggested we should publish as much as complaints data as possible.

### Our response

#### Timing of reporting

As there was broad support for our proposals, we are continuing to introduce the new Payment Services Complaints Return. We realise PSPs and e-money issuers will face immediate challenges making changes to complaints handling processes, so we are introducing the reporting later than proposed in CP17/11. Reporting under the new return will not be required for the first six months of PSD2's implementation (i.e. the period until 13 July 2018). The detailed transitional timeframes for this reporting are set out in DISP in Appendix 1. PSPs and e-money issuers should note that the Payment Services Complaints Return will need to be completed on an annual basis, unlike the current complaints return

that is completed twice a year. They should also note that the new deadlines for resolving complaints will still apply from 13 January 2018.

### **Separating complaints**

We have responded to comments that the challenges around differentiating between 'PSD complaints' and 'EMD complaints' and wider payment services complaints would make the reporting very difficult. We have simplified the return so that the times in which complaints are resolved only need to be reported under the broader 'complaints about payment services and electronic money' category, and so that 'PSD complaints' and 'EMD complaints' do not need to be separated out.

### **Multi-faceted complaints and service categories**

We have made a number of clarifications in the return and the guidance notes, including clarifying some of the labels for the service categories and providing guidance on how to report multi-faceted complaints.

### **Publication of data**

As stated in CP17/11, should complaints data be published, we will be careful to avoid giving a misrepresentative impression of the number of complaints.

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## 5 Conduct of business

### Who should read this chapter

Payment service providers (PSPs), e-money issuers, and credit institutions subject to BCOBS, including credit unions.

- 5.1** This chapter covers the feedback we received about proposed changes to our conduct of business rules in BCOBS and guidance in Chapter 8 of the Approach Document – Conduct of Business.

### Changes to guidance in Chapter 8 of the Approach Document

- 5.2** PSD2 brings about a number of changes to conduct of business requirements for PSPs. In CP17/11 we consulted on changes to the guidance we provide on conduct of business requirements in our Approach Document. We also sought to update our guidance in light of responses to our Call for Input on the FCA's current approach to the payment services regime which asked for further illustrations in a number of areas.<sup>21</sup>
- 5.3** We also added some references to our Approach Document to reflect new requirements around strong customer authentication (SCA – also known as two factor authentication). SCA is designed to make payments more secure, and to reduce fraud, through more robust authentication procedures. These requirements have been developed by the EBA through Regulatory Technical Standards on Strong Customer Authentication and Common and Secure Communication (SCA RTS). Some of the PSRs 2017 requirements do not apply until 18 months after the SCA RTS comes into force.

*In CP17/11 we asked:*

**Q10:** *Do you agree with the guidance we propose in Chapter 8 of the revised Approach Document in relation to changes to information requirements, rights and obligations and other changes? If not please explain why not and suggest an alternative approach.*

- 5.4** We received a wide range of responses. Most respondents neither agreed nor disagreed with our proposed changes, instead providing suggestions to the proposed guidance. These suggestions have been broken down into the following key areas:
- *Merchant acquiring* – concern was expressed that the changes mean the FCA does not acknowledge 'alternative models of acquiring' and it was argued this will have a detrimental impact on existing business models.

<sup>21</sup> The Call for Input can be found here: [www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime](http://www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime) The Feedback Statement (FS16/12) was published in November 2016 and can be found here: [www.fca.org.uk/publication/feedback/fs16-12.pdf](http://www.fca.org.uk/publication/feedback/fs16-12.pdf)

- *Consumer Credit Act (CCA) and the PSRs 2017* – questions were raised about the changes the Treasury has made regarding the interaction between the PSRs 2017 and the CCA, for example applying the information requirements in the PSRs 2017 in parallel to transparency obligations under the CCA.
- *Consent and data protection law* – concerns were raised that the draft guidance does not provide enough information on the interaction between PSD2 and data protection law (including the General Data Protection Regulation, especially regarding consent). They requested clarity as to the types of consent needed to make payment transactions and to access payment accounts for the purposes of account information services (AIS) and payment initiation services (PIS).
- *Durable medium* – further guidance was requested on durable media and, in particular, the requirement to "exclude the possibility of the PSP or person acting for them changing the content" of information provided or made available to customers.
- *Incorrect charging codes* – clarification was requested as to what a PSP should do if a payment is received from within the EEA and the payer's PSP has not complied with its obligations to use the SHA charging code as per Regulation 66 of the PSRs 2017 (i.e. where the payer pays the charges levied by the payer's PSP and the payee pays the charges levied by the payee's PSP). Respondents also requested confirmation of what intermediaries should do in those circumstances.
- *Refunds for unauthorised transactions* – further guidance was requested on the timescales that apply to refunding customers for unauthorised transactions, what constitutes gross negligence and on notifying a person designated under the Proceeds of Crime Act (POCA).
- *Business day, immediately available, credit dating* – it was suggested that we allow for incoming cut-off times in some circumstances.
- *'Banking services'* – concerns were raised with us including 'banking services' as an example of a term that may be misleading to customers when used by a non-bank PSP. It was argued that this term is used commonly in literature to include services provided by non-banks.
- *Non-payment accounts* – questions were raised on new guidance we provided on the applicability of the PSRs 2017 to non-payment accounts. Further clarity was sought on how the PSRs 2017 apply to payment transactions on non-payment accounts.
- *Liability of AIS providers (AISPs) and PIS providers (PISPs)* – further guidance was requested to address two issues: (i) the lack of a mechanism to deal with claims between account servicing payment service providers (ASPSPs) and PISPs; and (ii) the fact that there are no liability provisions relating to AISPs.
- *Misdirected payments* – further guidance was requested on the meaning of 'relevant information' in the context of the obligation on the payee's PSP to provide information to the payer's PSP where there is a misdirected payment, and on the payer's PSP to provide information to its customer when it cannot recover misdirected funds.



- *Confirmation of availability of funds* – we were asked to provide further guidance relating to an ASPSP's obligation to respond 'immediately' to a request from a card based payment instrument issuer (CBPII), what information the ASPSP must provide to its customer, and how PSRs 2017 Regulation 68 applies to e-money.
- *Denying access to PISPs and AISPs* – we were asked to confirm whether inadvertently denying an AISP or PISP access to a payment account as a result of denying the customer's access to the payment account pursuant to Regulation 71(2) would constitute 'denying access' under Regulation 71(7), and therefore whether notification requirements would apply.
- *Correspondent banking arrangements* – we were asked to provide further guidance on how the extension of scope of the PSRs 2017 (to capture transactions where only one PSP is located in the EEA, as well as transactions in non-EEA currencies) impacts correspondent banking arrangements.
- *Favourable changes* – comments were provided on our draft guidance stating that two months' notice is required where a PSP wishes to make favourable or unfavourable unilateral changes to a customer's terms and conditions. Respondents commented that, where changes are favourable to customers (for example, where the PSP is reducing or removing a charge), it would be beneficial for customers if the PSP passed on those changes to customers as quickly as possible, rather than providing two months' advance notice.
- *Payments where the transaction amount is not known in advance* – comments were made on our guidance regarding situations where a different means of payment is used to settle a transaction than the card on which funds were blocked (e.g. cash or another payment card). In these circumstances, we stated that PSPs should take a reasonable approach to releasing funds and do so in accordance with existing industry practice (which we understood to be approximately seven days for credit card transactions and five days for debit card transactions). A respondent commented that the authorisation validity period is set by the relevant card scheme and varies to accommodate different retail environments as well as card not present transactions.

### Our response:

We are grateful for the feedback that drew our attention to certain elements of our guidance on conduct of business obligations that we could make clearer. Where appropriate, we have made changes to the Approach Document to clarify these points.<sup>22</sup>

### Merchant acquiring

We acknowledge concerns raised about guidance we provided on merchant acquiring and we have clarified in the Approach Document that, while there is an illustration of one model of acquiring in Annex 4 to the Approach Document, other models of acquiring may be possible. We have confirmed in the guidance however, that the adoption of a particular business model by acquirers should not deprive their customers of the

<sup>22</sup> The revised Approach Document can be found here:  
[www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf](http://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf)

protections provided by the PSRs 2017 – in particular with regard to safeguards in the event of the acquirer's insolvency, execution times and information requirements.

### **Consumer credit and the PSRs 2017**

We believe changes made by the Treasury to the draft PSRs 2017 address a number of respondents' concerns about their interaction with the CCA. We have amended our guidance in our Approach Document to reflect these changes, and added some additional guidance on the interaction between the CCA and the PSRs 2017.

### **Consent and data protection law**

We have amended the Approach Document in Chapter 8 and Chapter 17 to clarify our guidance on consent and explicit consent in the context of the PSRs 2017. We have distinguished between the use of these terms in this context and under data protection law. We also provide guidance on firms' obligations under Regulation 97 of the PSRs 2017, which requires that firms process customer data with explicit consent when providing payment services. Our guidance reflects that this requirement should not prevent existing customers from maintaining access to payment services. We state that, for contracts entered into prior to 13 January 2018, we would not expect to take regulatory or disciplinary action against a PSP which complies with their obligations under data protection legislation.

### **Durable medium**

We have amended the Approach Document to highlight the findings of the Court of Justice of the EU, which recently considered whether websites constitute a durable medium. This is relevant to PSPs when considering how they provide or make available information in a durable medium.

### **Incorrect charging codes**

We have already provided guidance on the obligations on PSPs under Regulation 66 of the PSRs 2017 with respect to charging codes. We expect PSPs (both in the UK and in the EEA) to comply with their obligations under PSD2, and so do not intend to provide guidance on what PSPs should do in situations where these obligations are not properly met by PSPs. Recognising that such situations may arise, we remain open to engaging with PSPs on solutions the industry may wish to develop that could resolve issues arising from the use of incorrect charging codes.

### **Refunds for unauthorised transactions**

The PSRs 2017 are clear that refunds must be provided as soon as practicable, and in any event no later than the end of the next business day, except where the PSP has reasonable grounds to suspect fraudulent behaviour by the customer and notifies a body designated under POCA. We consider that our guidance is sufficiently clear on this matter, and therefore have not made any changes to the Approach Document.



### **Business day, immediately available, and credit dating**

The PSRs 2017 do not provide for cut-off times for incoming payments and have a clear definition of 'business day'. We have considered responses on this subject but have concluded that our guidance is appropriate and so we do not intend to amend the Approach Document.

### **'Banking services'**

We agree that terms used by providers, including 'banking services', need to be considered in context and that it may be possible for a non-bank PSP to use this term without misleading their customers. We have amended the guidance to make clear that non-bank PSPs should not describe the services they provide in ways that imply they are a bank.

### **Non-payment accounts**

We have made some changes to the guidance on non-payment accounts, in particular to clarify that provisions such as Regulation 89(1) of the PSRs 2017, which only apply to payment accounts, will not apply to non-payment accounts. The relevant provisions in BCOBS will apply instead.

### **Liability of AISP and PISPs**

We have added guidance to the Approach Document to clarify that, where a PISP is responsible for an unauthorised, non-executed or defectively executed transaction, an ASPSP which has refunded a customer can seek compensation from the PISP which must, on request, provide that compensation immediately. We acknowledge that the PSRs 2017 do not provide a specific mechanism to deal with claims for compensation between ASPSPs and PISPs. However, the final PSRs 2017 do provide for a right of recourse and a right of action in this case. We have provided guidance on this in Chapter 8 of our Approach Document. We have also made reference to the fact that PSPs may put in place voluntary arrangements for the settlement of such liabilities between themselves. We are aware of industry discussions on this matter.

The PSRs 2017 do not specifically deal with claims between ASPSPs and AISPs, for example where an ASPSP has been obligated to compensate the customer in respect of unauthorised transactions attributable to an AISP. However, similar to our guidance in respect of PISPs, we have provided guidance in the Approach Document on the ASPSP's right of recourse and action under the PSRs 2017, which is relevant to seeking compensation from AISPs.

We have also clarified that where a customer experiences detriment caused by its AISP other than in relation to an unauthorised payment, the customer should contact the AISP in the first instance, rather than its ASPSP. We have also clarified that AISPs will be subject to complaints handling rules and the jurisdiction of the Financial Ombudsman Service.

### **Misdirected payments**

We have amended the Approach Document to provide guidance that 'relevant information' for the purposes of Regulation 90 of the PSRs 2017 is likely to include the payee's name and an address at which

documents can be effectively served on that person, and to clarify the interaction of this provision with data protection law.

### **Confirmation of availability of funds**

We have updated our Approach Document to clarify what information PSPs should provide to customers who are the subject of a request for confirmation of availability of funds (i.e. the name of the requestor and the response given) and to clarify how quickly ASPSPs should respond to requests for confirmation of availability of funds. We have also included guidance to explain that, whilst Regulation 68 does not apply to payment transactions initiated through card-based payment instruments on which e-money is stored (e.g. a gift card for a shopping centre), in our view account based e-money products would not be excluded from Regulation 68 of the PSRs 2017.

### **Blocking access to PISPs and AISPs**

We have clarified certain guidance regarding blocking of access. In particular, we have confirmed that, where an ASPSP stops a customer's use of a payment instrument, and the PISP or AISP cannot access the account as a result, this does not amount to a denial of access for AIS and PIS, requiring notification to the FCA.

### **Correspondent banking arrangements**

As correspondent banking arrangements can differ across jurisdictions and PSPs, we have not included any guidance on the extension of scope of PSD2 and how it may affect a PSP's correspondent banking arrangements. We would, however, be willing to engage with the industry on this point.

### **Favourable changes**

Except in relation to interest and exchange rates, the PSRs 2017 do not distinguish between favourable and unfavourable changes in respect of the amount of notice required and, as a result, we have not amended our guidance. Where a change is favourable to a customer (e.g. reduction of a charge), this does not, however, prevent a PSP from waiving its right to apply such charge during the two month notice period.

### **Payments where the transaction amount is not known in advance**

We understand from the feedback provided that, where a different means of payment is used to settle a transaction than the card on which funds were blocked (e.g. cash or another payment card), the authorisation validity period is set by the relevant card scheme and varies to accommodate different retail environments as well as 'card not present' transactions. We have amended our guidance accordingly.

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## Monthly statements (Regulations 53 and 54 of the PSRs 2017)

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- 5.5** Most PSPs currently meet the requirements on the provision of information on individual transactions by issuing statements. Changes in PSD2 mean that there are new requirements with respect to payers.
- 5.6** The Treasury consulted on whether to exercise the member state option in PSD2 to require PSPs to provide monthly statements and remove the possibility that PSPs would have to provide transaction-by-transaction information to the payee. In Treasury's July 2017 response to the consultation<sup>23</sup> they clarified their position stating that they will mandate that customers are provided with a monthly statement on a durable medium, thereby avoiding the default scenario.
- 5.7** We have amended our guidance to reflect Treasury's changes.

*In CP17/11 we asked:*

**Q11:** *Do you agree with the two versions of the guidance we propose in Chapter 8 of the revised Approach Document relating to monthly statements, including the guidance which assumes the Treasury exercise the member state option? If not please explain why not and suggest an alternative approach.*

- 5.8** A significant number of respondents questioned the FCA and HMT's interpretation of the relevant PSD2 provisions (before Treasury's July publication) and therefore did not comment on the specific versions of text presented. The majority of respondents stated they interpret the relevant PSD2 provisions to mean where customers have already been moved onto paperless statements or similar practices they can continue to receive information in this way.

### Our response

We have updated our approach to reflect the final wording of Regulations 53 and 54 of the PSRs 2017. These impose an obligation on PSPs to provide specific information to customers in respect of each payment transaction on paper or on another durable medium at least once per month free of charge (unless certain other conditions are met).

In the case of the PSPs of payers, the regulations are framed in such a way as to require it to be the customer's choice whether they receive information in any way other than the monthly provision of transaction information in a durable medium.

Where the PSP wishes to give customers this choice (for example, of receiving this information in a non-durable medium), a PSP must amend its framework contract as necessary. The Directive requires they must do so even where this is a continuation of an existing practice. We expect firms to put procedures in place for new customers (and customers

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<sup>23</sup> See the HM Treasury webpages on the Implementation of PSD2, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629988/Implementation\\_of\\_the\\_revised\\_EU\\_Payment\\_Services\\_Directive\\_II\\_response.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629988/Implementation_of_the_revised_EU_Payment_Services_Directive_II_response.pdf)

opening or moving to a new product) which enable customers to exercise that choice and provide their agreement.

In respect of existing customers, where they have already had the opportunity to exercise a choice and have provided their agreement, we would not expect PSPs to need to seek their agreement again.

We appreciate that some existing customers might not have expressed such a choice to date and might not currently be provided with statements in a durable medium. PSPs should consider how best to meet their obligations to these customers in respect of Regulation 53 and 54 of the PSRs 2017. We acknowledge the practical difficulties that PSPs may have in obtaining agreement from all of these customers by 13 January 2018. Our expectation would be that, as a minimum, PSPs have a clear plan in place by January 2018 to communicate with these customers and ask them to make such a choice within six months. Once this period has ended, if a customer has not made a choice, then a PSP must by default follow the approach set out in regulation 54(1) of the PSRs 2017.

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## BCOBS

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**5.9** In CP17/11 we proposed changes to the Handbook's Banking Conduct of Business Sourcebook (BCOBS) on the security of electronic payments, unauthorised transactions and defective payments. We believe there is merit in extending these PSD2 provisions to products subject to BCOBS to increase the consistency of consumer protection.

**5.10** We also outlined other minor amendments to BCOBS which we proposed to make, having reviewed aspects of BCOBS, to clarify our expectations for businesses.

*In CP17/11 we asked*

**Q14:** *Do you agree with our proposed changes to BCOBS? If not please explain why not and suggest an alternative approach.*

**5.11** The majority of those who responded to Q14 agreed with our proposed changes to BCOBS and did not suggest amendments. A minority supported our proposal but also asked for changes. One respondent disagreed with the proposals. The comments we received included:

- more guidance should be given on our expectations about misdirected payments, including what 'relevant information' should be provided to consumers, and what 'reasonable efforts' to recover funds would include;
- there should be no reference to strong customer authentication (SCA) as it could be burdensome for firms to introduce;
- we should go further, to remove liability for consumers where SCA is not followed, even for accounts and payments outside the scope of the PSRs 2017; and



- the need to submit a written request to obtain information about misdirected payments could be a barrier to some consumers.

## Our response

Responses were largely supportive of the proposed changes to BCOBS and so we are broadly continuing with the proposed approach.

### Misdirected payments

To clarify our expectations, we have added more guidance on misdirected payments, including replicating the guidance we have added to the Approach Document on what 'relevant information' includes. We have not added further guidance on what 'reasonable efforts' includes as this requirement is already part of BCOBS and we do not propose to alter this.

We do not propose to make the requirements in BCOBS more burdensome than those in the PSRs 2017 by changing the way requests can be made about misdirected payments as this would have a disproportionate impact on firms such as credit unions.

### Security of electronic payments

In relation to concerns that we are adding a burden by making reference to the SCA RTS, our guidance is merely intended to clarify that following its requirements would be one way of complying with the rule, but does not mandate that it is followed. The guidance also states that the authentication procedures should be proportionate to the risks involved. We therefore do not propose to change our guidance in BCOBS on the security of electronic payments.

There was also some concern about our statement in our consultation regarding provisions on liability where SCA is not followed. Our intention was solely to clarify that we are not bringing across these provisions from the PSRs 2017; they would not be relevant given that BCOBS does not mandate that firms apply SCA.

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## 6 Regulatory reporting, notifications and record keeping

### Who should read this chapter

Payment Service Providers (PSPs) and e-money institutions (EMIs).

- 6.1** In this chapter we respond to the feedback received on the proposed changes to regulatory reporting and record keeping.
- 6.2** The new reporting templates, guidance notes for completion, and record keeping rule are set out in Appendix 1 of this PS, in amendments to the Supervision Manual (SUP). Chapter 13 of the revised Approach Document summarises the reporting requirements for PSPs.

### Fraud reporting

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- 6.3** PSD2 requires PSPs to provide, on at least an annual basis, statistical data on fraud relating to different means of payments to their competent authorities. Competent authorities are required to supply these data in aggregated form to the EBA and European Central Bank (ECB).
- 6.4** In CP17/11 we stated that the directive does not specify what these statistical data should include or how it should be reported. We noted that the ECB and EBA were considering whether it would be beneficial to standardise such reporting across the different member states given the data reporting requirements under Article 96(6) of PSD2.
- 6.5** When we published CP17/11 we considered that EU level discussions were not likely to conclude by January 2018. We therefore proposed to develop an interim report which we proposed PSPs complete in the first reporting period.
- 6.6** The EBA has since published a consultation on draft Guidelines on PSD2 fraud reporting requirements.<sup>24</sup> The consultation closes on 3 November 2017.

*In CP17/11 we asked:*

**Q15:** *Do you agree with our proposal for reporting of statistics on fraud relating to different means of payment? If not please explain why not and suggest an alternative approach.*

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<sup>24</sup> The latest information on the EBA fraud reporting Guidelines can be found here: [www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-fraud-reporting-under-psd2](http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-fraud-reporting-under-psd2)



- 6.7** The majority of respondents to this question neither agreed nor disagreed with our proposal. A number of respondents considered that the reporting form was broadly workable given the data they already collect. There were some suggestions and requests for clarification:
- there was support for the fraud report being used to collect data on fraud where the customer is manipulated into making a payment;
  - some respondents asked whether it would be acceptable for their trade organisation to collate fraud data and submit it to the FCA on their behalf;
  - we were asked whether data reported under our rule would be used to monitor compliance with the SCA RTS;
  - it was noted that it could be difficult to report fraud relating to payment initiation service (PIS) providers before the SCA RTS requirements for these providers to identify themselves commence;
  - there was a request for additional guidance on how transactions in non-sterling currencies should be converted for the purpose of reporting; and
  - respondents suggested that the fraud reporting form should use the same terminology as existing fraud reporting in the industry. In particular it was noted that the proposed form did not include a fraud category where card details are stolen, e.g. where 'card not present' fraud is committed. Some respondents suggested additional, more detailed types of data that the form should collect.

### Our response

#### **EBA guidelines**

We are continuing to introduce the fraud reporting requirements that we consulted on in CP17/11. This means that from 13 January 2018 all PSPs will be required to collect the fraud data specified in Form REP017 (which can be found in Appendix 1) and report these data to the FCA on an annual basis. We have changed the date for submission of the fraud report so that the first return should cover the period beginning on 13 January 2018 and ending on 31 December 2018. Subsequent reporting periods will run from 1 January to 31 December each year. We have made this change to align with PSPs' existing annual reporting obligations.

Once the EBA has finalised its guidelines on fraud reporting, we will communicate our approach (for example, how and when we replace REP017) to PSPs that are subject to the fraud reporting requirements.

#### **Delegating responsibility for fraud reporting**

We do not intend to change our approach. The PSRs 2017 require that PSPs submit statistical data to their competent authorities.

#### **Links to EBA regulatory technical standards**

We do not intend to use the data collected using REP017 to monitor PSPs in terms of their use of exemptions from SCA under the SCA RTS.

**PIS fraud**

We would not expect PSPs to record data on transactions initiated via PIS providers (PISPs) until they are able to recognise such payments, as distinct from those made directly by customers.

**Non-sterling transactions**

We provide guidance in the completion notes for REP017 to assist PSPs that need to report data on transactions in non-sterling currencies.

**Fraud report terminology**

We have worked with industry to ensure that the REP017 uses terminology that is already used and understood by PSPs. We do not intend to collect more detailed data than proposed in CP17/11. This is to ensure the reporting form is manageable for all PSPs, including smaller PSPs with limited resources. As suggested, we have added an additional fraud type: 'card details stolen (card not present)'.

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**PI/EMI regular reporting**

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- 6.8** In CP17/11 we proposed collecting additional information through regulatory reporting in light of the proposed changes to our supervisory approach. This would allow us to assess the risk that different businesses pose to the FCA's objectives better.
- 6.9** We proposed to add new questions to the returns that authorised PIs and small PIs complete, and to apply the authorised PI return to registered account information service providers (RAISPs).
- 6.10** As well as requiring more information from authorised EMIs and small EMIs, we proposed to replace the current returns with one new consolidated return which all EMIs would complete.
- 6.11** In CP17/22 we consulted on the aspects of these returns that relate to items that comprise 'own funds' (to meet capital requirements). We did this to reflect that under PSD2 own funds requirements will now be stipulated in the Capital Requirements Regulation (CRR). We also provided a flow chart to help businesses navigate the CRR.

*In CP17/11 we asked:*

**Q17:** *Do you agree with our proposed changes to the reporting we collect from PIs and EMIs? Do you also agree to the reduction of reporting frequency for EMIs from twice yearly to annually? If not please explain why not and suggest an alternative approach.*

*In CP17/22 we asked:*

**Q2:** *Do you agree with our proposed changes to reporting and the Approach Document to reflect that the items that can make up own funds are now dictated by the CRR? If not, please explain why not and suggest amendments.*



- 6.12** Most respondents who answered the question in CP17/11 supported the proposal, with some noting that the change in reporting frequency and amalgamation of returns would ease the burden on EMIs.
- 6.13** The majority of respondents who answered the question in CP17/22 supported the proposals relating to own funds. One respondent noted that they would have preferred that the CRR allow a more flexible approach to the calculation of own funds though recognised that the FCA is unable to depart from the CRR's approach.

### Our response

We are maintaining the proposals, which received broad support from consultation respondents.

We are making a small change to the data that must be reported on PIS volumes to make it easier for the reporting to be completed. This will align the reporting on PIS for authorised PIs, RAISPs and authorised EMIs, with the records that we are requiring credit institutions to keep about this business. We are also making some minor amendments to the wording of some of the questions to make them clearer.

We have incorporated the updates to the returns relating to own funds items that we consulted on in CP17/22.

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## Credit institution record keeping for account information service (AIS) and PIS business

- 6.14** In CP17/22 we proposed that credit institutions carrying out AIS or PIS (as providers of these services) should keep records of the volumes of this business. We did not propose that these data be reported to the FCA at this stage.

*In CP17/22 we asked:*

**Q3:** *Do you agree with the proposed record-keeping rule on account information services and payment initiation services volumes? If not, please explain why not and suggest an alternative approach.*

- 6.15** Most of those who responded to this question agreed with our proposed record keeping rule. We were asked to clarify from when this rule would apply.

### Our response

As no concerns were raised in responses we are continuing with the proposed approach. We believe this will allow us to better understand how competition is working in the AIS and PIS markets. We are adding some guidance to clarify what records we expect to be kept.

In response to a query about when records should be kept from, we can clarify they will need to be kept from 13 January 2018 (where firms are conducting AIS or PIS).

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## Controllers and close links

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- 6.16** In CP17/11 we proposed to require authorised PIs to submit the Annual Controllers Report and Annual Close Links Report that EMIs and FSMA-authorized firms currently provide to us.
- 6.17** As a condition for authorisation under the PSRs 2017, small PIs and authorised PIs must satisfy us that any close links they have with another person are not likely to prevent our effective supervision. The PSRs 2017 also require authorised PIs to notify us if there are any changes likely to affect these conditions.

*In CP17/11 we asked:*

**Q18:** *Do you agree with our proposal to require authorised PIs to submit the annual controllers report (REP002) and annual close links report (REP001)? If not please explain why not and suggest an alternative approach.*

- 6.18** The majority of those who responded to this question agreed with the proposal, including some who commented that authorised PIs should be treated the same as EMIs. Those who disagreed largely stated that they thought existing requirements to notify us of changes were sufficient, and that additional reporting would be burdensome.

### Our response

We acknowledge that authorised PIs are already required to notify us of changes in circumstances. However, we believe that formalising a reporting requirement will allow us to have greater visibility of who is controlling firms and what their close links are.

We are conscious of the overall burden of reporting requirements. However, we do not believe these particular requirements should be burdensome as firms should already hold records about their controllers and close links.

As we stated in CP17/11, we think it is appropriate to have the same close links and controllers reporting requirements for authorised PIs and EMIs. We are therefore continuing to introduce these reporting requirements for authorised PIs.

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## Incident reporting

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- 6.19** Under PSD2, PSPs are required to notify us if they become aware of a major operational or security incident (such as a cyber-attack on an IT system which prevents consumers using their bank accounts). This requirement is set out in Regulation 99 of the PSRs 2017.
- 6.20** In CP17/22 we proposed to amend the Supervision manual (SUP) to direct that PSPs notify us of major operational or security incidents. While we consulted on the basis of draft EBA Guidelines, the EBA has since finalised its Guidelines on major incident reporting under Directive (EU) 2015/2366 (PSD2).<sup>25</sup>
- 6.21** We also proposed guidance in SUP that major incident notifications do not need to be submitted when the notification channel for these notifications is not operational.

*In CP17/22 we asked:*

**Q1:** *Do you agree with our proposal that PSPs follow the relevant EBA Guidelines to notify us of major operational or security incidents? If not, please explain why not and suggest an alternative approach.*

- 6.22** Most respondents who responded to this question agreed with our proposed approach, but we received some comments, including the following:
- concerns were raised that the thresholds set by the EBA Guidelines would result in a large number of notifications to the FCA;
  - it was queried whether the EBA Guidelines would be reviewed in future should they be shown to be onerous;
  - there were questions about the scope of the incident reporting notification requirements;
  - clarification was requested on our approach to notifications outside of our standard business hours; and
  - there was the suggestion that a general framework for the sharing of information relating to incidents would be helpful.

### Our response

We intend to comply with the EBA Guidelines on major incident reporting and have updated our requirements on PSPs to reflect the final version. Firms should read the final Guidelines to understand what types of incidents should be notified. Firms should also note that the final Guidelines require notifications to be made within 4 hours of an incident being identified, rather than the proposed 2 hours.

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<sup>25</sup> The final EBA Guidelines on incident reporting can be found here: [www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-major-incidents-reporting-under-psd2](http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-major-incidents-reporting-under-psd2)

We have amended our guidance in the Approach Document to clarify the notifications that should be submitted. We have also clarified that our notification channel is usually available at all times. These notifications will be made via our Connect system.<sup>26</sup>

The revised notification template can be found in Appendix 1.

In response to a comment about whether the Guidelines would be reviewed, we can clarify the Guidelines will be reviewed on a regular basis and at least every two years.

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26 Connect is an online system which businesses use to submit certain applications and notifications to the FCA

## 7 Account information services, payment initiation services and confirmation of availability of funds

### Who should read this chapter

Account servicing payment service providers (ASPSPs) – such as banks, building societies, e-money institutions (EMIs), payment institutions (PIs) and credit card providers

Card-based payment instrument issuers (CBPIIs)

Account information service providers (AISPs) – such as financial data aggregators

Payment initiation service providers (PISPs)

- 7.1** In this chapter we respond to the feedback received on Chapter 17 of our revised Approach Document relating to account information services (AIS) and payment initiation services (PIS), which will be brought within the scope of FCA regulation by the PSRs 2017. We also respond to comments on the notification required when access to a payment account for the purpose of AIS or PIS is denied by an ASPSP.

### Account Information Service and Payment Initiation Services

- 7.2** As part of establishing a clear legal framework under which providers of AIS and PIS can provide their services with the consent of the customer, the PSRs 2017 set out requirements covering the interaction between ASPSPs and providers of AIS and PIS.
- 7.3** The PSRs 2017 (reflecting PSD2) also sets out requirements for the confirmation of availability of funds for card-based payment transactions involving CBPIIs. These are PIs that issue payment instruments that are linked to an account held with a different ASPSP. These firms can get confirmation that funds are available on the account held with the ASPSP, enabling CBPIIs to manage their credit risk.
- 7.4** The EBA has additionally developed Regulatory Technical Standards on Strong Customer Authentication and Common and Secure Communication (SCA RTS). The SCA RTS will govern certain aspects of how CBPIIs, AISPs, PISPs and ASPSPs operate, especially the security requirements and communication processes that they must follow. However, some of the PSRs 2017 requirements do not apply until 18 months after the SCA RTS comes into force.
- 7.5** We sought views on our proposed guidance (in Chapter 17 of the Approach Document) covering a number of these requirements where we have provided interpretation.

In CP17/11 we asked:

**Q21:** *Do you agree with the guidance we set out in Chapter 17 of the revised Approach Document, including the proposals for guidance set out above? If not, please explain why not and suggest an alternative approach?*

**7.6** Of those who responded the majority were broadly supportive of the FCA guidance, but provided challenges across three broad areas:

**A) Access to accounts and confirmation of availability of funds**

- We received requests that we clarify what makes an account 'accessible online' (meaning that it can be accessed for the customer by PISPs, AISPs and CBPIIs) and some challenged the FCA's guidance on when accounts should be 'accessible online' by AISPs and CBPIIs.
- Some questioned exactly what information needs to be made available by the ASPSP to the PISP after they initiate a payment.
- We were asked for more guidance on what functionality ASPSPs must make available for PISPs, including account management, international payments or credit transfers for credit card accounts.
- Respondents believe our guidance could be amended to allow ASPSPs to limit the value of payments initiated through PISPs to the same level as payments requested from the ASPSP directly through a comparable channel.
- It was queried how much information should be available for AISPs to request from ASPSPs, and challenge was provided on the FCA's guidance that this information should include elements other than transactions on the accounts themselves.
- More guidance was requested on what messages ASPSPs are able to communicate to their customers about AISPs and PISPs.
- Concerns were raised with ambiguous wording at paragraph 17.4 in the draft of the revised Approach Document, which suggested that ASPSPs must provide functionality for CBPIIs to initiate payments from customers' accounts after the ASPSP had confirmed that funds are available.
- It was suggested that our guidance may be too restrictive in relation to the 'objective reasons' for which an ASPSP may treat AISPs and PISPs differently from customers themselves, and the reasons they may deny access to these firms.

**B) Fraud and security**

- Questions were raised about ASPSPs' obligations to build and make available interfaces during the transitional period (especially to allow confirmation to CBPIIs that funds are available in payment accounts) before the SCA RTS applies to firms. Many respondents also objected to AISPs and PISPs accessing accounts before the SCA RTS applies.
- Further guidance was requested on whether access to testing environments for SCA RTS-compliant interfaces can be subject to registration, and to PISPs, AISPs and CBPIIs agreeing to ASPSPs' terms and conditions.



- We were asked to clarify what we consider to be 'sensitive payments data', which must be treated differently by AISPs and PISPs. Respondents also expressed concerns about how requirements for PISPs not to store sensitive payment data would apply where PISPs also provided other services which required them to hold sensitive payment data.
- Concerns were raised about fraud and security where AISPs and PISPs have access to consumers' credentials, especially where they are retained by the AISP or an outsourced provider (as in the case of many AISP business models at present). Some respondents think we should amend guidance to suggest that the customer's personalised security credentials should not be visible to the AISP or PISP.

### C) Data and consent

- We were asked to require AISPs to tell customers what action to take if their data is used without authorisation.
- Concerns were raised about the risks of detriment to customers that could result from AISPs and PISPs accessing their accounts. These risks included customer data being used, sold or shared without their consent; customers being unable to provide and manage consent; data being shared that a customer might otherwise have redacted; and customers not knowing who is liable if there are breaches of the rules and guidance which apply to customer data.
- Concerns were raised about relying on the Financial Services Register for the purposes of determining (in real time) that AISPs and PISPs are regulated and are entitled to request information or initiate payments on behalf of consumers. Concern was also expressed that the Register does not act as a source of fraud intelligence.
- It was suggested that we also make references to CBPIIs when discussing requirements for 'explicit consent'.

### Our response

We set out the main changes we are making to our Approach Document guidance on AIS and PIS below.<sup>27</sup> As these services have been newly brought into regulation, we may need to reassess some of this guidance in future once the market has developed.

#### A) Access to accounts and confirmation of availability of funds CBPIIs and payment initiation

We have made a small change to a paragraph explaining the process of confirming that funds are available on payment accounts, to make clear that ASPSPs do not need to make available functionality for CBPIIs to initiate payments.

#### Payment accounts which are 'accessible online'

We have clarified our guidance on which payment accounts are 'accessible online', to emphasise that:

<sup>27</sup> The revised Approach Document can be found here: [www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf](http://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf)

- For the purposes of AIS and PIS, a customer does not need online banking security credentials for their account to be 'accessible online', but customers without credentials may need to receive them before using the services of AISP and PISP.
- Access for confirmation of availability of funds (by CBPIIs) should not depend on whether the customer has registered for online banking and received credentials for their account.

### **Information and functionality made available to PISPs and to AISPs**

We have made small modifications to our guidance on the information which must be made available by ASPSPs to PISPs following the initiation of a payment, the functionality PISPs should be able to access, and the information that must be made available to AISPs when requesting customers' information (with consent):

- We have highlighted that information to be provided to the PISP includes failure or refusal to execute a transaction.
- Though the legislation, and our perimeter guidance, already make clear that PIS covers payment initiation only, we have made clearer in our revised Approach Document that the ASPSP does not need to offer access to other functionality than that needed to initiate payments.
- We still follow the principle that AISPs should be able to access all information that the ASPSP makes available to the customer in relation to the payment account. However, we have changed our guidance in light of our view that information on the customer themselves, such as their address, is likely to be more appropriately provided by the customer.

We have not, however, changed our guidance on the value limits which ASPSPs may apply to payments made through PISPs; this could undermine the principle that ASPSPs must generally treat payment orders the same whether they are initiated through PISPs or by the customer directly.

### **Messages ASPSPs are able to communicate to their customers about AISPs and PISPs**

As a result of respondents' feedback, we have modified our guidance noting that ASPSPs must not prohibit or discourage customers from using AIS or PIS. We believe this was already sufficiently clear that ASPSPs must not prohibit or discourage the use of AIS and PIS (in their Terms and Conditions, for instance), but we have added that they may provide factual information explaining AIS and PIS.

### **ASPSPs denying access to AISPs and PISPs or treating them differently from customers themselves**

We have not substantively modified our guidance to give more information on the 'objective reasons' for which ASPSPs may treat AISPs and PISPs differently from the customer themselves; we have added wording to avoid giving the implication that there are no other reasons



for treating these entities differently from consumers beside fraudulent or unauthorised access. We have given more guidance on the reasons that ASPSPs may deny access to AISPs or PISPs. We have highlighted that Regulation 71(7) of the PSRs 2017 does not diminish ASPSPs' ability to refuse payment orders or information requests made through AISPs or PISPs for legitimate reasons which would have led them to refuse those orders or requests from the customer themselves.

### **Functionality of the Financial Services Register**

We note the views of stakeholders about their ability to access information on the authorisation and registration status of AISPs and PISPs on our Register. We are currently exploring options to make a subset of the register data available in a downloadable format, giving ASPSPs better access to data about AISPs and PISPs. The intention is to have this available by January 2018.

## **B) Fraud and security**

### **AISPs and PISPs accessing customer credentials**

To take into account the comments we have received on AISPs and PISPs accessing consumer credentials, we have highlighted that AISPs (alongside any outsourcers they utilise to provide their service) should only hold credentials when necessary for the service provided.

### **Sensitive payment data**

We have made some changes to the guidance on sensitive payments data, to explain what requirements not to store or request (as applicable) sensitive payments data for AISPs and PISPs mean in practice. We note that PISPs should not hold consumer credentials once used to initiate a payment, and explain our view that the requirement not to store sensitive payment data would not apply where a PISP legitimately holds the data as a result of providing another payment service. For AISPs, we explain that this means that customer credentials should be requested from the customer themselves, not the ASPSP.

We also highlight in our guidance in Chapter 8 of the Approach Document – Conduct of business requirements – that there is a distinction between 'sensitive payments data' under the PSRs and 'sensitive personal data' under data protection legislation.

### **Intermediate period before the SCA RTS applies**

The intention of the PSRs 2017 (and PSD2) is to allow access to accounts for the purpose of AIS and PIS even before the SCA RTS applies. We therefore aren't changing our approach but have been more specific in outlining that ASPSPs are not obliged to provide an interface which complies with the SCA RTS before this date. We also make reference to our joint communication with HMT, which outlines the actions we believe that firms should take during this period.<sup>28</sup>

We also do not change our guidance to note that ASPSPs are not obliged to respond to requests from CBPIIs to confirm that funds are available

28 FCA and the Treasury, Expectations for the third party access provisions in PSD2, July 2017, [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630135/Expectations\\_for\\_the\\_third\\_party\\_access\\_provisions\\_in\\_PSDII.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630135/Expectations_for_the_third_party_access_provisions_in_PSDII.pdf)

before the SCA RTS applies. We believe that this situation is unlikely to arise given that there are no mechanisms available at present for firms to use for this purpose, and there is no obligation on ASPSPs to create an interface to allow this communication until the SCA RTS applies.

### **Access to interface testing environments**

We have not changed our guidance to state that access to ASPSPs' test environments can be made subject to their terms and conditions as this would be inconsistent with the SCA RTS (as presently drafted).

## **C) Data and consent**

### **Explicit consent for CBPIIs and ASPSPs**

We have modified our guidance to provide more information on how our existing guidance would apply to both CBPIIs and ASPSPs when interacting to confirm that funds are available in a customer's payment account.

We have also more clearly set out what 'explicit consent' means in practice for firms, and clarified that these obligations are distinct from any obligation to obtain consent or explicit consent arising under data protection legislation.

### **AISP dispute resolution**

We have referred to our guidance about complaints handling in Chapter 11 of the revised Approach Document, which is relevant to all PSPs.

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## **AIS/PIS denial notification**

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- 7.7** Under the PSRs 2017, an ASPSP may only deny an AISP or a PISP access to a payment service user's payment account on the basis of reasonably justified and duly evidenced reasons. These reasons must relate to unauthorised or fraudulent access to the payment account by that AISP or PISP. This includes the unauthorised or fraudulent initiation of a payment transaction. In such cases an ASPSP must immediately report the denial relating to the AIS or the PIS to the FCA. The report must include the details of the case and the reasons for taking action.
- 7.8** In CP17/11 we proposed some changes to the Supervision Manual in our Handbook (SUP) to direct the form, content and timing of the notification. We did not propose that ASPSPs provide us with repeat notifications where access to the same payment account is requested repeatedly by the same AISP or PISP. Similarly, where an ASPSP blocks access to more than one of its customers' payment accounts for the same reasons relating to the same AISP or PISP, we proposed that only a single incident notification would be required. In all instances we proposed to direct that an ASPSP provide a follow-up notification if and when access is restored to that AISP or PISP.



In CP17/11 we asked:

**Q22:** *Do you agree with our proposals to direct the form, content and timing of notifications that must be provided where access has been denied to providers of AIS and PIS, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach?*

**7.9** Of those who responded, the majority of respondents agreed with our proposals but there were suggestions for amendments to our proposed requirements, including:

- Clarification on whether a notification needs to be provided in circumstances where the underlying account would not be accessible for the customer;
- That ASPSPs should not be required to provide notifications when access is restored;
- That the form should be easier for ASPSPs to complete;
- Clarification on the timeframe for submission of the notification, with one respondent suggesting that they should be permitted more than one business day to make a submission; and
- Clarification was requested on the action the FCA would take on receipt of a notification.

### Our response

In response to feedback received, we are making some small changes to the notification form, and adding some clarifications in our guidance notes, and our Approach Document guidance. We have clarified that we would not expect notifications to be required for denial of access if it relates to legitimate reasons which would have led them to refuse those orders or requests from the customer themselves (as we discussed above in relation to our AIS and PIS guidance).

To make the form easier to complete we are removing the question asking about steps that must be taken for access to be restored, and replacing it with a simpler question asking whether access will be immediately restored. We believe this will still provide us with the information we need about next steps. If 'yes' is selected to indicate that access will immediately be restored, then a restoration of access notification will not need to be provided. However the restoration notification will otherwise still be required.

We are maintaining our guidance around the timing of notifications. Notifications should be submitted immediately, which we take to mean as quickly as possible. We would expect to this be in a timeframe which allows for the form to be completed on a satisfactory basis, including giving a description of the circumstances that led to the denial. We would not, however, consider more than one business day to be 'immediately'.

We will not require repeat notifications when the same account (or set of accounts), subject to a previous notification was repeatedly denied, though a restoration of access notification will be required when access is granted again. The purpose of this restoration notification is to give us better visibility of the outcome of cases we are being notified about.

With regards to our approach to dealing with notifications we receive, this will be in line with our general supervisory approach. As we note in Chapter 12 of the revised Approach Document, information we receive from notifications is analysed and further supervisory action may be considered where, for example, the PSRs 2017 requirements are breached. We would normally ask the PSP or e-money issuer for an explanation of why the breach occurred and then agree remedial action.

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### **AIS/PIS credit institution notifications**

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- 7.10** Credit institutions will not have to apply to the FCA for permission to provide AIS or PIS. However, in order to understand whether the competition aims of PSD2 are being met, and to understand these emerging markets, we proposed requiring credit institutions to notify the FCA if they are providing these services.
- 7.11** Payment institutions, e-money institutions or unregulated businesses that wish to provide AIS or PIS must apply to the FCA for permission to undertake these services. We give feedback on new record-keeping requirements for credit institutions' AIS and PIS in Chapter 6 above.

*In CP17/11 we asked:*

**Q23:** *Do you agree with our proposed requirements for FSMA firms seeking to provide AIS or PIS? If not, please explain why not and suggest an alternative approach*

- 7.12** The majority of those who responded to question 23 agreed with our proposal.

#### **Our response**

As the majority of those responding supported our proposed notification, and no serious objections were raised with our approach, we do not intend to alter this proposed requirement.

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## 8 Payment service providers' access to payment account services

### Who should read this chapter

Credit institutions and firms that need access to payment account services from a credit institution in order to provide their own payment services.

- 8.1** This chapter sets out our response to the feedback received on our proposed guidance on the requirements under Regulation 105 of the PSRs 2017. It also covers our proposals to direct the form, content and timing of the notification credit institutions should submit to the FCA when they have withdrawn or refused access to payment account services.
- 8.2** This feedback is given jointly with the Payment Systems Regulator, as this section of CP17/11 was published jointly with the Payment Systems Regulator.

### Guidance on payment service providers' access to payment account services

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- 8.3** PSD2 aims to improve PSPs' access to payment account services so that they can provide their own payment services in an unhindered and efficient manner. For credit institutions, under Regulation 105 of the PSRs 2017, this means providing access on a proportionate, objective and non-discriminatory basis and notifying the FCA whenever they refuse or withdraw access.
- 8.4** We proposed guidance that was intended to ensure the aims of PSD2 are realised, in particular that PSPs have access – on a proportionate, objective and non-discriminatory basis – to the account services they need to carry out their business.

*In CP17/11 we asked:*

**Q19:** *Do you agree with our proposed guidance on PSPs' access to payment account services, as set out in Chapter 16 of the revised Approach Document? If not please explain why not and suggest an alternative approach. Is there anything additional that it would be useful for us to provide in our guidance?*

- 8.5** Most respondents to this question agreed with our approach to providing guidance on Regulation 105, but had suggestions on where we could provide further clarity:
- questions were raised about our proposed guidance that credit institutions should not have 'blanket policies' in place restricting access to broad categories of PSPs. It was suggested by credit institutions that they should be able to determine which

categories of PSP they provide services to on the basis of commercial or risk based reasons.

- we were asked whether there was an obligation for credit institutions to provide duly motivated reasons to the PSP or prospective PSP, when access was refused or withdrawn (as well as the obligation to provide these reasons to the FCA). Further clarity was sought on circumstances where such communication may constitute tipping off. Some respondents representing those who access payment account services via credit institutions thought that these reasons should always be provided to the PSP or prospective PSP.
- concerns were raised by respondents that credit institutions may set unrealistic criteria which prevent PSPs or prospective PSPs from obtaining access to payment account services, or may otherwise refuse access on the basis of their commercial or risk appetite. It was also argued that access could be prevented through the credit institution delaying its consideration of an application.
- we were asked for confirmation that the FCA and Payment Systems Regulator would assess how credit institutions' criteria were applied, rather than assessing those criteria themselves. We were asked to give specific examples of the factors we would expect to apply in all cases, when we assess whether access has been granted in a proportionate, objective and non-discriminatory basis.
- we were asked to clarify that Regulation 105 only applies to PSPs that provide payment account service access to the wider marketplace on a commercial basis and that, for example, a PSP offering limited payment account services to a group company, would not be required to provide such access to the wider market.
- we received comments on our proposal to consider in our assessment whether a credit institution's concerns about granting access can be addressed in a different way, for example, through charging a higher price. It was suggested that higher remuneration would not offset financial crime risk.
- one respondent asked for clarity on how the FCA will manage situations where PSPs have applied for access across multiple credit institutions simultaneously. The respondent suggested there is a risk that the slowest to respond will be required to go through the appeals process and potentially have to provide access.
- we were asked to make clear that the guidance provided in our revised Approach Document relating to Regulation 105 of the PSRs 2017 is the same as the guidance provided in the Payment Systems Regulator's Approach Document.

### Our response

We are amending the guidance in Chapter 16 of our revised Approach Document to take a number of these comments into account.

#### **Policies restricting access to categories of PSPs**

We have further clarified that under Regulation 105, in our view, credit institutions should not have policies based on restricting access to payment services they provide to certain categories or types of PSPs. This is consistent with our view that under Regulation 105 of the PSRs



2017, credit institutions should consider applications from PSPs and prospective PSPs individually and on their own merits. In our view this does not prevent credit institutions from applying commercial appetite or risk tolerance as long as this is applied to the circumstances of the individual PSP or prospective PSP. We would reiterate that credit institutions are not under any compulsion to provide the products or services in question.

### **Communication of duly motivated reasons to PSPs**

There is no obligation on credit institutions under Regulation 105 of the PSRs 2017 to provide duly motivated reasons to PSPs or prospective PSPs. However, we have amended our guidance to clarify our expectation that in practice, a credit institution will communicate its decision to the PSP or prospective PSP, except to the extent that it is unlawful to do so.

With regards to tipping off, all firms should continue to treat their communications with customers in line with other regulatory and legal obligations such as the Proceeds of Crime Act (POCA) (section 333A). We have provided guidance on this in Chapter 19 of the revised Approach Document.

### **Assessment of whether access has been provided on a proportionate, objective and non-discriminatory basis**

Part of our assessment of whether a credit institution has granted access on a proportionate, objective and non-discriminatory basis will be whether the credit institution has applied its criteria consistently. We acknowledge that credit institutions will each have their own established criteria reflecting, for example, business need and risk appetite. However, we may find it necessary, in the course of assessing notifications, to evaluate the criteria themselves. For example, this may be necessary to understand whether the criteria discriminate against a certain category of PSPs and would prevent a credit institution from being able to effectively assess a PSP or prospective PSP's application on its own merits.

We do not propose to add examples in the guidance of factors that will apply in all circumstances. This is because circumstances will vary from case to case and not all factors will be relevant in all cases.

The PSRs 2017 do not provide an appeals process for PSPs who have been refused access. They provide powers for the competent authority to investigate potential breaches of the requirements by credit institutions. The time a credit institution takes to respond to an application could be a factor in a decision about whether to investigate them (and the outcome of an investigation). However, other factors are also likely to be important (particularly those set out in our revised Approach Document).

### **Charges for account access**

We consider that assessing whether a credit institution has considered charging a higher price, rather than restricting access altogether, may sometimes be appropriate when we consider a particular refusal or withdrawal. For example, they may use higher fees to fund additional checks that could reduce risks. So we do not intend to remove this factor

from our guidance. We acknowledge that it will not always be possible for a credit institution to offset risks or meet commercial drivers by charging applicants higher prices; however in our view they should consider any such possibilities with the applicant.

### **Credit institutions who do not provide payment account services to the market**

The requirements of Regulation 105 apply to all UK credit institutions. However, we have added text to Chapter 16 setting out that one factor we will take account of in any assessment of whether access has been provided on a proportionate, objective and non-discriminatory basis is whether the credit institution already provides the services being requested.

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## **Access to payment accounts notification**

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**8.6** The PSRs 2017 require credit institutions to provide to the FCA duly motivated reasons for refusing or withdrawing access to payment account services.

**8.7** We proposed some changes to the Supervision Manual of our Handbook (SUP 15.14) to direct the form, content and timing of this notification. The final SUP rules and final notification form can be found in Appendix 1.

*In CP17/11 we asked:*

**Q20:** *Do you agree with how we propose to implement the requirement to provide duly motivated reasons when refusing or withdrawing access, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach.*

**8.8** Most respondents to this question agreed with the proposals. However, they made some suggestions for further guidance on when, and in what circumstances, credit institutions should notify and what information they should include:

- questions were raised asked about the functionality of the notification form, for example whether drop down boxes would be available for some of the questions. It was argued that the form should allow for standardised responses.
- a concern was raised that credit institutions may attempt to create a pre-application process by which they could turn down potential applications for payment accounts without having to notify the FCA. It was suggested the notification form should differentiate between types of refusal that take place before a formal application and types of refusal that take place once an application has been assessed.
- it was queried whether enquiries about access to payment account services that do not progress to applications should be notified to the FCA.
- clarity was requested on how notifications should be made when access is withdrawn from multiple PSPs, for example, because of the removal of a particular product.



- clarification was sought that the notification is not required to be provided to the Payment Systems Regulator in addition to the FCA.

## Our response

### Submission channel

We can confirm that the notification form will be available through the FCA Connect Portal as a webform.<sup>29</sup> Where possible and appropriate we have included drop down boxes to make it more straightforward to complete. However, there will not be standardised responses for all questions. We expect credit institutions to assess requests for access individually and in the case of refusals or withdrawals, to provide us with duly motivated reasons which explain how the credit institution applied its criteria to a particular PSP or prospective PSP.

We have clarified in the revised Approach Document that credit institutions are not required to provide separate or duplicate notifications of their refusal or withdrawal to the Payment Systems Regulator.

### Treatment of potential applicants

With regard to the treatment of requests for access before applications are submitted, our guidance already deals with situations where potential applicants that want to apply are refused the opportunity to apply as a refusal for the purposes of notifications. This is in addition to notifications required when applications are turned down and when access is withdrawn.

However, we have now also amended the notification form so that the credit institution can differentiate between pre-application refusals and post-application refusals.

We have added further guidance in the revised Approach Document that we won't require notifications where a potential applicant has enquired, and has had the opportunity to apply, but has decided of its own volition not to.

### Withdrawal of services

We have added guidance in SUP and the Approach Document to clarify that a credit institution that withdraws access from multiple PSPs at the same time, for example when withdrawing a particular service from the market, can (and in certain circumstances should) contact the FCA in the first instance, in advance of the withdrawal. The FCA will then advise whether and in what form duly motivated reasons should to be given to the FCA.

We have also made a number of small changes to the form, incorporating feedback.

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29 You can find the Connect webform here: [www.fca.org.uk/firms/connect](http://www.fca.org.uk/firms/connect)

## 9 Consequential changes and other revisions to the Approach Document

### Who should read this chapter

All payment services providers (PSPs) and e-money issuers as well as others that may be subject to regulation or notification under the PSRs 2017 or the Electronic Money Regulations 2011 (EMRs).

**9.1** In this chapter we set out our response to the draft changes to our Approach Document on supervising PSPs and e-money issuers to bring our approach in line with the way we supervise other sectors.

**9.2** We also respond to feedback on the small consequential changes we are making to the FCA Handbook, and other revisions we are making to the Approach Document, including those relating to safeguarding.

### Supervision approach

**9.3** We proposed guidance in our revised Approach Document regarding our approach to supervision. We removed references to complaints-led supervision, as we will no longer be following this supervisory approach. We set out that our approach will be aligned with our general supervisory approach for firms which we regulate.

*In CP17/11 we asked:*

**Q24:** *Do you agree with our proposed approach to supervising the PSRs 2017? If not please explain why not and suggest an alternative approach.*

**9.4** Most respondents agreed to our proposed approach to supervising PSPs and e-money issuers. There some suggested amendments to our approach:

- more detail was requested on the FCA's methodology in assessing the risk of individual firms, categories of firms and entire sectors, as well as details of any changes to FCA's complaints procedure going forward;
- we were asked us to keep the emerging account information services (AIS) and payment initiation services (PIS) markets under regular review; and
- we were asked us to increase our communication with the payments sector about our approach to supervision.



## Our response

### Approach to supervision

We have amended our revised Approach Document to be clearer about where readers can find information about our supervisory approach. All PSPs and e-money issuers are supervised in accordance with our general approach to supervision. The specific measures we take will be dictated by the risk we see in individual firms, categories of firms and sectors.

PSPs and e-money issuers should review our Approach Document and the information on our website, as well as our recent Mission document, for more information about how we supervise firms that fall within our regulatory perimeter.

### Supervision of AIS and PIS

We will keep the emerging AIS and PIS markets under regular review in a number of ways, including through regular reporting requirements placed on PSPs engaging in AIS and PIS.

### Communications

We regularly engage with industry through stakeholder groups, bilaterally and through a number of other channels and initiatives. We will continue to engage with industry on a regular basis, and have already begun issuing a number of communications in the run-up to PSD2 implementation.

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## Consequential changes to the Handbook

- 9.5** We proposed a number of consequential changes to the Handbook, including to the Consumer Credit sourcebook (CONC), Dispute Resolution: Complaints Sourcebook (DISP) and Decision Procedure and Penalties manual (DEPP). We are also making a number of glossary changes, including adding registered account information service providers (RAISPs) to the definition of PSP.

*In CP17/11 we asked:*

**Q25:** *Do you agree with our proposed consequential changes to the Handbook? If not, please explain why not and suggest an alternative approach.*

- 9.6** All of those who responded to this question agreed with our proposed changes.

## Our response

As no comments were received which suggested changes, we are not further refining the consequential changes to the Handbook. However, we have made some necessary alterations to the Handbook to reflect the final content of the PSRs 2017.

## Comments on wider Approach Document revisions

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- 9.7** In CP17/11 we noted that majority of the changes we were making to the Approach Document merely reflected changes under the PSRs 2017, or were clarifications made in response to feedback received through our February 2016 Call for Input on the FCA's current approach to the payment services regime.<sup>30</sup>
- 9.8** As well as asking questions in CP17/11 on the approach we were taking to specific parts of the Approach Document, we asked for comments on the wider revisions we were proposing to make.

In CP17/11 we asked:

**Q26:** *Do you have any comments on the wider revisions to the Payment Services and E-money Approach Document? Are there any omissions or aspects that are unclear in the revised Approach Document?*

- 9.9** In response to this question, the majority of comments were about safeguarding, which we cover separately below. We also received a few comments on other parts of the revised Approach Document:
- it was stated that the 28-day period for notifying of changes in circumstances specified in the Approach Document needs to be reconsidered as it is too short;
  - it was requested that we clarify our expectations in relation to passporting, and address concerns about firms subverting the passporting process to avoid rigorous authorisation and registration checks.

### Our response

We do not intend to alter the period for notifying of changes in circumstances. The approach we have taken historically has not proved problematic and we still believe this period of time is appropriate.

We have amended the passporting chapter of the revised Approach Document to further clarify the requirements for firms.

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## Safeguarding

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- 9.10** Respondents to the February 2016 Call for Input on the FCA's approach to the current payment services regime asked us to clarify our safeguarding guidance. In particular we were asked to clarify the obligation to segregate funds, and to give guidance on when safeguarding obligations come to an end. In 2016 we also contacted all PIs and EMIs reminding firms of their safeguarding obligations.

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<sup>30</sup> The Call for Input can be found here: [www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime](http://www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime) The Feedback Statement (FS16/12) was published in November 2016 and can be found here: [www.fca.org.uk/publication/feedback/fs16-12.pdf](http://www.fca.org.uk/publication/feedback/fs16-12.pdf)



**9.11** We proposed clarifications to Approach Document guidance on safeguarding in CP17/11.

**9.12** Several respondents to CP17/11 provided feedback on our proposed changes to safeguarding. Most felt that some of the changes to the guidance led to an overly restrictive interpretation that was either operationally complex or unreasonable. Several argued that while these measures have good intentions they are not necessary to achieve the consumer protection that PSD2 aims to achieve. Respondents asked us to revise the Approach Document to give more intra-day flexibility and provide clarity on specific sections of the guidance. In particular, respondents:

- stated that they did not believe that it is appropriate or necessary for a payment transaction that includes a foreign exchange component to be deconstructed;
- argued that it is unreasonable – and creates operational difficulties – to request firms that receive international payments to separate out the specific payments that need to be safeguarded versus those that do not;
- had concerns that the FCA has interpreted the segregation requirement for fees in an overly complex way, arguing that a PSP should be able to receive an entire payment, including fees, into a segregation account;
- argued that the FCA should allow some flexibility to hold excess funds so as to ensure that the safeguarding accounts have sufficient funds to meet their obligations, while accepting that funds should not be comingled;
- raised concerns that for e-money card schemes, even though the user has exchanged their e-money for goods/services, the issuer has to continue to safeguard funds in relation to redeemed e-money until paid out (leading to several problems because the card scheme needs to hold the funds in an account that may be subject to collateral rights);
- raised concerns about the guidance suggesting that all funds have to be safeguarded up until the point of delivery, as they argued this would see the same funds being safeguarded several times; and
- asked us to clarify the definition of 'unrelated payment services', so as to explicitly ensure that an EMI carrying out payment services does not have to safeguard the same funds twice.

### Our response

Safeguarding customer funds is the main consumer protection measure within the PSRs 2017. PMIs and EMIs do not fall within the remit of the Financial Services Compensation Scheme (FSCS). It is of the utmost importance that firms have in place appropriate and well managed safeguarding arrangements to ensure that in the event of a firm insolvency there is a timely and orderly pay out to customers. The legislation is prescriptive in how safeguarding arrangements are managed and maintained and our revised Approach Document reflects these requirements.

We note below our response to particular issues raised and set out where we make changes.

### **Segregation and safeguarding accounts**

It is important that funds that are not 'relevant funds' are kept separate from 'relevant funds' to avoid any dilution of the asset pool. Where payment transactions are between payers and payees outside of the EEA the payment transaction does not fall within the definition of 'relevant funds', therefore such funds need to be kept separate from relevant funds. We believe that our approach to the management of fees sitting within a segregated or safeguarding account is a practical solution to mitigating the risk of comingling. We accept that the amount of relevant funds fluctuates and needs to be estimated for currency payments. The proposed guidance already sets out how firms may legitimately deal with these unavoidable discrepancies. It is not acceptable for firms to over-fund their accounts rather than maintain appropriate and robust processes and records for safeguarding and segregation accounts.

### **Rights or interest in the safeguarding account**

The PSRs 2017 are clear that no other party can have a right or an interest in the safeguarding account. It has been suggested that a change to the PSRs 2017 could provide more flexibility without affecting consumer protection and the outcomes intended by the legislation. We will work with industry and the Treasury to better understand these issues.

### **Double counting**

We have updated our Approach Document to be clear that the same funds do not have to be safeguarded at the same time by multiple participants in the payment chain.

### **Other issues**

We have updated our Approach Document to clarify what 'unrelated payment services' are.

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## 10 The Payment Systems Regulator's approach

### Who should read this chapter

Payment system operators, direct participants in the Bacs, Faster Payments and CHAPS payment systems who provide indirect access to those systems, PSPs who access payment systems indirectly (indirect PSPs), prospective indirect PSPs, and independent ATM deployers and their end users.

- 10.1** In this chapter the Payment Systems Regulator is responding to the feedback received on the areas of the PSRs 2017 which it is the sole competent authority for. References to 'we' or 'our' in this chapter mean the Payment Systems Regulator, and not the FCA.
- 10.2** The Payment Systems Regulator is publishing its new Approach Document alongside this PS.<sup>31</sup>

### Access to payment systems

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- 10.3** PSD2 aims to ensure that existing and new PSPs can access payment systems in a proportionate, objective and non-discriminatory way. PSD2 preserves the existing PSD requirements on direct access to certain payment systems, and adds new requirements regarding indirect access. Regulations 103 and 104 of the PSRs 2017 transpose the PSD2 provisions on access (article 35 of PSD2) into UK law

*In CP17/11 we asked:*

**Q27:** *Do you agree with the Payment Systems Regulator's proposed approach to access to payment systems? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide guidance on?*

- 10.4** Most respondents broadly agreed with our approach to providing guidance on Regulations 103 and 104 of the PSRs 2017, but suggested we should clarify some areas:
- One respondent asked for clarity on the circumstances where Regulation 104 of the PSRs 2017 (indirect access to designated payment systems) applies as opposed to Regulation 105 of the PSRs 2017 (access to payment account services).

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<sup>31</sup> The Payment Systems Regulator's Approach Document can be found here: [www.psr.org.uk/psr-publications/policy-statements/Payment-Services-Regs-2017-our-final-approach](http://www.psr.org.uk/psr-publications/policy-statements/Payment-Services-Regs-2017-our-final-approach)

- One respondent asked about the obligation for an indirect access provider (IAP) that withdraws or cancels a PSP's access to tell the PSP why it has done so (Regulation 104). The respondent wanted us to clarify that this obligation does not apply where it would be unlawful (for example, if it constitutes 'tipping off' under anti-money laundering legislation) or it would erode a financial institution's financial crime controls by disclosing details about how it identifies financial crime.
- One respondent requested further clarity that Regulation 105 of the PSRs 2017 only applies to PSPs providing payment account service access to the wider marketplace on a commercial basis, and that, for example, a PSP offering limited payment account services to a company in its own group would not be required to provide the same access to the wider market. Another respondent said that an IAP may decline access for reasons other than those within the remit of Regulation 104 of the PSRs 2017, and that the provision of access services needs to be considered as part of a wider relationship with a PSP.
- One respondent said that to increase the number of IAPs we would need to change the liability model, so that the remitting bank would be responsible for their payment traffic, not the IAP.
- Our consultation stated that the Court of Justice of the European Union was asked to rule on whether a three-party scheme with licensees should be subject to article 35 PSD2 (Regulation 103 of the PSRs 2017). One respondent clarified that the question the Court of Justice of the European Union was asked to rule on actually concerned three-party schemes using agents or co-brand partners.

## Our response

### Regulation 104 and Regulation 105 cases

We will decide which regulation is most appropriate on a case-by-case basis.

There are some circumstances where Regulation 105 of the PSRs 2017 does not apply, but Regulation 104 may apply. For example, cases which do not involve seeking access to a payment account service cannot be considered under Regulation 105 of the PSRs 2017. Regulation 105 also does not cover the supply of payment account services to credit institutions – but Regulation 104 does cover the supply of indirect access to payment systems to credit institutions.

Where there is no clear reason for a case to be considered under one regulation or the other, we will consider the relative significance of payment system access compared with payment account services access.

### Disclosure of reasons

We have added some text to Chapter 2 of the Payment Systems Regulator's Approach Document to clarify that IAPs will only be required to give full reasons to the applicant to the extent permitted by law.

### Access services as part of a wider relationship

Any decision to decline access to payment systems is within the remit of Regulation 104. We can take all reasons into account when we assess



or investigate compliance (including reasons relating to the wider relationship with the PSP).

### **IAPs who do not provide indirect access services to the market**

The requirements of Regulation 104 of the PSRs 2017 apply to all direct participants who already allow PSPs that are not direct participants to 'pass transfer orders' through a payment system. However, when we assess whether a decision is proportionate, objective and non-discriminatory, we will take account of whether the IAP already provides the services being requested. We have added text to Chapter 2 of our Approach Document (Access to payment systems) to reflect this.

### **Liability**

Liability in indirect access is out of the scope of the PSRs 2017.

### **Appeal to the Court of Justice of the European Union**

We have amended the text in Chapter 2 of our Approach Document to reflect the respondent's clarification on the point which the Court of Justice of the European Union has been asked to adjudicate on.

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## **Our approach to monitoring Regulation 103 of the PSRs 2017**

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**10.5** To help us monitor compliance with the access provisions in Regulation 103 of the PSRs 2017, we proposed to issue a new direction requiring relevant payment system operators (PSOs) to provide us with an annual compliance report. This would include, for example:

- the PSO's own assessment of its compliance with the requirements of Regulation 103
- details of all expressions of interest from PSPs in potentially getting access to the system
- the outcome of any expressions of interest

We would use our PSRs 2017 powers to issue the direction.

**10.6** As our General Direction 3 (GD3) currently requires similar information from payment system operators regulated under the PSRs 2009, we proposed to revoke GD3 to avoid overlap or duplication of regulatory requirements.

*In CP17/11 we asked*

**Q28:** *Do you agree with the Payment Systems Regulator's proposal to replace our General Direction 3 with a new direction under the PSRs 2017, requiring annual compliance reports from payment system operators about their compliance with Regulation 103 of the PSRs 2017? If so, what should the compliance reports contain? If not, should we rely on complaints only for monitoring compliance with Regulation 103?*

- 10.7** One respondent suggested that we should simplify our approach by relying on complaints to monitor compliance with Regulation 103, instead of requiring annual compliance reports as we currently do under GD3. This is similar to the way we propose to monitor compliance with Regulation 104 of the PSRs 2017. The respondent said we should only require compliance reports if a complaints-led process proves to be ineffective.
- 10.8** On the other hand, another respondent said we were right to replace GD3. This respondent suggested that the PSOs concerned should give us their views on what the compliance reports should contain.

### Our response

We will replace our General Direction 3 with a reporting requirement under the PSRs 2017 for PSOs who are subject to Regulation 103. As we say in our Approach Document, we will review these obligations within two years. We will undertake a piece of work to repeal GD3 and introduce a new direction under the PSRs 2017 later this year. We will take feedback from the relevant PSOs into account as part of this work.

### Our approach to monitoring Regulation 104 of the PSRs 2017

- 10.9** We proposed to monitor compliance with Regulation 104 of the PSRs 2017 by considering complaints we receive from PSPs. We also proposed to issue an initial direction to all IAPs, requesting information to help us understand the criteria and governance processes they use to assess indirect access requests.

*In CP17/11 we asked:*

**Q29:** *Do you agree with the Payment Systems Regulator's proposal to require initial information from IAPs to help us understand the criteria and governance processes they have in place to comply with Regulation 104 of the PSRs 2017? If not, please explain why not and suggest an alternative approach.*

- 10.10** Some respondents suggested that we have already collected the necessary information from IAPs during our indirect access market review. One respondent said structured interviews with IAPs would be a more efficient and flexible way for the supervisor to gather input and develop its views.
- 10.11** One respondent thought we should do more than require initial information from IAPs in relation to Regulation 104. This respondent would like to see IAPs maintain regulated standards for indirect participants.



## Our response

Before requesting the initial information from IAPs, we will consider the precise information we require and whether we already hold some of it. We will also engage with IAPs to determine the best way to collect the relevant information.

Member states cannot introduce regulation which goes beyond the requirements of PSD2 (because it is a 'maximum harmonising' directive). We cannot therefore require regulated standards of IAPs. If indirect PSPs have suggestions on improving standards for indirect access provision outside formal regulation, they can suggest changes to the IAP code of conduct administered by UK Finance.

## Our approach to monitoring Regulation 61

**10.12** PSD2 aims to maintain the provision of ATM services while ensuring clarity on withdrawal charges. Independent ATM deployers (IADs) were excluded from the scope of PSD. PSD2 maintains that general exclusion, but extends specific transparency requirements to all ATM deployers.

**10.13** All IADs in the UK are members of LINK, Visa or Mastercard. These payment systems already have rules requiring members (including IADs) to ensure the information listed in Regulation 61 is provided when offering ATM withdrawal services. We proposed to monitor compliance by working together with LINK, Visa and Mastercard, to ensure that all independent ATM deployers that are members of these payment systems comply with the information requirements in the scheme rules (and therefore Regulation 61 of the PSRs 2017). We would also monitor complaints that we receive.

*In CP17/11 we asked:*

**Q30:** *Do you agree with the Payment Systems Regulator's proposed approach to monitoring compliance with Regulation 61 of the PSRs 2017? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide in our guidance?*

**10.14** One respondent said it would be useful for PSPs to have visibility of the monitoring as this will help them choose the right partner. Another respondent asked for more clarity on how the enforcement process will work for Regulation 61. The respondent also wanted to understand who will be required to report data in this area.

## Our response

Our powers and procedures guidance (PPG) sets out the factors we will consider in deciding whether to publish the details of a breach of the PSRs 2017.

Our PPG also sets out the details of our enforcement process for the PSRs 2017. Visa, Mastercard and LINK can independently enforce against a breach of their scheme rules if they deem it appropriate.

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## Our powers and procedures guidance

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**10.15** We consulted on the guidance on our powers and procedures for enforcing those requirements of the PSRs 2017 which we are responsible for.

*In CP17/11 we asked:*

**Q31:** *Do you agree with the Payment Systems Regulator's proposal on how we will exercise our powers to enforce compliance with the PSRs 2017, as set out in our PSRs 2017 powers and procedures guidance? If not, please explain why not and suggest an alternative approach.*

**10.16** We received the following comments in response to this question:

- One respondent said we should always tell firms when we intend to publish information about them. This respondent suggested that, where we disclose details of our enforcement decisions in order to increase transparency, we should consider anonymising case summaries.
- One respondent suggested there should be an upper limit on the level of penalty we can impose (for example, 10% of a domestic scheme's turnover). This respondent also said that the proposal that penalties be paid within 14 calendar days is likely to cause difficulties for most companies, and is not consistent with the standard practice of other regulators.
- One respondent said that, when we have appointed a skilled person, we should give the person being investigated written notice of any material changes in scope. The respondent said this would promote effective collaboration and transparency.
- One respondent asked for more detail on the interaction between the PSRs 2017 and the Financial Services (Banking Reform) Act 2013 (FSBRA), particularly the position with our FSBRA powers and guidance. They said that if PSD2 means that we can no longer use our FSBRA powers, it would be good practice to rescind our draft FSBRA guidance and publish new guidance.
- Respondents made a number of other detailed suggestions about issues including, for example, the timeframe for responding to preliminary findings and the nature of information requests.



## Our response

### Change in scope of a skilled person's report

We have added text to the powers and procedures guidance (PPG) to note that if there is a material change in the scope of a skilled person's report, we would normally expect to tell the person being investigated.

### FSBRA section 56 and 57 guidance

Our FSBRA powers relating to access (sections 56 and 57) and our draft guidance will continue to apply after the PSRs 2017 come into force in January 2018, albeit in more limited circumstances. For example, credit unions are not regulated under the PSRs 2017 and we will continue to consider any access application or requirement related to a credit union under our FSBRA powers. We are planning to review our draft guidance on sections 56 and 57 FSBRA to reflect these changes.

### Publishing information

The guidance explains that if we find that an access provider has failed to comply with PSD2 requirements, we have the power to publish details of the compliance failure and of any financial penalty we impose. We consider that this potential sanction can operate to encourage parties to comply with their obligations. An anonymous case summary would not have the same impact. Where we decide not to impose this sanction, we might consider it appropriate to publish an anonymous case summary to inform the wider market.

Where we propose to publish details of a compliance failure, our Enforcement Decisions Committee (EDC) will decide if we should issue a warning notice to the person under investigation. That person will have an opportunity to make representations to the EDC once the warning notice has been issued. The guidance explains how a person may appeal against a final decision by the EDC to publish details.

### Financial penalties

There is no cap on the level of the financial penalties we can impose for regulatory compliance failures under the PSRs 2017. We will take account of our statement of penalty principles when deciding on the level of any financial penalty.

We usually expect to require that parties pay any financial penalty imposed within 14 calendar days. However, our guidance provides that we will consider deferring the payment or accepting payment by instalments where, for example, the party requires a reasonable time to raise funds to pay the whole penalty within a sensible period. We will review each case on its facts.

### Other issues

We have reviewed our PPG taking account of the other points raised in submissions, and do not consider that we need to make any further changes to the wording of the PPG.

## Appointment of the Enforcement Decisions Committee

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- 10.17** We proposed to appoint our Enforcement Decisions Committee (EDC) to decide, in contested cases, whether compliance failures have occurred and whether to impose a financial penalty and publish details of compliance failures under the PSRs 2017.

*In CP17/11 we asked:*

**Q32:** *Do you agree the Payment Systems Regulator's Enforcement Decisions Committee should be appointed to decide, in contested cases, whether compliance failures have occurred and whether to impose a financial penalty and publish details of compliance failures under the PSRs 2017? If not please explain why not and suggest an alternative approach.*

- 10.18** All respondents who commented on this question agreed that the EDC should be appointed for this purpose.

### Our response

We confirm that the EDC will be appointed for this purpose.

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# Annex 1

## List of non-confidential respondents

### CP17/11:

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ABCUL

AIME

APCC

Association of Foreign Exchange

Association of UK Payment Institutions

BACS

Barclays

Book Tokens Ltd

BRC

BSA

C. Hoare & Co

Call Credit

Computer Share Investor

Consumer Panel

Credit Data Research

Currencies Direct

Dalir

EMA

EML

EPA

Eris FX



Evalon, Barclays and Lloyds

Experian

Fast Encash Money Transfer Ltd

Faster Payments

FDATA

Figo

FSCom

Global Pay UK

IAMNT

International Underwriting Association

Irish League of Credit Unions

Joint response from BBA, Payments UK, The UK Card Association and FFA UK (these organisations are now together known as, and referred to in this document as, UK Finance)

Limehouse

Link

Mastercard

Metro Bank

Metro Remittance Ltd

Mobile UK

Modulr FS

MoneyGram

Monzo

OFX

Open Banking

Paypoint Payment Services

Paysafe

Pinset Mason



Radius Payments

RBS

Route Trading

S. Lelieveldt

Step Change

The Number UK

TransferWise

Transpact

TrueLayer

UK Giftcard and Voucher Association

Virgin Money

Visa

WEx

Which?

YBS

### **CP17/22:**

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EMA

Fast Encash Money Transfer

Financial Services Consumer Panel

ObjectTech Group

Optima Consultancy

PaySafe

UK Finance

## Annex 2

### Status of EBA workstreams

1. The table below shows the status of Guidelines, regulatory technical standards (RTS), and implementing technical standards (ITS) being developed by the EBA which are relevant to PSD2. The status is current as of the time of publication of the PS.

Name of workstream	Type of workstream	Status
<u>Authorisation, and registration as account information service provider</u>	Guidelines	Final
<u>Minimum monetary amount of professional indemnity insurance</u>	Guidelines	Final
<u>Major incident reporting</u>	Guidelines	Final
<u>Complaints to Competent Authorities about infringements of PSD2</u>	Guidelines	Draft – consultation closed
<u>Operational and security risk</u>	Guidelines	Draft – consultation closed
<u>Fraud reporting</u>	Guidelines	Draft – consultation open until 3 November 2017
<u>Passporting under PSD2</u>	RTS	Final draft – subject to approval
<u>Stronger customer authentication and secure communication</u>	RTS	Final draft – EBA Opinion on EU Commission amendments published
<u>Central Contact Points</u>	RTS	Draft – consultation open until 29 September 2017
<u>Supervision</u>	RTS	Under development (no dedicated webpage)
<u>EBA Register</u>	RTS and ITS	Draft – consultation open until 18 September 2017



## Annex 3

### Abbreviations used in this paper

<b>2EMD</b>	Directive (EU) 2009/110 – the Second Electronic Money Directive
<b>ADR</b>	Alternative dispute resolution
<b>AIS</b>	Account information service
<b>AISP</b>	Account information service provider
<b>Authorised EMI</b>	Authorised electronic money institution
<b>Authorised PI</b>	Authorised payment institution
<b>API</b>	Application programming interface
<b>ASPSP</b>	Account servicing payment service provider
<b>Bacs</b>	Bacs Payment Schemes Limited
<b>BCOBS</b>	Banking Conduct of Business Sourcebook
<b>Call for Input</b>	February 2016 Call for Input: the FCA's approach to the current payment services regime
<b>CBPII</b>	Card-based payment instrument issuer
<b>CCA</b>	Consumer Credit Act 2006
<b>CHAPS</b>	Clearing House Automated Payment System
<b>CMA</b>	The Competition and Markets Authority
<b>CP</b>	Consultation paper
<b>CRR</b>	Regulation (EU) 575/2013 – The Capital Requirements Regulation
<b>CONC</b>	Consumer Credit Sourcebook
<b>DEPP</b>	Decision Procedure and Penalties manual
<b>DISP</b>	Dispute Resolution: Complaints
<b>EBA</b>	European Banking Authority

<b>EBA Authorisation Guidelines</b>	EBA Guidelines under Directive (EU) 2015/2366 (PSD2) on the information to be provided for the authorisation of payment institutions and e-money institutions and for the registration of account information service providers
<b>EBA PII Guidelines</b>	EBA Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee under Article 5(4) of Directive (EU) 2015/2366
<b>ECB</b>	The European Central Bank
<b>ECE</b>	Electronic communications exclusion
<b>ECN</b>	Electronic communications network
<b>EEA</b>	European Economic Area
<b>EG</b>	Enforcement Guide
<b>EMI</b>	Authorised EMIs and small EMIs
<b>EMRs</b>	Electronic Money Regulations 2011
<b>EU</b>	European Union
<b>FSA</b>	Financial Services Authority
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	The Financial Services and Markets Act 2000
<b>IAP</b>	Indirect Access Provider
<b>ISA</b>	Individual Savings Account
<b>ITS</b>	Implementing Technical Standard
<b>LNE</b>	Limited Network Exclusion
<b>MLRs 2007</b>	Money Laundering Regulations 2007
<b>MLRs</b>	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
<b>PERG</b>	Perimeter Guidance Manual
<b>PI</b>	Authorised PIs and small PIs
<b>PII</b>	Professional indemnity insurance
<b>PIS</b>	Payment initiation services



<b>PISP</b>	Payment initiation service provider
<b>POCA</b>	Proceeds of Crime Act 2002
<b>PSD</b>	Directive (EU) 2007/64 – the Payment Services Directive
<b>PSD2</b>	Directive (EU) 2015/2366 – the revised Payment Services Directive
<b>PSP</b>	Payment services provider
<b>PSRs 2009</b>	Payment Services Regulations 2009
<b>PSRs 2017</b>	Payment Services Regulations 2017
<b>RAISP</b>	Registered account information service provider
<b>The Register</b>	The Financial Services Register
<b>RTS</b>	Regulatory technical standards
<b>SCA</b>	Strong customer authentication
<b>SCA RTS</b>	The EBA's regulatory technical standards on strong customer authentication and common and secure communication under Article 98 of Directive 2015/2366
<b>SFD</b>	Settlement Finality Directive
<b>Small EMI</b>	Small electronic money institution
<b>Small PI</b>	Small payment institution
<b>SUP</b>	Supervision Manual
<b>Treasury</b>	HM Treasury
<b>VAT</b>	Value-added tax

**Terms used in this document with specific meaning under the Payment Services Regulations 2017**

<b>'account information service provider'</b>	means a payment service provider which provides account information services
<b>'account servicing payment service provider'</b>	means a payment service provider providing and maintaining a payment account for a payer

<b>'authorised payment institution'</b>	<p>Means</p> <p>a) a person authorised as a payment institution pursuant to PSRs 2017 Regulation 6 (conditions for authorisation as a payment institution) and included by the FCA in the register as an authorised payment institution pursuant to Regulation 4(1)(a) (the register of certain payment service providers); or</p> <p>b) a person included by the FCA in the register pursuant to PSRs 2017 Regulation 150 or 152, and Regulation 153(1) (transitional provisions).</p>
<b>'credit institution'</b>	<p>an undertaking, the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account (as defined in Article 4(1)(1) of the Capital Requirements Regulations (EU) 575/2013) and for the purposes of the EMRs includes an EEA branch of a credit institution that has its head office outside the EEA.</p>
<b>'electronic communications network'</b>	<p>means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed; (as defined in Article 2(a) of Directive 2002/21/EC)</p>
<b>'electronic communications service'</b>	<p>means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks; (as defined in Article 2(c) of Directive 2002/21/EC)</p>
<b>'electronic money institution'</b>	<p>means a legal person that has been granted authorisation under Title II to issue electronic money (Article 2(1) of EMD2)</p>
<b>'payment initiation service provider'</b>	<p>means a payment service provider which provides payment initiation services</p>



<b>'payment service'</b>	means any of the activities specified in Part 1 of Schedule 1 (payment services) of the PSRs 2017 when carried out as a regular occupation or business activity, other than any of the activities specified in Part 2 of that Schedule (activities which do not constitute payment services)
<b>'payment service provider'</b>	means any of the following persons when they carry out payment services — a) authorised payment institutions; b) small payment institutions; c) registered account information service providers; d) EEA authorised payment institutions; e) EEA registered account information service providers; f) electronic money institutions; g) credit institutions; h) the Post Office Limited; i) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and j) government departments and local authorities, other than when carrying out functions of a public nature
<b>'registered account information service provider'</b>	means an account information service provider included by the Authority on the register pursuant to PSRs 2017 Regulation 4(1)(c)
<b>'small payment institution'</b>	means a person included by the Authority in the register pursuant to PSRs 2017 Regulation 4(1)(b)

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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# Appendix 1

## Final Handbook text including PERG

## **PAYMENT SERVICES INSTRUMENT 2017**

### **Powers exercised by the Financial Ombudsman Service Limited**

A. The Financial Ombudsman Service Limited makes this instrument amending:

- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
- (2) the rules, standard terms and guidance for Voluntary Jurisdiction participants,

as set out in Annexes A and I of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 227 (Voluntary jurisdiction);
- (b) paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme);
- (c) paragraph 14 (The scheme operator’s rules) of Schedule 17;
- (d) paragraph 15 (Fees) of Schedule 17;
- (e) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
- (f) paragraph 22 (Consultation) of Schedule 17.

B. The making (and amendment) of the rules, guidance and standard terms in Annexes A and I by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

### **Powers exercised by the Financial Conduct Authority**

C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:

- (1) the following sections of the Act:
  - (a) section 69 (Statement of policy) as applied by paragraph 1 of Schedule 6 to the Payment Services Regulations 2017 (SI/2017/752) (“the Regulations”);
  - (b) section 137A (The FCA’s general rules);
  - (c) section 137T (General supplementary powers);
  - (d) section 139A (Power of the FCA to give guidance);
  - (e) section 169(9) (Investigations etc. in support of overseas regulator) as applied by paragraph 3 of Schedule 6 to the Regulations;
  - (f) section 210 (Statements of policy) as applied by regulation 112(6) of the Regulations;
  - (g) section 226 (Compulsory jurisdiction);
  - (h) section 229 (Awards);
  - (i) section 395 (The FCA’s and PRA’s procedures) as applied by paragraph 9 of Schedule 6 to the Regulations;
  - (j) paragraph 23 of Schedule 1ZA (fees) as applied by regulation 118(1) of the Regulations; and

- (k) paragraph 13 (FCA’s rules) of Schedule 17 (The Ombudsman Scheme); and
- (2) the following regulations of the Regulations:
- (a) regulation 30(4) and (5) (Supervision of firms exercising passport rights);
  - (b) regulation 71(8) (Limits on the use of payment instruments and access to payment accounts);
  - (c) regulation 98(3) (Management of operational and security risks);
  - (d) regulation 99(2) (Incident reporting);
  - (e) regulation 105(4) (Access to bank accounts);
  - (f) regulation 109 (Reporting requirements); and
  - (g) regulation 120 (Guidance).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules, guidance and standard terms made and amended by the Financial Ombudsman Service Limited.

### Commencement

- F. This instrument comes into force on 13 January 2018 except for part 2 of Annex G which comes into force on 1 April 2018.

### Amendments to the Handbook

- G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
General Provisions (GEN)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Banking: Conduct of Business sourcebook (BCOBS)	Annex F
Supervision manual (SUP)	Annex G
Decision Procedure and Penalties manual (DEPP)	Annex H
Dispute Resolution: Complaints sourcebook (DISP)	Annex I
Consumer Credit sourcebook (CONC)	Annex J

### Amendments to material outside the Handbook

- H. The Enforcement Guide (EG) is amended in accordance with Annex K to this instrument.

- I. The Perimeter Guidance manual (PERG) is amended in accordance with Annex L to this instrument.

**Notes**

- J. In this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- K. This instrument may be cited as the Payment Services Instrument 2017.

By order of the Board of the Financial Ombudsman Service Ltd  
11 September 2017

By order of the Board of the Financial Conduct Authority  
12 September 2017

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>account servicing payment service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service provider</i> providing and maintaining a <i>payment account</i> for a <i>payer</i> .
<i>account information service</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) an online service to provide consolidated information on one or more <i>payment accounts</i> held by the <i>payment service user</i> with another <i>payment service provider</i> or with more than one <i>payment service provider</i> , and includes such a service whether information is provided:  (a) in its original form or after processing;  (b) only to the <i>payment service user</i> or to the <i>payment service user</i> and to another <i>person</i> in accordance with the <i>payment service user's</i> instructions.
<i>account information service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service provider</i> which provides <i>account information services</i> .
<i>acquiring payment transactions</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service</i> provided by a <i>payment service provider</i> contracting with a <i>payee</i> to accept and process <i>payment transactions</i> which result in a transfer of funds to the <i>payee</i> .
<i>complaints reporting directions</i>	The directions in <i>DISP</i> 1.10B.
<i>credit transfer</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service</i> for crediting a <i>payee's payment account</i> with a <i>payment transaction</i> or a series of <i>payment transactions</i> from a <i>payer's payment account</i> by the <i>payment service provider</i> which holds the <i>payer's payment account</i> , based on an instruction given by the <i>payer</i> .
<i>digital content</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) goods or services which are produced and supplied in

digital form, the use or consumption of which is restricted to a technical device and which do not include in any way the use or consumption of physical goods or services.

<i>direct debit</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service</i> for debiting the <i>payer's payment account</i> where a <i>payment transaction</i> is initiated by the <i>payee</i> on the basis of consent given by the <i>payer</i> to the <i>payee</i> , to the <i>payee's payment service provider</i> or to the <i>payer's own payment service provider</i> .
<i>EEA registered account information service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>person</i> that is registered as an <i>account information services provider</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> under the <i>Payment Services Directive</i> .
<i>EMD complaint</i>	any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, an <i>electronic money</i> holder about the provision of, or failure to provide, a financial service or a <i>redress determination</i> :  (a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and  (b) concerning the rights and obligations arising under Part 5 of the <i>Electronic Money Regulations</i> .
<i>issuing payment instruments</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service</i> by a <i>payment service provider</i> contracting with a <i>payer</i> to provide a <i>payment instrument</i> to initiate <i>payment orders</i> and to process the <i>payer's payment transactions</i> .
<i>payment account</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) an account held in the name of one or more <i>payment service users</i> which is used for the execution of <i>payment transactions</i> .
<i>payment initiation service</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) an online service to initiate a <i>payment order</i> at the request of the <i>payment service user</i> with respect to a <i>payment account</i> held at another <i>payment service provider</i> .
<i>payment initiation service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service provider</i> which provides <i>payment initiation services</i> .
<i>payment order</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) any instruction by:  (a) a <i>payer</i> ; or  (b) a <i>payee</i> ,

to their respective *payment service provider* requesting the execution of a *payment transaction*.

*PSD complaint* any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *payment service user* about the provision of, or failure to provide, a financial service or a *redress determination*:

- (a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
- (b) concerning the rights and obligations arising under Parts 6 and 7 of the *Payment Services Regulations*.

*registered account information service provider* (in accordance with regulation 2(1) of the *Payment Services Regulations*) an *account information service provider* registered pursuant to regulation 18 of the *Payment Services Regulations* and included by the *FCA* in the *Financial Services Register* pursuant to regulation 4(1)(c) of the *Payment Services Regulations*.

Amend the existing definitions as shown.

*agent* (in relation to *payment services* or *electronic money*) a person who acts on behalf of a *payment institution* or an *electronic money institution* in providing *payment services*.

[Note: article 4 ~~(22)~~ (38) of the *Payment Services Directive*]

*authorised payment institution* (in accordance with regulation 2(1) of the *Payment Services Regulations*):

- (a) a person authorised as a payment institution pursuant to regulation 6 of the *Payment Services Regulations* (conditions for authorisation as a payment institution) and included by the *FCA* in the *Financial Services Register* as an authorised payment institution pursuant to regulation 4(1)(a); of the *Payment Services Regulations* (the register of certain payment service providers); or
- (b) a person ~~deemed to have been granted authorisation by virtue of regulation 121~~ included by the *FCA* in the *Financial Services Register* pursuant to regulation 150 or 152(2), and 153(1) of the *Payment Services Regulations* (Transitional and saving provisions: authorised payment institutions).

*branch* ...

- (g) (in accordance with regulation 2(1) of the *Payment Services Regulations*) (in relation to a *payment institution*, a registered

account information service provider or an EEA registered account information service provider) a place of business of such a ~~payment institution~~ payment service provider, other than its head office, which forms a legally dependent part of ~~the institution~~ such a provider and which carries out directly all or some of the ~~transactions~~ services inherent in its business. For the purposes of the *Payment Services Regulations*, all places of business set up in the same *EEA State* other than the *United Kingdom* by an ~~authorised payment institution~~ such a payment service provider are to be regarded as a single *branch*.

[Note: article 4 ~~(29)~~ (39) of the *Payment Services Directive*]

- ...
- business day*
- (1) (except in DISP 1.6.2A and DISP 2.8) (in relation to anything done or to be done in (including to be submitted to a place in) any part of the *United Kingdom*):
- ...
- (2) (except in DISP 1.6.2A and DISP 2.8) (in relation to anything done or to be done by reference to a market outside the *United Kingdom*) any *day* on which that market is normally open for business.
- (3) (in DISP 1.6.2A and DISP 2.8) any day on which the relevant payment service provider is open for business as required for the execution of a payment transaction.
- consumer*
- (1) (except as specified in this definition) any natural person acting for purposes outside his trade, business or profession. [Note: article 2 of the *Distance Marketing Directive*, article 2 of the *Unfair Terms in Consumer Contracts Directive* (93/13/EEC), article 2 of the *E-Commerce Directive*, article 4 ~~(14)~~ (20) of the *Payment Services Directive*, article 3 of the *Consumer Credit Directive* and article 4(1) of the *MCD*:-]
- ...
- credit institution*
- ...
- (3) (in relation to the definition of electronic money issuer and payment service provider) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of article 4(1)(17) of the *EU CRR* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with article 47 of the *CRD*.
- EEA authorised payment institution*
- (a) (in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* authorised in an *EEA State* other than the *United Kingdom* to provide *payment services* in accordance

with the *Payment Services Directive* or a *person* entitled to provide *payment services* of the type described in paragraph 1(g) of Schedule 1 to the *Payment Services Regulations 2009* under regulation 152(5) of the *Payment Services Regulations*; and

...

*Financial Services Register*

the public record, as required by section 347 of the *Act* (The public record), regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers), regulation 4 of the *Electronic Money Regulations* and article 8 of the *MCD Order*, of every:

...

(ab) *small payment institution*;

(aba) *registered account information service provider*;

(abb) *person providing a service falling within paragraph 2(k)(i) to (iii) or paragraph (l) of Schedule 1 to the Payment Services Regulations, who has notified the FCA under regulation 38 or 39 of the Payment Services Regulations*;

(ac) *agent of an authorised payment institution or a small payment institution or a registered account information service provider*;

...

*framework contract*

(in accordance with regulation 2(1) of the *Payment Services Regulations*) a contract for *payment services* which governs the future execution of individual and successive ~~payment transactions~~ *payment transactions* and which may contain the obligation and conditions for setting up a ~~payment account~~ *payment account*.

[Note: article 4 ~~(12)~~ (21) of the *Payment Services Directive*]

*money remittance*

(in accordance with regulation 2(1) of the *Payment Services Regulations*) a service for the transmission of money (or any representation of monetary value), without any ~~payment accounts~~ *payment accounts* being created in the name of the ~~payer~~ *payer* or the ~~payee~~ *payee*, where:

(a) funds are received from a ~~payer~~ *payer* for the sole purpose of transferring a corresponding amount to a ~~payee~~ *payee* or to another *payment service provider* acting on behalf of the ~~payee~~ *payee*; or

(b) funds are received on behalf of, and made available to, the ~~payee~~ *payee*.

[Note: article 4 (~~13~~) (22) of the *Payment Services Directive*]

- payer*
- (1) (for the purposes of FEES 9) a person who holds a payment account and allows instructions to be given to transfer funds from that payment account, or who gives instructions to transfer funds.
  - (2) (for purposes other than FEES 9)
    - (a) a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or
    - (b) where there is no payment account, a person who gives a payment order.

- payee*
- (1) (for the purposes of FEES 9) a person who is the intended recipient of transferred funds ; and
  - (2) (for purposes other than FEES 9) a person who is the intended recipient of funds which have been the subject of a payment transaction.

*payment institution* an authorised payment institution, an EEA authorised payment institution or a small payment institution.

[Note: articles 4(4) and ~~26(3)~~ 32(3) of the *Payment Services Directive*]

- payment instrument*
- (1) (in *BCOBS*) any personalised device or personalised set of procedures agreed between the *banking customer* and the *firm* used by the *banking customer* to initiate an instruction or request by the *banking customer* to the *firm* to make a payment.
  - (2) (except in BCOBS) (in accordance with regulation 2(1) of the Payment Services Regulations) any:
    - (a) personalised device; or
    - (b) personalised set of procedures agreed between the payment service user and the payment service provider,  
used by the payment service user in order to initiate a payment order.

*payment service* (in accordance with regulation 2(1) of, and Schedule 1 to, the *Payment Services Regulations*):

- (a) ~~Any~~ Subject to (b), any of the following activities when carried out as a regular occupation or business activity:
  - (i) services enabling cash to be placed on a ~~payment account~~ payment account and all of the operations

- required for operating a ~~payment account~~ payment account;
- (ii) services enabling cash withdrawals from a ~~payment account~~ payment account and all of the operations required for operating a ~~payment account~~ payment account;
  - (iii) execution of ~~the following types of payment transaction~~ payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
    - (A) ~~direct debits~~ execution of direct debits, including one-off ~~direct debits~~ direct debits;
    - (B) ~~payment transactions~~ execution of payment transactions ~~executed~~ through a payment card or a similar device;
    - (C) ~~credit transfers~~ execution of credit transfers, including standing orders;
  - (iv) execution of ~~the following types of payment transaction~~ payment transactions where the funds are covered by a credit line for the a payment service user:
    - (A) ~~direct debits~~ execution of direct debits, including one-off ~~direct debits~~ direct debits;
    - (B) ~~payment transactions~~ execution of payment transactions ~~executed~~ through a payment card or a similar device;
    - (C) ~~credit transfers~~ execution of credit transfers, including standing orders;
  - (v) ~~issuing payment instruments~~ issuing payment instruments or ~~acquiring payment transactions~~ acquiring payment transactions;
  - (vi) ...
  - (vii) execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods or services. [deleted]

(viii) ~~payment transactions~~ payment initiation services;

(ix) ~~payment transactions~~ account information services.

(b) The following activities do not constitute ~~payment services~~ payment services:

(i) ~~payment transactions~~ payment transactions executed wholly in cash and directly between the ~~payer~~ payer and the ~~payee~~ payee, without any intermediary intervention;

(ii) ~~payment transactions~~ payment transactions between the ~~payer~~ payer and the ~~payee~~ payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and payee;

...

(iv) ~~payment transactions~~ payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;

(v) services where cash is provided by the ~~payee~~ payee to the ~~payer~~ payer as part of a ~~payment transaction~~ payment transaction for the purchase of goods or services following an explicit request by the ~~payer~~ payer immediately before the execution of the ~~payment transaction~~ payment transaction;

(vi) ~~money~~ cash-to-cash currency exchange ~~business~~ consisting of cash-to-cash operations where the funds are not held on a ~~payment account~~ payment account;

(vii) ~~payment transactions~~ payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the ~~payee~~ payee:

...

(viii) ~~payment transactions~~ payment transactions carried out within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;

(ix) ~~payment transactions~~ payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by

persons referred to in ~~(h)~~ (viii) or by investment firms, ~~full~~ credit institutions, collective investment undertakings, asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;

- (x) services provided by technical service providers, which support the provision of *payment services*, without the provider entering at any time into possession of the funds to be transferred, excluding *payment initiation services* or *account information services* but including:

...

- (xi) services based on ~~instruments~~ specific *payment instruments* that can be used ~~to acquire goods or services~~ only in a limited way and meet one of the following conditions:

- (A) allow the holder to acquire goods or services only in ~~or on~~ the issuer's premises; or

- (B) ~~under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services, are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or~~

- (C) may be used only to acquire a very limited range of goods or services; or

- (D) are valid only in a single *EEA state*, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

~~and for these purposes the "issuer" is the person who issues the instrument in question;~~

- (xii) ~~payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between~~

~~the payment service user and the supplier of the goods and services; payment transactions~~ resulting from services provided by a provider of electronic communications networks or services, including transactions between persons other than that provider and a subscriber, where those services are provided in addition to electronic communications services for a subscriber to the network or service, and where the additional service is:

- (A) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or
- (B) performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere,

provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240;

- ~~(A) payment transactions~~ payment transactions carried out ~~between payment service providers, or their agents or branches, for their own account;~~
- ~~(B) payment transactions~~ payment transactions and related ~~services~~ services between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a *payment service provider* other than an undertaking belonging to the same group;
- ~~(C) cash withdrawal services by providers to withdraw cash by means of provided through automated automatic teller machines where the provider is acting on behalf of one or more card issuers, which are is not party to the framework contract with the customer withdrawing money from a payment account payment account, where no and does not conduct any other payment service payment service is conducted by the provider.~~

[Note: articles 3 and 4(3) of, and the Annex 1 to, the *Payment Services Directive*]

*payment service* (1) (except in *DISP*) (in accordance with regulation 2(1) of the

*provider*

*Payment Services Regulations*) any of the following *persons* when they carry out a *payment service*:

- (a) an *authorised payment institution*;
- (b) a *small payment institution*;
- (ba) a registered account information service provider;
- (c) an *EEA authorised payment institution*;
- (ca) an *EEA registered account information service provider*,
- (d) a ~~full~~ *credit institution*;
- (e) an *electronic money issuer*;
- (f) the Post Office Limited;
- (g) the Bank of England, the European Central Bank and the national central banks of *EEA States* other than the *United Kingdom*, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
- (h) government departments and local authorities, other than when carrying out functions of a public nature.

[Note: article 1(1) of the *Payment Services Directive*]

- (2) (in *DISP* and ~~*FEES 5.5*~~) as in (1) but excluding a ~~full~~ *credit institution*.

...

*payment service user*

(in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* when making use of a *payment service* in the capacity of either ~~payer~~ payer, or ~~payee~~ payee, or both.

[Note: article 4(10) of the *Payment Services Directive*]

*Payment Services Directive*

Directive ~~2007/64/EC~~ (EU) 2015/2366 of the European Parliament and of the Council of ~~13th November 2007~~ 25 November 2015 on payment services in the internal market amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

*Payment Services Regulations*

with respect to an activity carried on before 13 January 2018 the Payment Services Regulations 2009 (SI 2009/209), and with respect to an activity carried on on or after 13 January 2018 the Payment Services Regulations 2017 (SI 2017/752).

*payment  
transaction*

- (1) (for the purposes of FEES 9) an action of transferring funds, initiated by the payer or on its behalf or by the payee, irrespective of any underlying obligations between the payer and the payee.
- (2) (for purposes other than FEES 9) an act initiated by the payer or payee, or on behalf of the payer, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee.

*small payment  
institution*

(in accordance with regulation 2(1) of the *Payment Services Regulations*):

- (a) a person registered as a small payment institution pursuant to regulation 14 of the *Payment Services Regulations* and included by the FCA in the *Financial Services Register* pursuant to regulation 4(1)(b) of the *Payment Services Regulations* (the register of certain payment service providers);  
or
- (b) a person included by the FCA in the *Financial Services Register* pursuant to regulations 151(1) and 153(1) of the *Payment Services Regulations* (transitional provisions).

## Annex B

### Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 3 Rules about application

##### 3.1 Who?

...

- 3.1.8 G The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive*, the *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* and the *Electronic Money Directive* to *credit institutions* (see Parts ~~5 and 6~~ 6 and 7 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or applied by the *Consumer Credit Directive* (see, for example, the information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)).

Annex C

**Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)**

In this Annex, underlining indicates new text.

**1 Annex 1 Detailed application of SYSC**

...

Part 3	Tables summarising the application of the common platform requirements to different types of firm			
...				
Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
<u>SYSC 9.2</u> <u>G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Applicable to credit institutions only, not including incoming EEA firms which have permission for cross border services only and which do not carry on regulated activities in the United Kingdom.</u>

...

After SYSC 9.1 (General rules on record-keeping) insert the following new section. The text is all new and is not underlined.

**9.2 Credit institutions providing account information services or payment initiation services**

- 9.2.1 R A *credit institution* must keep records of any *account information services* and *payment initiation services* it provides.
- 9.2.2 R A *UK firm* must keep the records required by SYSC 9.2.1R in respect of *account information services* and *payment initiation services* provided anywhere in the *EEA*. The records must make clear in which *EEA State* those services were provided.
- 9.2.3 R An *EEA firm* must keep the records required by SYSC 9.2.1R in respect of *account information services* and *payment initiation services* provided in the *UK*.
- 9.2.4 R The records required by SYSC 9.2.1R must be sufficient to enable the *credit institution* to provide to the *FCA*, upon request, the following information:
- (1) The number of different *payment accounts* that the *credit institution* has accessed for the purposes of providing *account information services*.
  - (2) The number of *payment service users* who have used the *account information services* provided by the *credit institution*.
  - (3) The number of different *payment accounts* that the *credit institution* has accessed for the purposes of providing *payment initiation services*.
  - (4) The number of *payment transactions* the *credit institution* has initiated when providing *payment initiation services*.
- 9.2.5 R The records required by SYSC 9.2.1R must be sufficient to enable the *credit institution* to provide the *FCA* with the information specified in SYSC 9.2.4R for each calendar year in the previous five years, except that there is no requirement to record this information for any period prior to 13 January 2018.
- 9.2.6 G
- (1) When keeping records in accordance with SYSC 9.2.4R (1) and (3), *credit institutions* should count each individual payment account once, even where it has been accessed multiple times.
  - (2) When keeping records in accordance with SYSC 9.2.4R (2), *credit institutions* should count each customer once (including where the customer has used the *account information services* multiple times).

- 9.2.7 G *Credit institutions providing account information services and payment initiation services* are also required to notify the *FCA* in accordance with *SUP 15.8.12R*.

## Annex D

### Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 5 Regulators' logos and the Key facts logo

##### 5.1 Application and Purpose

Application

5.1.1 G This chapter contains:

... (1) *guidance for firms, authorised payment institutions, registered account information service providers and authorised electronic money institutions and their appointed representatives, agents or tied agents on the circumstances in which the FCA permits them to reproduce the FSA and FCA logos;*

...

...

#### 7 Charging consumers for telephone calls

##### 7.1 Application

...

7.1.4 R This chapter does not apply ~~for~~ to telephone lines which:

(1) enable *payment service users* to request information to which paragraph (2) of regulation ~~48~~ 56 of the *Payment Services Regulations* applies; or

...

...

#### Sch 4 Powers exercised

...

##### 4.2G Powers to make rules

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the rules in <i>GEN</i> :	
	...

	Section 226 (Compulsory jurisdiction) (including as applied by <del>regulation 125</del> <u>regulations 117 and 133</u> of the <i>Payment Services Regulations</i> and article 26(1) (Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms) of the <i>MCD Order</i> )
	...
	Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority) (including as applied by article 25 (Application of provisions of the Act to the FCA in respect of its supervision of consumer buy-to-let mortgage firms) of the <i>MCD Order</i> ), and by regulation 15A of the <i>ADR Regulations</i>
	<u>Paragraph 23 (fees) of Schedule 1ZA as applied by regulation 118(1) of the <i>Payment Services Regulations</i></u>
	...

**Sch 4.3G**

	The following additional powers have been exercised by the <i>FCA</i> to make the <i>rules</i> in <i>GEN</i> :
	...
	Regulations <del>82</del> <u>109</u> (Reporting requirements), <del>86</del> <u>112</u> (Proposal to take disciplinary measures) and <del>92</del> <u>118</u> (Costs of supervision) of and paragraph 1 of Schedule <del>5</del> <u>6</u> (Disciplinary powers) to the <i>Payment Services Regulations</i>

...

**Sch 4.5G Powers to issue statements**

	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> to issue the parts of the statements in <i>GEN</i> :
	...
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule <del>5</del> <u>6</u> to the <i>Payment Services Regulations</i> , <del>paragraph 1</del> <u>paragraph 1</u> of Schedule 3 to the <i>Electronic Money Regulations</i> , regulation 29(1) of the Legal Aid, <del>Sentencing</del> <u>Sentencing</u> and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635) and regulation 28(1) of the <i>Immigration Regulations</i>
	...
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule <del>5</del> <u>6</u> to the <i>Payment Services Regulations</i> and <del>paragraph 3</del> <u>paragraph 3</u> of Schedule 3 to the <i>Electronic Money Regulations</i> and by regulation 71(2) of the <i>AIFMD UK regulation</i>

...
Section 210 (Statements of policy) (including as applied by regulation <del>86</del> <u>112</u> (6) of the <i>Payment Services Regulations</i> , regulation 53(6) of the <i>Electronic Money Regulations</i> , regulation 71(3) of the <i>AIFMD UK regulation</i> , regulation 29(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635), regulation 28(2) (Statements of policy) of the <i>Immigration Regulations</i> and article 23(4) (Application of provisions of the Act to registered consumer buy-to-let mortgage firms) of the <i>MCD Order</i> )
...
Section 395 (The FCA's and PRA's procedures) (including as applied by paragraph <del>7</del> <u>9</u> of Schedule <del>5</del> <u>6</u> to the <i>Payment Services Regulations</i> , paragraph 8 of Schedule 3 to the <i>Electronic Money Regulations</i> , regulation 30(7) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635), article 3(11) of the <i>Financial Services Act 2012</i> (Consumer Credit) Order 2013, regulation 29 (Application of Part 26 of the 2000 Act) of the <i>Immigration Regulations</i> and article 24(2) (Application of procedural provisions of the Act) of the <i>MCD Order</i> )
...

**Sch 4.6G**

The following additional powers and related provisions have been exercised by the *FCA* to issue the parts of the statements in *GEN*:

...
Regulation <del>93</del> <u>120</u> (Guidance) of the <i>Payment Services Regulations</i>
...

...

**Sch 4.8G**

The following additional powers and related provisions have been exercised by the *FCA* in *GEN* to direct, require or specify:

...
Articles 18 (Obligations of registered consumer buy-to-let mortgage firms) and 19 (Power to direct registered consumer buy-to-let mortgage firms to take appropriate action) of the <i>MCD Order</i>
<u>Regulations 30(4) and (5) (Supervision of firms exercising passport rights), 71(8) (Limits on the use of payment instruments and access to payment accounts), 98(3) (Management of operational and security risks), 99(2) (Incident reporting), 105(4) (Access to bank accounts) and 109 (Reporting</u>

	requirements) of the <i>Payment Services Regulations</i>
--	--

...

**Sch 4.12G** The following additional powers have been exercised by the *FCA* to give the other guidance in *GEN*:

	...
	Regulation <del>93</del> <u>120</u> (Guidance) of the <i>Payment Services Regulations</i>
	...

...

## Annex E

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 5 Distance communications

##### 5.1 The distance marketing disclosure rules

...

Exception: contracts for payment services

...

- 5.1.3B G Where a *distance contract* covers both *payment services* and *non-payment services*, this exception applies only to the ~~payment services~~ payment services aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part ~~5~~ 6 of the *Payment Services Regulations*.

## Annex F

### Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Application

### 1.1 General application

...

1.1.3 R Except as provided for in *BCOBS* 1.1.4R, this sourcebook does not apply to:

- (1) *payment services* where ~~Part 5 and 6~~ Parts 6 and 7 of the *Payment Services Regulations* apply; or

...

1.1.4 R (1) Chapters 2, 2A, 5 and 6 of *BCOBS* (except for *BCOBS* ~~5.1.11R~~ 5.1.10AR to *BCOBS* 5.1.19R) and *BCOBS* 4.3 apply to *payment services* where ~~Parts 5 and 6~~ and 7 of the *Payment Services Regulations* apply.

- (2) Chapter 3 of *BCOBS* applies to *payment services* where ~~Parts 5 and 6~~ and 7 of the *Payment Services Regulations* apply with the modifications set out in *BCOBS* 3.1.2R(2).

...

1.1.4A G Guidance on the application of the *Payment Services Regulations* can be found in *PERG* 15.

...

## 3 Distance communications

### 3.1 Distance marketing

...

Exception: contracts for payment services

3.1.13 G Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in *BCOBS* 3.1.2R(2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in ~~Part 5~~ 6 of the *Payment Services Regulations*.

...

## 4 Information to be communicated to banking customers

### 4.1 Enabling banking customers to make informed decisions

...

4.1.4 G The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

...

(8) ~~the terms of any compensation scheme if the *firm* cannot meet its obligations in respect of the *retail banking service*; [deleted]~~

...

...

## 5 Post sale

### 5.1 Post sale requirements

Service

...

5.1.3 G ~~To the extent that it relates to a *retail banking service*, a *firm* may find it helpful to take account of the British Bankers' Association "A Statement of Principles: Banks and businesses — working together". [deleted]~~

...

Security of electronic payments

5.1.10A R A *firm* that allows a *banking customer* to make electronic payments must consider the risk of fraud and put in place appropriate procedures and technical safeguards to ensure that such payments can be carried out in a safe and secure manner.

5.1.10B G Such procedures should include authentication procedures for the verification of the identity of the *banking customer* or the validity of the use of a particular *payment instrument*, proportionate to the risks involved. Where appropriate, *firms* may wish to consider the adoption of 'strong customer authentication', as defined in the *Payment Services Regulations*, and specified in regulatory technical standards adopted by the European Commission under article 98 of the *Payment Services Directive*.

...

Banking customer's liability for unauthorised payments

- 5.1.12 R (1) Subject to (2) and (3), a *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for an amount up to a maximum of ~~£50~~ £35 for losses in respect of unauthorised payments arising:
- (a) from the use of a lost or stolen *payment instrument*; or
  - (b) ~~where the *banking customer* has failed to keep the personalised security features of the *payment instrument* safe, from the misappropriation of the *payment instrument*.~~
- (1A) Paragraph (1) does not apply where:
- (a) the loss, theft or misappropriation of the *payment instrument* was not detectable by the *banking customer* prior to the payment; or
  - (b) the loss was caused by acts or omissions of an *employee* or *branch* of the *firm* or of an entity which carried out activities on behalf of the *firm*.

...

...

Non-execution or defective execution of payments

...

- 5.1.15 R ...
- (2) Where incorrect *payment routing information* has been provided to a *firm* in respect of a payment:
- (a) *BCOBS* 5.1.16R and *BCOBS* 5.1.17R do not apply in relation to that payment; ~~and~~
  - (b) the *firm* must make reasonable efforts to recover the funds involved in the transaction; and
  - (c) if the *firm* is unable to recover the funds it must, on receipt of a written request, provide to the *banking customer* all available relevant information in order for the *banking customer* to claim repayment of the funds.
- (2A) A *firm* that is in receipt of funds as the result of the provision of incorrect *payment routing information* by a *banking customer* must co-operate with the *firm* that is seeking to recover the funds, in particular by providing all relevant information for the collection of

the funds.

...

5.1.15A G For the purposes of *BCOBS* 5.1.15R ‘relevant information’ will include the name of the account holder into whose account the funds have been paid, and an address at which documents can be effectively serviced on that *person*.

5.1.15B G *BCOBS* 5.1.15R (2) (c) and *BCOBS* 5.1.15R (2A) may require a *firm* to disclose personal data about a customer to whom it provides a bank account where funds have been transferred to that account as a result of incorrect payment routing information. When providing information to the customer to ensure the fair and transparent processing of personal data as required by applicable data protection legislation a *firm* should take account of its potential obligations under *BCOBS* 5.1.15R(2)(c) and *BCOBS* 5.1.15R(2A).

...

### TP 1 Transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Materials to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provisions: dates in force</b>	<b>Handbook provisions: coming into force</b>
...					
<u>8</u>	<u><i>BCOBS</i> 5.1.10BG</u>	<u>R</u>	<u>A <i>firm</i> need not have regard to the guidance referred to in column (2) in interpreting and applying <i>BCOBS</i> 5.1.10AR until 18 months after the date on which the regulatory technical standards adopted under article 98 of the <i>Payment Services Directive</i> come into force.</u>	<u>13 January 2018 until the date specified in column (4)</u>	<u>13 January 2018</u>

## Annex G

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

#### Part 1: Comes into force on 13 January 2018

#### 15 Notifications to the FCA

#### 15.1 Application

...

15.1.3B D The directions and guidance in SUP 15.14 apply to *payment service providers* as set out in that section.

What?

15.1.4R ...

15.1.4AR D SUP 15.8 and SUP 15.14 apply with respect to the carrying on of *payment services* and other activities to which the *Payment Services Regulations* apply.

...

#### 15.2 Purpose

15.2.1 G ...

15.2.1A G *Payment service providers* are required to provide the FCA with such information as the FCA may direct in respect of their provision of *payment services* or compliance with the requirements imposed by or under Parts 2 to 7 or regulation 105 of the *Payment Services Regulations*. The purpose of SUP 15.8 is to request information from *full credit institutions* where they provide (or propose to provide) *account information services* or *payment initiation services*. In addition to this general requirement, *payment service providers* are required under the *Payment Services Regulations* to notify the FCA on the occurrence of certain specified events. The purpose of SUP 15.14 is to provide directions and guidance to *payment service providers* on the form, content and timing of notifications required under the *Payment Services Regulations*.

15.2.2 G This chapter sets out:

...

(4) *rules* requiring a *firm* to ensure that information provided to the FCA is accurate and complete; ~~section 398~~ section 398 of the Act makes it

an offence knowingly or recklessly to provide the *FCA* with information which is false or misleading in a material particular, in purported compliance with any requirement imposed by or under the *Act*; the purpose of the *rules* in *SUP* 15.6 is to ensure that *firms* take due care to ensure the accuracy of information and to require them to ensure that information is not only accurate but also complete; ~~and~~

- (5) material (in *SUP* 15.10 (Notification of suspicious transactions or orders (market abuse)) which makes reference to the provisions of the *Market Abuse Regulation* that detail requirements on the reporting of transactions or orders about which there is reasonable suspicion of *market abuse*; and
- (6) directions and guidance for a *payment service provider* on the form, content and timing of notifications required to be submitted to the *FCA* in accordance with or in relation to the *Payment Services Regulations*.

...

## 15.8 Notification in respect of particular products and services

...

15.8.11 ...

Credit institutions providing account information services or payment initiation services

15.8.12 D Unless *SUP* 15.8.13D applies, a *full credit institution* must notify the *FCA* before it starts to provide an *account information service* or a *payment initiation service*.

15.8.13 D A *full credit institution* which:

- (1) prior to 13 January 2018, started to provide a service which, if provided on or after 13 January 2018, would have constituted an *account information service* or a *payment initiation service*; and
- (2) continues to provide an *account information service* or a *payment initiation service* on 13 January 2018,

must notify the *FCA* that it is providing *account information services* or *payment initiation services* by 10 February 2018.

15.8.14 D A notification required under *SUP* 15.8.12 or *SUP* 15.8.13 must include a description of the *account information service* or *payment initiation service* that is being or is to be provided.

15.8.15 D The notification required under *SUP* 15.8.12 or *SUP* 15.8.13 must be made in accordance with the requirements in *SUP* 15.7 (Form and method of

notification).

...

After SUP 15.13 (Notification by CBTL firms) insert the following new section. The text is not underlined.

## **15.14 Notifications under the Payment Services Regulations**

### Application

15.14.1 G This section applies to *payment service providers*.

### Purpose

15.14.2 G The purpose of this section is to give directions and guidance to *payment service providers* relating to the form, content and timing of notifications required under the *Payment Services Regulations*.

### Notification by credit institutions under regulation 105

15.14.3 D A *full credit institution* to which regulation 105 of the *Payment Services Regulations* applies must notify the *FCA* if it refuses a request for access to *payment account* services from:

- (1) a *person* falling within paragraphs (1)(a) to (e) (excluding (1)(d)) of the *Glossary* definition of *payment service provider*; or
- (2) an applicant for authorisation or registration as such a *payment service provider*.

15.14.4 G References in this section to a refusal of a request for access to *payment account* services include a withdrawal or termination of access to such services.

15.14.5 G A notification required by regulation 105(3) of the *Payment Services Regulations* and SUP 15.14.3D must include duly motivated reasons for the refusal.

15.14.6 D Unless the *FCA* directs otherwise, a notification required by regulation 105(3) of the *Payment Services Regulations* and SUP 15.14.3D must be submitted by the *full credit institution* to the *FCA*:

- (1) in the form specified in SUP 15 Annex 9D;
- (2) by electronic means made available by the *FCA*; and
- (3) at the same time as it informs the *person* referred to in SUP 15.14.3D(1) or (2) of its refusal.

15.14.7 D If for any reason the *full credit institution* does not notify the *person*

referred to in *SUP* 15.14.3D(1) or (2) of its refusal, the *full credit institution* must submit the notification required by *SUP* 15.14.3D immediately following the decision by the *full credit institution* to refuse access.

15.14.8 G The direction in *SUP* 15.14.6D will not apply if the *FCA* gives a different direction to a specific *credit institution*, in the light of the particular circumstances surrounding a refusal of access to *payment account* services, about how to notify the *FCA*. The *FCA* is likely to be minded to do so where a *credit institution* decides to withdraw access to a large number of *persons* falling within paragraphs (1)(a) to (e) (excluding (1)(d)) of the *Glossary* definition of *payment service provider* simultaneously, such that complying with *SUP* 15.14.6D becomes impractical, and provides advance notice of the proposed withdrawal to their usual supervisory contact at the *FCA*. For these purposes, fewer than ten *persons* is unlikely to be considered a large number.

15.14.9 G *Credit institutions* are reminded of the general notification requirements in *SUP* 15.3, including the obligation to notify the *FCA* as soon as they become aware of any matter (including a matter which may occur in the foreseeable future) which could affect their ability to continue to provide adequate services to their *customers* and which could result in serious detriment to a *customer* of the *credit institution* (*SUP* 15.3.1R(3)).

Notification by account servicing payment service providers under regulation 71

15.14.10 D An *account servicing payment service provider* to which regulation 71(8)(c) of the *Payment Services Regulations* applies must notify the *FCA* if it denies an *account information service provider* or a *payment initiation service provider* access to a *payment account* under regulation 71(7).

15.14.11 D A notification required by regulation 71(8)(c) of the *Payment Services Regulations* and *SUP* 15.14.10D must include details of the case and the reasons for denying access.

15.14.12 D A notification required by regulation 71(8)(c) of the *Payment Services Regulations* and *SUP* 15.14.10D must be submitted by the *account servicing payment service provider* to the *FCA*:

- (1) in the form specified in *SUP* 15 Annex 10
- (2) by electronic means made available by the *FCA*; and
- (3) immediately after the first occasion on which it denies the *account information service provider* or the *payment initiation service provider* in question access to a *payment account*.

15.14.13 G Where:

- (1) an *account servicing payment service provider* denies access to more than one *payment account* or to a *payment account* on multiple

consecutive occasions; and

- (2) these denials of access:
- (a) are in respect of the same *account information service provider* or *payment initiation service provider*; and
  - (b) arise out of the same facts and happen for the same reasons,

the *account servicing payment service provider* is required to submit only a single notification in respect of them under regulation 71(8)(c) of the *Payment Services Regulations* and *SUP 15.14.10D*.

15.14.14 G Where an *account servicing payment service provider* has already submitted a notification in accordance with regulation 71(8)(c) of the *Payment Services Regulations* and *SUP 15.14.10D* and continues to deny access to a *payment account*, it is not required to notify the *FCA* of a consecutive denial of access that happens after the original notification was sent if it:

- (1) is in respect of the same *account information service provider* or *payment initiation service provider*; and
- (2) arises out of the same facts and happens for the same reasons.

15.14.15 D An *account servicing payment service provider* that has previously submitted a notification in accordance with regulation 71(8)(c) of the *Payment Services Regulations* and *SUP 15.14.10D* must notify the *FCA* if it subsequently restores access to the *payment account* for the *account information service provider* or *payment initiation service provider* that was the subject of the original notification, unless it indicated in the first notification that it intended to immediately restore access and access was so restored.

15.14.16 D A notification required under *SUP 15.14.15D* must be submitted by the *account servicing payment service provider* to the *FCA*:

- (1) in the form specified in *SUP 15 Annex 10*;
- (2) by electronic means made available by the *FCA*; and
- (3) immediately after it restores access to the *payment account(s)* for the *account information service provider* or *payment initiation service provider*.

15.14.17 G For the purposes of *SUP 15.14.12D* and *SUP 15.14.16D* we would expect the *account servicing payment service provider* to complete and submit the notification as quickly as possible.

Notification of major operational or security incidents under regulation 99

15.14.18 G Regulation 99(1) of the *Payment Services Regulations* provides that, if a

*payment service provider* becomes aware of a major operational or security incident, the *payment service provider* must, without undue delay, notify the *FCA*. The purpose of this section is to direct the form and manner in which such notifications must be made and the information they must contain, in exercise of the power in regulation 100(2) of the *Payment Services Regulations*.

- 15.14.19 G The *EBA* has issued Guidelines on incident reporting under the *Payment Services Directive* that specify the criteria a *payment service provider* should use to assess whether an operational or security incident is major and needs to be reported to the *FCA*. These Guidelines also specify the format for the notification and the procedures the *payment service provider* should follow.
- 15.14.20 D *Payment service providers* must comply with the *EBA*'s Guidelines on incident reporting under the *Payment Services Directive* as issued on 27 July 2017 where they are addressed to *payment service providers*.
- 15.14.21 D In particular, a notification required by regulation 99(1) of the *Payment Services Regulations* must be submitted by the *payment service provider* to the *FCA*:
- (1) within the timescales and at the frequencies specified in the *EBA*'s Guidelines on incident reporting under the *Payment Services Directive*;
  - (2) in writing on the form specified in *SUP 15 Annex 11D* ; and
  - (3) by such electronic means as the *FCA* may specify.
- 15.14.22 G *Payment service providers* should note that article 16(3) of Regulation (EU) No 1093/2010 also requires them to make every effort to comply with the *EBA*'s Guidelines on incident reporting under the *Payment Services Directive*.
- 15.14.23 G Where the electronic means of submission of notifications is known not to be available or operated at the time the incident is first detected, the notification should be sent to the *FCA* as soon as the electronic means of submission becomes available and operational again. Unless the *FCA* has informed a specific *payment service provider* that electronic means of submission are also available to it and operated at other times, the electronic means of submission are available and operated during normal operating hours, as specified by the *FCA*.
- 15.14.24 G The *EBA*'s Guidelines on incident reporting under the *Payment Services Directive* contain guidelines on the completion of the form specified in *SUP 15 Annex 11D*. *Payment service providers* should use the same form in all reports concerning the same incident. *Payment service providers* may not have sufficient information to complete all parts of the form in the initial report. They should complete the form in an incremental manner and on a best effort basis as more information becomes readily available in the

course of their internal investigations.

General provisions

- 15.14.25 D *SUP 15.6.1R to SUP 15.6.6G (Inaccurate, false or misleading information) apply to payment service providers that are required to make notifications in accordance with this section as if a reference to firm in SUP 15.6.1R to SUP 15.6.6G were a reference to the relevant category of payment service provider and a reference to a rule were a reference to the directions in this section.*
- 15.14.26 G *Payment service providers are reminded that regulation 142 of the Payment Services Regulations (Misleading the FCA or the Payment Systems Regulator) makes it an offence for a person to knowingly or recklessly provide the FCA with information which is false or misleading in a material particular in purported compliance with the directions given in this section or any other requirement imposed by or under the Payment Services Regulations.*
- 15.14.27 G *If a payment service provider fails to comply with the directions in this section then the notification is invalid and there may be a breach of the regulation of the Payment Services Regulations or the direction that required the notification to be given.*
- 15.14.28 G *The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the FCA. They do not apply to notifications required under this section because of the specific directions given in this section.*

**15 Annex 1R**      **Application of SUP 15 to incoming EEA firms and, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions**

...	
3.	For any other <i>incoming EEA firm or, incoming Treaty firm, EEA authorised payment institution or EEA authorised electronic money institution</i> , SUP 15 applies as set out in the following table.

Applicable sections		Application
...		
SUP 15.11	...	
<u>SUP 15.14</u>	<u>Notifications under the Payment Services</u>	<u>Apply in so far as responsibility for the matter in question is not reserved by an EU instrument to the</u>

	<u>Regulations</u>	<u>payment service provider's Home State regulator</u>
--	--------------------	--

- 15 Annex  
1AR**
- (1) *SUP 15 does not apply to an incoming EEA firm which has permission for cross border services only and which does not carry on regulated activities in the United Kingdom.*
- (2) ...
- (3) *SUP 15 does not apply to an EEA authorised payment institution or an EEA authorised electronic money institution which exercises passport rights in the United Kingdom on a cross border services basis only.*

...

Insert the following new Annexes after SUP 15 Annex 8R Form G: The Retail Investment Adviser Complaints Notifications Form. The text is not underlined.

# 15 Annex Form NOT002 Payment Account Service rejections or withdrawals 9D (notification by credit institutions under regulation 105)

NOT002 - Notification of refusal or withdrawal of access to payment account services to PSPs and prospective PSPs (regulation 105 PSRs 2017)

**Firm details**

1 Who should the FCA contact at the credit institution in relation to this notification?

A	B	C	D
Name	Position	Telephone number	Email

**Notification of refusal or withdrawal of access to payment account services**

2 Details of the payment service provider (PSP) or prospective PSP refused access to payment account services

A	B	C
FRN	Name of PSP or prospective PSP	Head office address

3 Please confirm the regulatory status of the PSP that was refused access to payment account services or has had access withdrawn

A
[select]
"authorised or registered by the FCA or another EEA regulator" "a person that has submitted an application for registration or authorisation"

4 What products and/or services was the PSP or prospective PSP accessing (in the case of withdrawal) or seeking access to?

5 safeguarding account

A	B
yes/no	operational account (i.e. business current account)

6 payment accounts (for the purposes of making transactions on behalf of customers)

C	D
yes/no	other

7 What payment services did the PSP or prospective PSP provide or intend to provide?

A
[select one or more]
"(a) services enabling cash to be placed on a payment account and all of the operations required for operating a payment account;" "(b) services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account;" "(c) the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider— (i) execution of direct debits, including one-off direct debits; (ii) execution of payment transactions through a payment card or a similar device; (iii) execution of credit transfers, including standing orders;" "(d) the execution of payment transactions where the funds are covered by a credit line for a payment service user— (i) execution of direct debits, including one-off direct debits; (ii) execution of payment transactions through a payment card or a similar device; (iii) execution of credit transfers, including standing orders;" "(e) issuing payment instruments or acquiring payment transactions;" "(f) money remittance;" "(g) payment initiation services;" "(h) account information services."

8 When was a decision made to refuse or withdraw access?

A
[date]

9 Was access refused or withdrawn?

Yes/no
--------

10 Was the refusal following receipt of an application?

Yes/no
--------

11 OR, was the PSP or prospective PSP told it was not eligible to apply or was not permitted to progress its application in a timely manner?

Yes/no
--------

12 Withdrawn (please answer questions 13 and 14)

A	B
yes/no	Refused (please answer questions 15 - 19)

13 On what date was the decision to withdraw access communicated to the PSP?  
14 What period of notice was given if access was withdrawn?

A
[date]

15 Did the credit institution provide its criteria to the PSP or prospective PSP enquiring about access to payment account services?  
16 If not, please explain why no criteria were provided

yes/no

17 Was the decision to refuse access communicated to the PSP or prospective PSP seeking access?  
18 If so, on what date was the decision communicated?  
19 If not, please explain why the decision was not communicated

yes/no
[date]

A

20 What were the duly motivated reasons for refusing or withdrawing access (as per Regulation 105(4) PSRs 2017)? Where appropriate, please make reference to the criteria against which the access seeker was assessed.

--

21 Please describe the process that was followed to make the decision (for example, the person(s) with responsibility for making the decision, any deadlines that were applied, and the arrangements and/or procedures that were followed when considering whether to refuse or withdraw access)

--

22 Were the reasons for the decision communicated to the PSP or prospective PSP seeking access or having access withdrawn?

yes/no
--------

23 Was the PSP or prospective PSP provided with an opportunity to respond to the credit institutions' concerns or rectify any identified risks before the decision to refuse/ withdraw access was made?

yes/no
--------

24 If not, please explain why no opportunity was provided

--

## 15 Annex Form NOT003 AIS/PIS denial (notification by account servicing payment service providers under regulation 71)

NOT003 - AIS/PIS denial (PSRs 2017 regulation 71(8): ASPSP denial of access to payment accounts to a provider of AIS or PIS)

**Special Instructions**

If this is a notification that access has been denied, answer all questions except questions 2 and 6

If this is a notification that access has been restored please only answer questions 1, 2 and 6

**Type of notification**

- 1 Is this notification:  
(i) an initial notification that access to a payment account has been denied under regulation 71(7) of the Payment Services Regulation 2017; or  
(ii) a notification that the issues set out in a previous notification have been resolved such that access has been restored (in accordance with SUP 15.14.13 and SUP 15.14.14)?

A
Access denied Access restored

- 2 If this is a notification that access has been restored, please provide the case ID provided when you submitted the relevant denial notification

B
[insert case ID from previous denial notification]

**ASPSP submitting the notification**

- 3 Details of the ASPSP submitting the notification

A
Details of individual who can be contacted about this notification (title, name, telephone & email address)

**Information about the denial of access**

- 4 Details of the AISP/PISP that has been denied access

A
Name

B
The authorisation number of the AISP/PISP contained in the public register(s) of the home Member State (e.g. the FCA refers to this as the "Firm Reference Number")

C
Name of the competent authority with which the AISP or PISP is registered or authorised

- 5 Denial of access

A
On this occasion has access been denied to a single payment account or to all payment accounts or a category of payment accounts?
single payment all payment accounts category of payments accounts

B
Time and date at which access was denied

C
What were the reasons for taking action? How did these relate to unauthorised or fraudulent access to the payment account?

D
What was prevented? (select)
Access to data Payment initiation

E
Please provide a description of the circumstances that led to the denial of access

F
Do you intend to immediately restore access?
Yes No Unknown

- 6 Restoration of access

A
Where access has been restored, please provide details of how the issue was resolved:

# 15 Annex Form Notification of major operational or security incidents – PSD2 11D

Major Incident Report	
<input type="checkbox"/> Initial report	within 4 hours after detection
<input type="checkbox"/> Intermediate report	maximum of 3 business days from previous report
<input type="checkbox"/> Last intermediate report	
<input type="checkbox"/> Final report	within 2 weeks after closing the incident
<input type="checkbox"/> Incident reclassified as non-major	Please explain: <input style="width: 100%;" type="text"/>

  

Report date <input style="width: 100%;" type="text" value="DD/MM/YYYY"/>	Time <input style="width: 100%;" type="text" value="HH:MM"/>
Incident identification number, if applicable (for interim and final reports) <input style="width: 100%;" type="text"/>	

A - Initial report			
A 1 - GENERAL DETAILS			
<b>Type of report</b>			
Type of report	<input type="checkbox"/> Individual <input type="checkbox"/> Consolidated		
<b>Affected payment service provider (PSP)</b>			
PSP name	<input style="width: 100%;" type="text"/>		
PSP unique identification number, if relevant	<input style="width: 100%;" type="text"/>		
PSP authorisation number	<input style="width: 100%;" type="text"/>		
Head of group, if applicable	<input style="width: 100%;" type="text"/>		
Home country	<input style="width: 100%;" type="text"/>		
Country/countries affected by the incident	<input style="width: 100%;" type="text"/>		
Primary contact person	Email	Telephone	
Secondary contact person	Email	Telephone	
<b>Reporting entity (complete this section if the reporting entity is not the affected PSP in case of delegated reporting)</b>			
Name of the reporting entity	<input style="width: 100%;" type="text"/>		
Unique identification number, if relevant	<input style="width: 100%;" type="text"/>		
Authorisation number, if applicable	<input style="width: 100%;" type="text"/>		
Primary contact person	Email	Telephone	
Secondary contact person	Email	Telephone	
A 2 - INCIDENT DETECTION and INITIAL CLASSIFICATION			
Date and time of detection of the incident	<input style="width: 100%;" type="text" value="DD/MM/YYYY, HH:MM"/>		
The incident was detected by <sup>(1)</sup>	<input style="width: 100%;" type="text"/>	If Other, please explain: <input style="width: 100%;" type="text"/>	
Please provide a short and general description of the incident (should you deem the incident to have an impact in other EU Member States(s), and if feasible within the applicable reporting deadlines, please provide a translation in English)	<input style="width: 100%; height: 50px;" type="text"/>		
What is the estimated time for the next update?	<input style="width: 100%;" type="text" value="DD/MM/YYYY, HH:MM"/>		

B - Intermediate report													
B 1 - GENERAL DETAILS													
<p>Please provide a more DETAILED description of the incident. e.g. information on:</p> <ul style="list-style-type: none"> <li>- What is the specific issue?</li> <li>- How it happened</li> <li>- How did it develop</li> <li>- Was it related to a previous incident?</li> <li>- Consequences (in particular for payment service users)</li> <li>- Background of the incident detection</li> <li>- Areas affected</li> <li>- Actions taken so far</li> <li>- Service providers/ third party affected or involved</li> <li>- Crisis management started (internal and/or external (Central Bank Crisis management))</li> <li>- PSP internal classification of the incident</li> </ul>													
Date and time of beginning of the incident (if already identified)	DD/MM/YYYY, HH:MM												
Incident status	<input type="checkbox"/> Diagnostics <input type="checkbox"/> Recovery <input type="checkbox"/> Repair <input type="checkbox"/> Restoration												
Date and time when the incident was restored or is expected to be restored	DD/MM/YYYY, HH:MM												
B 2 - INCIDENT CLASSIFICATION & INFORMATION ON THE INCIDENT													
Overall impact	<input type="checkbox"/> Integrity <input type="checkbox"/> Confidentiality <input type="checkbox"/> Continuity <input type="checkbox"/> Availability <input type="checkbox"/> Authenticity												
Transactions affected <sup>(2)</sup>	<table border="1"> <tr> <td>Number of transactions affected</td> <td></td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> <tr> <td>As a % of regular number of transactions</td> <td></td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> <tr> <td>Value of transactions affected in EUR</td> <td></td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> </table> Comments:	Number of transactions affected		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation	As a % of regular number of transactions		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation	Value of transactions affected in EUR		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation
Number of transactions affected		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
As a % of regular number of transactions		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
Value of transactions affected in EUR		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
Payment service users affected <sup>(3)</sup>	<table border="1"> <tr> <td>Number of payment service users affected</td> <td></td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> <tr> <td>As a % of total payment service users</td> <td></td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> </table>	Number of payment service users affected		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation	As a % of total payment service users		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation				
Number of payment service users affected		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
As a % of total payment service users		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
Service downtime <sup>(4)</sup>	<table border="1"> <tr> <td>Total service downtime</td> <td>DD:HH:MM</td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> </table>	Total service downtime	DD:HH:MM	<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation								
Total service downtime	DD:HH:MM	<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
Economic impact <sup>(5)</sup>	<table border="1"> <tr> <td>Direct costs in EUR</td> <td></td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> <tr> <td>Indirect costs in EUR</td> <td></td> <td><input type="checkbox"/> Actual figure</td> <td><input type="checkbox"/> Estimation</td> </tr> </table>	Direct costs in EUR		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation	Indirect costs in EUR		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation				
Direct costs in EUR		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
Indirect costs in EUR		<input type="checkbox"/> Actual figure	<input type="checkbox"/> Estimation										
High level of internal escalation	<input type="checkbox"/> YES <input type="checkbox"/> YES, AND CRISIS MODE (OR EQUIVALENT) IS LIKELY TO BE CALLED UPON <input type="checkbox"/> NO Describe the level of internal escalation of the incident, indicating if it has triggered or is likely to trigger a crisis mode (or equivalent) and if so, please describe												
Other PSPs or relevant infrastructures potentially affected	<input type="checkbox"/> YES <input type="checkbox"/> NO Describe how this incident could affect other PSPs and/or infrastructures												
Reputational impact	<input type="checkbox"/> YES <input type="checkbox"/> NO Describe how the incident could affect the reputation of the PSP (e.g. media coverage, potential legal or regulatory infringement, etc.)												
B 3 - INCIDENT DESCRIPTION													
Type of Incident	<input type="checkbox"/> Operational <input type="checkbox"/> Security												
Cause of incident	<input type="checkbox"/> Under investigation <input type="checkbox"/> External attack <input type="checkbox"/> Internal attack <input type="checkbox"/> External events <input type="checkbox"/> Human error <input type="checkbox"/> Process failure <input type="checkbox"/> System failure <input type="checkbox"/> Other												
	<table border="1"> <tr> <td> <input type="checkbox"/> Distributed/Denial of Service (D/DoS)  <input type="checkbox"/> Infection of internal systems  <input type="checkbox"/> Targeted intrusion  <input type="checkbox"/> Other            If Other, specify         </td> </tr> </table>	<input type="checkbox"/> Distributed/Denial of Service (D/DoS) <input type="checkbox"/> Infection of internal systems <input type="checkbox"/> Targeted intrusion <input type="checkbox"/> Other If Other, specify											
<input type="checkbox"/> Distributed/Denial of Service (D/DoS) <input type="checkbox"/> Infection of internal systems <input type="checkbox"/> Targeted intrusion <input type="checkbox"/> Other If Other, specify													
Was the incident affecting you directly, or indirectly through a service provider?	<input type="checkbox"/> Directly <input type="checkbox"/> Indirectly If indirectly, please provide the service provider's name												
B 4 - INCIDENT IMPACT													
Building(s) affected (Address), if applicable													
Commercial channels affected	<input type="checkbox"/> Branches <input type="checkbox"/> Telephone banking <input type="checkbox"/> Point of sale <input type="checkbox"/> E-banking <input type="checkbox"/> Mobile banking <input type="checkbox"/> Other <input type="checkbox"/> ATMs												
Payment services affected	<input type="checkbox"/> Cash placement on a payment account <input type="checkbox"/> Credit transfers <input type="checkbox"/> Money remittance <input type="checkbox"/> Cash withdrawal from a payment account <input type="checkbox"/> Direct debits <input type="checkbox"/> Payment initiation services <input type="checkbox"/> Operations required for operating a payment account <input type="checkbox"/> Card payments <input type="checkbox"/> Account information services <input type="checkbox"/> Acquiring of payment instruments <input type="checkbox"/> Issuing of payment instruments <input type="checkbox"/> Other												
Functional areas affected	<input type="checkbox"/> Authentication/authorisation <input type="checkbox"/> Clearing <input type="checkbox"/> Indirect settlement <input type="checkbox"/> Communication <input type="checkbox"/> Direct settlement <input type="checkbox"/> Other												
Systems and components affected	<input type="checkbox"/> Application/software <input type="checkbox"/> Hardware <input type="checkbox"/> Database <input type="checkbox"/> Network/infrastructure <input type="checkbox"/> Other												
Staff affected	<input type="checkbox"/> YES <input type="checkbox"/> NO Describe how the incident could affect the staff of the PSP/service provider (e.g. staff not being able to reach the office to support customers, etc.)												
B 5 - INCIDENT MITIGATION													
Which actions/measures have been taken so far or are planned to recover from the incident?													
Has the Business Continuity Plan and/or Disaster Recovery Plan been activated?	<input type="checkbox"/> YES <input type="checkbox"/> NO												
If so, when?	DD/MM/YYYY, HH:MM												
If so, please describe													
Has the PSP cancelled or weakened some controls because of the incident?	<input type="checkbox"/> YES <input type="checkbox"/> NO												
If so, please explain													



Amend the following text as shown.

## 16 Reporting requirements

### 16.1 Application

...

16.1.1A D The directions and *guidance* in SUP 16.13 apply to ~~an authorised payment institution and a small payment institution~~ a payment service provider as set out in that section.

16.1.1AA G Credit institutions and electronic money institutions should note that some of the directions in SUP 16.13 apply to them as well as to payment institutions and registered account information service providers.

16.1.1B ...

### 16.2 Purpose

16.2.1 G ...

(3) The FCA has supervisory functions under the *Payment Services Regulations* and the *Electronic Money Regulations*. In order to discharge these functions, the FCA requires the provision of information on a regular basis. SUP 16.13 sets out the information that the FCA requires from *payment service providers* to assist it in the discharge of its functions as well as directions and guidance on the periodic reports that are required under the *Payment Services Regulations*. SUP 16.15 sets out the information that the FCA requires from *electronic money issuers* to assist it in discharging its functions and responsibilities under the *Electronic Money Regulations*.

...

## 16.13 Reporting under the Payment Services Regulations

### Application

16.13.1 G This section applies to ~~authorised payment institutions and small payment institutions~~ a payment service provider as set out in this section (see SUP 16.1.1AD).

### Purpose

16.13.2 G The purpose of this section is to:



- 16.13.2A G The purpose of this section is also to set out the rules applicable to authorised payment institutions and small payment institutions payment service providers in relation to complete and timely reporting and failure to submit reports.
- 16.13.2B G Authorised payment institutions and small payment institutions should refer to the transitional provisions in SUP TP 1.11 (Payment services and electronic money returns).

Reporting requirement

- 16.13.3 D (1) An authorised payment institution ~~or~~ a small payment institution, an EEA authorised payment institution or a registered account information service provider must submit to the FCA the duly completed return applicable to it as set out in column (2) of the table in SUP 16.13.4D.
- (2) An authorised payment institution ~~or~~ a small payment institution or a registered account information service provider must submit the return referred to in (1):

...

- 16.13.3-  
A D SUP 16.4.5R (Annual controllers report) and SUP 16.5.4R (Annual Close Links Reports) apply to an authorised payment institution as if a reference to firm in these rules were a reference to an authorised payment institution.
- 16.13.3A D SUP 16.3.11R (Complete reporting) and SUP 16.3.13R (Timely reporting) also apply to authorised payment institutions ~~and~~ small payment institutions, EEA authorised payment institutions and registered account information service providers as if a reference to firm in these rules were a reference to ~~authorised payments institutions and small payment institutions~~ these categories of payment service provider.
- 16.13.3B R SUP 16.3.14R (Failure to submit reports) also applies to ~~authorised payment institutions and small payment institutions~~ payment service providers that are required to submit reports or assessments in accordance with this section and the Payment Services Regulations as if a reference to firm in this rule were a reference to ~~authorised payments institutions and small payment institutions~~ the relevant category of payment service provider.
- 16.13.3C G Authorised payment institutions, small payment institutions and registered account information service providers are reminded that they should give the FCA reasonable advance notice of changes to their accounting reference date (among other things) under regulation 37 of the Payment Services Regulations. The accounting reference date is important because many frequencies and due dates for reporting to the FCA are linked to the accounting reference date.
- 16.13.4 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to authorised payment

*institutions and, small payment institutions, EEA authorised payment institutions and registered account information service providers.*

(1)	(2)	(3)	(4)	(5)
Type of <del>firm</del> payment service provider	Return	Format	Reporting frequency	Due date
<i>Authorised Payment Institution</i> <u>authorised payment institution</u>	Authorised Payment Institution Capital Adequacy Return	FSA056 (Note 1)	Annual (Note 2)	30 <i>business days</i> (Note 3)
<u>registered account information service provider</u>	<u>Authorised Payment Institution Capital Adequacy Return</u>	<u>FSA056 (Note 1)</u>	<u>Annual (Note 2)</u>	<u>30 <i>business days</i> (Note 3)</u>
<i>Small Payment Institution</i> <u>small payment institution</u>	Payment Services Directive Transactions	Article I. F SA057 (Note 4)	Article II. A nnual (Note 5)	Article III. <del>month</del> <u>month</u> (Note 3)
Note 1	When submitting the completed return required, the <i>authorised payment institution or registered account information service provider</i> must use the format of the return set out in SUP 16 <del>Annex 27AD</del> <u>Annex 27CD</u> . Guidance notes for the completion of the return are set out in SUP 16 <del>Annex 27BG</del> <u>Annex 27DG</u> .			
Note 2	This reporting frequency is calculated from an <i>authorised payment institution's or registered account information service provider's</i> accounting reference date.			
Note 3	...			
Note 4	When submitting the completed return required, the <i>small payment institution</i> must use the format of the return set out in SUP 16 <del>Annex 28AD</del> <u>Annex 28CD</u> . Guidance notes for the completion of the return are set out in SUP 16 <del>Annex 28BG</del> <u>Annex 28DG</u> .			
...				

Statistical data on fraud

16.13.5 G Regulation 109(4) of the Payment Services Regulations requires payment service providers to provide to the FCA statistical data on fraud relating to different means of payment.

- 16.13.6    G    This requirement applies to:
- (1)    *authorised payment institutions;*
  - (2)    *small payment institutions;*
  - (3)    *registered account information service providers;*
- 
- (4)    *electronic money institutions;*
  - (5)    *credit institutions;*

16.13.7    D    This statistical data on fraud must be submitted to the *FCA* by electronic means made available by the *FCA* using the format of the return set out in *SUP 16 Annex 27ED*. Guidance notes for the completion of the return are set out in *SUP 16 Annex 27FG*.

16.13.8    G    The return set out in *SUP 16 Annex 27ED* must be provided to the *FCA* at least once per year. The first return should cover the period beginning on 13 January 2018 and ending on 31 December 2018 and should be submitted by 31 January 2019. Subsequent returns should cover consecutive reporting periods of one year beginning on 1 January and ending on 31 December each year and should be submitted within 1 *month* of the end of the reporting period.

...

## **16.15    Reporting under the Electronic Money Regulations**

...

16.15.3    G    ...

16.15.3A    G    *Electronic money institutions* should refer to the transitional provisions in *SUP TP 1.11* (Payment services and electronic money returns).

Reporting requirement

...

16.15.8    D    The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *electronic money*

---

*issuers that are not credit institutions.*

(1) Type of <i>electronic money issuer</i>	(2) Return	(3) Format	(4) Reporting Frequency	(5) Due date (Note 4)
<i>Authorised electronic money institution</i> (Note 1)	<u>Balance sheet EMI and SEMI Questionnaire</u>	FSA059 <u>FIN060</u>	<u>Half Yearly Annual</u> (Note 3)	30 <i>business days</i>
	Income statement	FSA060	Half yearly (Note 3)	30 <i>business days</i>
	Capital requirements	FSA061	Half yearly (Note 3)	30 <i>business days</i>
	Safeguarding	FSA062	Half yearly (Note 3)	30 <i>business days</i>
	Supplementary information	FSA063	Half yearly (Note 3)	30 <i>business days</i>
	<i>Annual report and accounts</i>	No standard format	Annual (Note 3)	80 <i>business days</i>
<i>Small electronic money institutions</i> (Note 2)	<u>Return EMI and SEMI Questionnaire</u>	FSA064 <u>FIN060</u>	<u>Half yearly Annual</u> (Note 5)	30 <i>business days</i>
	Total electronic money outstanding @ 31st December	FSA065	Annual (Note 5)	1 <del>month</del> <u>month</u>
	<i>Annual report and accounts</i>	No standard format	Annual (Note 5)	80 <i>business days</i>
(a) the Post Office Limited (b) the Bank of England, the ECB and the national central banks of <i>EEA States</i> other than the <i>United Kingdom</i> (c) Government departments and local authorities	<i>Average outstanding electronic money</i>	No standard format	<u>Half yearly Annual</u> (Note 6)	30 <i>business days</i>

(d) <i>credit unions</i> (e) municipal banks (f) the National Savings Bank				
Note 1	When submitting the completed returns required, the <i>authorised electronic money institution</i> must use the format of the returns set out in <del>SUP 16 Annex 30A to SUP 16 Annex 30E</del> <u>SUP 16 Annex 30HD</u> . <u>Guidance notes for the completion of the return are set out in SUP 16 Annex 30IG.</u>			
Note 2	When submitting the completed returns required, the <i>small electronic money institution</i> must use the format of the returns set out in <del>SUP 16 Annex 30F to SUP 16 Annex 30G</del> <u>SUP 16 Annex 30JD (FIN060) and SUP 16 Annex 30GD (FSA065)</u> . <u>Guidance notes for the completion of the FIN060 return are set out in SUP 16 Annex 30KG.</u>			
Note 3	<del>Where the <i>authorised electronic money institution's</i> reporting frequency is half yearly or annual, this</del> <u>This</u> field is calculated from the <i>authorised electronic money institution's</i> accounting reference date.			
Note 4	The due dates for returns are the last day of the periods given in column (5) of the table above following the relevant reporting frequency period set out in column (4) of the table above.			
Note 5	The reporting frequency in relation to FSA065 is calculated from 31 December each calendar year. <del>Otherwise, where the <i>small electronic money institution's</i> reporting frequency is half yearly or annual,</del> <u>In relation to FIN060,</u> this field is calculated from the <i>small electronic money institution's</i> accounting reference date.			
Note 6	This is calculated from 31 December each calendar year.			

After SUP 16 Annex 27B (Notes on Completing FSA056 (Authorised Payment Institution Capital Adequacy Return – SUP 16 Annex 27AD)) insert the following new Annex as SUP 16 Annex 27C. The text is not underlined.

## 16 Annex Authorised Payment Institution Capital Adequacy Return 27CD

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

### FSA056 Authorised Payment Institution Capital Adequacy Return

Currency Units Single

#### INTRODUCTORY MATTERS

Questions 67 to 69 must be answered in GBP

B

- 1 Is the firm included in the consolidated supervision of a parent credit institution pursuant to the Capital Requirements Directive 2013/36/EU and are all of the conditions specified in Article 7(1) of the Capital Requirements Regulations (EU) 575/2013 met?
- 2 If 'yes', please give the firm reference number of the firm that submitted the most recent consolidated capital statement to the FCA
- 67 Total income during the reporting period
- 68 Total income derived from payment services during the reporting period
- 69 Operating profit / loss of firm in the reporting period


#### Part One: CAPITAL REQUIREMENT

Part One must be answered in EUR

##### Initial Capital Requirement

- 3 Initial capital requirement at authorisation

--

##### Own Funds Requirement

- 4-6 Please indicate which method your firm uses to calculate its own funds requirement

--

##### Method A

- 7 Total fixed overheads for preceding year
- 8 Own funds requirement (10% of fixed overheads for preceding year)
- 9 Total capital requirement (higher of initial capital and own funds requirement)


##### Method B

- 10 Payment volume
- 11 4% of first €5m of payment volume
- 12 2.5% of payment volume between €5m and €10m
- 13 1% of payment volume between €10m and €100m
- 14 0.5% of payment volume between €100m and €250m
- 15 0.25% of any remaining payment volume
- 16 Total
- 17 Scaling factor
- 18 Own funds requirement
- 19 Total capital requirement (higher of initial capital and own funds requirement)


##### Method C

##### Relevant Indicator

- 20 Interest income
- 21 Interest expenses
- 22 Gross commissions and fees received
- 23 Gross other operating income
- 24 Total Relevant Indicator


##### Multiplication Factor

- 25 10% of the first €2.5m of the total relevant indicator
- 26 8% of the total relevant indicator between €2.5m and €5m
- 27 6% of the total relevant indicator between €5m and €25m
- 28 3% of the total relevant indicator between €25m and €50m
- 29 1.5% of any remaining amount of the total relevant indicator
- 30 Total Multiplication Factor
- 31 Scaling factor
- 32 Own funds requirement
- 33 Total capital requirement (higher of initial capital and own funds requirement)


**Part Two: TOTAL CAPITAL RESOURCES**

Part Two must be answered in GBP, unless otherwise stated

**Elements of Own Funds**

**Common Equity Tier 1 (CET1) Capital**

	B
90 CET1 items	
91 Adjustments to CET1 due to the application of Prudential Filters	
92 Deductions from CET1 items	
93 Exemptions from and alternatives to deductions from CET1 items	
94 Temporary waivers applied to CET1 deductions from own funds	
95 Total CET1 Capital	

**Additional Tier 1 (AT1) Capital**

96 AT1 Items	
97 Deductions from AT1 items	
98 Temporary waivers applied to AT1 deductions from own funds	
99 Total AT1 Capital	

**Tier 2 (T2) Capital**

100 T2 Items	
101 Deductions from T2 items	
102 Temporary waivers applied to T2 deductions from own funds	
103 Total T2 Capital	

**Eligible Capital for calculating Own Funds**

	A Total amount	B Eligible Amount	C Excess
104 CET1 Capital	-	-	
105 AT1 Capital	-	-	0.00
106 Tier 1 Capital	-	-	
107 T2 Capital	-	-	0.00

52 Total capital resources (GBP)	
53 £/€ exchange rate	
54 Total capital resources (EUR)	
55 Total capital requirement (EUR)	
56 Capital surplus/deficit (EUR)	

**Part Three: SUPPLEMENTARY INFORMATION**

**Safeguarding of relevant funds**

Please indicate which method the firm uses to safeguard relevant funds  
(Select all that apply and add the appropriate information)

	B	C	D
61	Placed in a separate account with an authorised credit institution	Credit institution name	Country where the account is located
62	Invested in approved secure liquid assets held in a separate account with an authorised custodian	Custodian name	Country where the account is located
63	Covered by an insurance policy with an authorised insurer	Insurer name	
64	Covered by a guarantee from an authorised insurer	Insurer name	
65	Covered by a guarantee from an authorised credit institution	Credit institution name	

**Number of Agents**

	B
66	Please report the number of agents the firm has

**Payment Systems**

70	Is the firm a member of any sterling interbank payment systems? <i>Select all that apply</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> LINK <input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> No <input type="checkbox"/> Other(s)
----	---	--

71 If Other(s), please specify

72	Which, if any, sterling interbank payment systems does your firm access <i>Select all that apply.</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> None <input type="checkbox"/> Other(s)
----	--	---

73 If Other(s), please specify

74 Which institution is the firm's primary provider of indirect access to sterling interbank payment systems?

**Transaction and User Information**

75 Number of full months in the reporting period in which the firm was FCA authorised

76 Number of payment transactions executed in the reporting period

	A	B
	GBP	EUR
77	Total value of payment transactions executed in the reporting period	

78 Number of new payment service users in the reporting period

Part Four: PROVIDERS OF ACCOUNT INFORMATION AND/OR PAYMENT INITIATION SERVICES

Account information services (AIS)

Please only answer the following questions if you provide account information services

	B	C
79 How many different payment accounts have been accessed by the firm in the reporting period for the purposes of providing AIS?	<input type="text"/>	
80 How many customers have used the firm's account information services in the reporting period?	<input type="text"/>	
81 Please enter the minimum monetary amount of the PII (or comparable guarantee) calculated in accordance with the EBA's Guidelines (EUR)	<input type="text"/>	
82 Please enter the amount of coverage of the professional indemnity insurance (or comparable guarantee) (EUR)	<input type="text"/>	
83 Has the minimum monetary amount, the insurance provider or the terms and conditions of the insurance policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the FCA?	<input type="text"/>	If yes, please explain <input type="text"/>

Payment initiation services (PIS)

Please only answer the following questions if you provide payment initiation services

84 How many different payment accounts have been accessed by the API in the reporting period for the purposes of providing PIS?	<input type="text"/>	
85 How many payment transactions has the firm initiated in the reporting period?	<input type="text"/>	
86 What is the total value of all payment transactions initiated by the firm during the reporting period? (EUR)	<input type="text"/>	
87 Please enter the minimum monetary amount of the PII (or comparable guarantee) calculated in accordance with the EBA's Guidelines (EUR)	<input type="text"/>	
88 Please enter the amount of coverage of the professional indemnity insurance (or comparable guarantee) (EUR)	<input type="text"/>	
89 Has the insurance provider or the terms and conditions of the insurance policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the FCA?	<input type="text"/>	If yes, please explain <input type="text"/>

After SUP 16 Annex 27C insert the following new Annex as SUP 16 Annex 27D. The text is not underlined.

**16 Notes on completing FSA056 (Authorised Payment Institution Capital Adequacy Annex Return – SUP 16 Annex 27CD) 27DG**

**FSA056 Authorised Payment Institution Capital Adequacy Return**

**Valuation**

Firms should follow their normal accounting practice wherever possible.

**Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR. The exchange rate entered at Element 53 should be used throughout the return to convert GBP to EUR where required.

- Elements 67-69, 90-107, and 52, must be completed in GBP.
- Element 77 must be answered in GBP and EUR.
- All other monetary answers must be in EUR

**Type of payment service: special instructions**

- **Registered account information service providers**  
Registered account information service providers (as defined in the Payment Services Regulations 2017, “**PSRs 2017**”) should only answer Elements 67-69 (income), and 79 - 83 (AIS).
- **Authorised payment institutions that only provide payment initiation services**  
Authorised payment institutions (APIs) that ONLY provide payment initiation services (PIS) should only answer Elements 67-69 (income), Element 3 (initial capital), Part Two (capital resources), Element 66 (Agents), 70-75 (payment systems) and 84-89 (PIS).
- APIs that provide PIS / AIS and/or other payments services should answer all Elements, including the relevant sections of Part 4 (depending on whether they provide AIS / PIS or both).

**Data elements**

These are referred to by row first, then by column, so data Element 2B will be the element numbered 2 in column B.

Figures should be entered in single units in the currency specified. For example, €1,234,567.50 should be entered as 1234567

**INTRODUCTORY MATTERS**

**Element 1B:** You must only answer ‘Yes’ to this question if both parts of the question apply to the API required to submit this report (i.e. if the API falls within paragraph 2(b) of regulation 22: (a) the API is included in the consolidated supervision of a parent credit institution pursuant to the Capital Requirements Directive 2013/36/EU and (b) that all of the conditions in Article 7(1) of the Capital Requirements Regulations (EU) 575/2013 are met in respect of the API and its parent. If either part of this question does not apply, you should enter “no”.

**Element 2B:** If you have answered “yes” to ‘Element 1B’ then please enter the Firm Reference Number of your firm’s parent credit institution. If you have answered “yes” to ‘Element 2B’ then you do not need to answer Elements 4 to 33 (own funds requirement).

**Element 67B:** State, in GBP, the total income of the whole legal entity, across all activity, for the reporting period. Follow your firm’s normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 68B:** State, in GBP, the total income for the reporting period derived from payment services. Follow your normal accounting practice when answering this question.

**Element 69B:** State, in GBP, the total operating profit or loss of the whole legal entity for the reporting period. Operating profit or loss is calculated after ordinary operating expenses are deducted from the gross profit, but before interest, tax, dividend payments and any extraordinary items are deducted.

## **Part One: CAPITAL REQUIREMENT**

### *Initial capital requirement*

**Element 3B:** State, in EUR the firm’s initial capital requirement at authorisation (Part 1, Schedule 3 of the PSRs 2017).

### *Own Funds Requirement*

**Elements 4B – 6B:** Firms should indicate which of the three methods they use to calculate their own funds requirement, as described in Part 2 of Schedule 3 of the PSRs 2017

Firms only need to complete those parts of the form that apply to their chosen method of calculating own funds.

If your firm has not completed a full financial year of business, then, in lieu of the figure for the “preceding year” or the “previous financial year”, you must use the projected figure(s) that your firm submitted to the FCA when applying for authorisation (subject to any adjustments that the FCA required or may require).

Please refer to Chapter 9 (Capital resources and requirements) of our Payment Services and Electronic Money Approach Document for further detail on how to calculate the own funds requirement.

### *Method A Calculation*

**Element 7B:** State, in EUR, the total fixed overheads for the preceding year. Please refer to Chapter 9 of our Approach Document for further guidance on fixed overheads.

**Element 8B:** State, in EUR, the figure equal to 10% of the figure you have reported in ‘Element 7B’.

**Element 9B:** State, the larger of the two figures you have reported in ‘Element 3B’ and ‘Element 8B’.

*Method B Calculation*

**Element 10B:** “Payment volume” means the total amount (i.e. value) of payment transactions executed by the API in the preceding financial year divided by the number of months in that year (paragraph 9(3), Part 2, Schedule 3 of the PSRs 2017). This figure should include transactions executed by agents of the API.

**Element 11B:** State, in EUR, the figure that equals 4% of the first €5m of payment volume.

**Element 12B:** State, in EUR, the figure that equals 2.5% of payment volume between €5m and €10m. If your firm has undertaken less than €5m in payment volume, insert a zero in this box.

**Element 13B:** State, in EUR, the figure that equals 1% of payment volume between €10m and €100m. If your firm has undertaken less than €10m in payment volume, insert a zero in this box.

**Element 14B:** State, in EUR, the figure that equals 0.5% of payment volume between €100m and €250m. If your firm has undertaken less than €100m in payment volume, insert a zero in this box.

**Element 15B:** State, in EUR, the figure that equals 0.25% of all payment volume over €250m. If your firm has undertaken less than €250m in payment volume, insert a zero in this box.

**Element 16B:** State, in EUR, the sum of the values from ‘Elements 11B to 15B’ above.

**Element 17B:** The “scaling factor” is:

- 0.50 for a payment institution that is authorised to provide only the payment service specified in paragraph 1(f) of Schedule 1 PSRs 2017 (money remittance); and
- 1.00 for a payment institution that is authorised to provide any other payment service specified in paragraph 1(a) to (e) of Schedule 1 PSRs 2017.

The scaling factor should be entered to 2 decimal places.

**Element 18B:** This figure is calculated using the following equation: ‘Element 16B x Element 17B’.

**Element 19B:** Insert the larger of the two figures you have reported in ‘Element 3B’ and ‘Element 18B’.

### Method C calculation

#### **Relevant Indicator**

**Element 20B – Element 23B:** these figures should be entered in EUR and should cover the expenses or income generated over the reporting period. Please refer to Chapter 9 (Capital resources and requirements) of our Payment Services and Electronic Money Approach Document for further detail on the Elements that make up the relevant indicator.

Firms should have regard to paragraphs 10(4)(a)-(d), Part 2, Schedule 3 of the PSRs 2017 for the purposes of calculating the relevant indicator:

- each element must be included in the sum with its positive or negative sign;
- income from extraordinary or irregular items must not be used;
- expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
- the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
- the relevant indicator must be calculated over the previous financial year; and
- audited figures must be used unless they are not available in which case business estimates may be used.

**Element 24B:** This should be the sum of the amounts stated in ‘Elements 20B to 23B’ above.  
**Multiplication Factor**

**Element 25B:** State, in EUR, the figure that equals 10% of the first €2.5m of the “total relevant indicator of income” in ‘Element 24B’.

**Element 26B:** State, in EUR, the figure that equals 8% of the “total relevant indicator of income” in ‘Element 24B’ between €2.5m and €5m. If your firm's total relevant indicator of income is less than or equal to €2.5m, you should enter zero in this box.

**Element 27B:** State, in EUR, the figure that equals 6% of the “total relevant indicator of income” in ‘Element 24B’ between €5m and €25m. If your firm's total relevant indicator of income is less than or equal to €5m, you should enter zero in this box.

**Element 28B:** State, in EUR, the figure that equals 3% of the “total relevant indicator of income” in ‘Element 24B’ between €25m and €50m. If your firm's total relevant indicator of income is less than or equal to €25m, you should enter zero in this box.

**Element 29B:** State, in EUR, the figure that equals 1.5% of the “total relevant indicator of income” in ‘Element 24B’ over €50m. If your firm's total relevant indicator of income is less than or equal to €50m, you should enter zero in this box.

**Element 30B:** State, in EUR, the sum of the values of ‘Elements 25B to 29B’ above.

**Element 31B:**

The “scaling factor” is:

- 0.50 for a payment institution that is authorised to provide only the payment service specified in paragraph 1(f) of Schedule 1 PSRs 2017 (money remittance); and

- 1.00 for a payment institution that is authorised to provide any other payment service specified in paragraph 1(a) to (e) of Schedule 1 PSRs 2017.

The scaling factor should be entered to 2 decimal places.

**Element 32B:** This figure is calculated by multiplying ‘Element 24B’ by Element 30B and ‘Element 31B’.

**Element 33B:** Insert the larger of the two figures you have reported in ‘Element 3B’ and ‘Element 32B’.

## **Part Two: TOTAL CAPITAL RESOURCES**

For the purposes of Part Two – Elements of Own Funds, please provide a value for Common Equity Tier 1, Additional Tier 1 and Tier 2 capital items. You will also need to provide values for adjustments, deductions, exemptions, and temporary waivers (entering zero where not relevant). You should enter these items in GBP.

To understand the items that may be used to form ‘own funds’, APIs should consult the PSRs 2017, the Capital Requirements Regulation (EU) 575/2013 (CRR), and the Payment Services and Electronic Money Approach Document.

Regulation 2 of the PSRs 2017 sets out that own funds has the definition given in the CRR Article 4(1)(118). Own funds consist of Tier 1 and Tier 2 items. Tier 1 is formed of Common Equity Tier 1 and Additional Tier 1. At least 75% of Tier 1 capital must be held as Common Equity Tier 1 capital and Tier 2 capital must be equal to or less than one third of Tier 1 capital. The return will take into account these limits when automatically calculating figures for eligible amounts in elements 104B-107B – these do not need to be manually entered.

**Element 52B:** This should be the sum of the capital items listed at 106B-107B.

**Element 53B:** Please provide the EUR equivalent value for 1 GBP to 4 decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis:

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 54B:** State the EUR equivalent of ‘Element 52B’ above.

**Element 55B:** State, in EUR, the same figure as you have reported in ‘Element 9B’, ‘Element 19B’ or ‘Element 33B’ (depending on the method your firm uses to calculate its capital requirement). If you answered “yes” to question 1, you must enter the figure reported in ‘Element 3B’ (initial capital requirement).

**Element 56B:** State, in EUR, the total capital surplus / deficit for your firm. This is calculated by subtracting the total capital requirement in ‘Element 55B’ above, from the total net capital resources in ‘Element 54B’ above (i.e. Element 54B – Element 55B = total capital surplus / deficit).

### **Part three: SUPPLEMENTARY INFORMATION**

#### **SAFEGUARDING OF RELEVANT FUNDS**

You must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds. At least one of the boxes in ‘Elements 61 to 65’ must be selected.

#### **NUMBER OF AGENTS**

**Element 66B:** State the number of agents that you have registered to undertake payment services.

#### **PAYMENT SYSTEMS**

**Element 70B:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 72B:** If your firm accesses, on an indirect basis, any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where the PSP indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 74B:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

#### **TRANSACTION AND USER INFORMATION**

**Element 75B:** Enter the full number of months during the reporting period that your firm was FCA authorised or registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the FCA on 15 October then you should enter “2”.

**Element 76B:** State the number of payment transactions executed by your firm during the reporting period. This includes payment transactions executed by agents of your firm.

**Element 77B:** State, the total amount (i.e. value) of all payment transactions executed during the reporting period. This includes payment transactions executed by agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them. This figure should be provided in EUR and GBP.

**Element 78B:** State the number of new users / customers who have used your firm’s payment services during the reporting period. This means those users that have entered into framework contracts or (where known) single payment service contracts during the reporting period and includes all customer types, including individual consumers and any corporate customers.

#### **Part Four: PROVIDERS OF ACCOUNT INFORMATION AND/OR PAYMENT INITIATION SERVICES**

**Account information services (AIS)**

Elements 79 – 83 should only be answered by firms providing account information services

**Element 79B:** State the number of payment accounts that the AIS provider has accessed for the purposes of providing AIS during the reporting period. You should count each individual payment account once, even where it has been accessed multiple times.

**Element 80B:** State the number of customers that have used the provider's AIS in the reporting period. Each customer should be counted once (including where the customer has used the AIS multiple times).

**Element 81B:** State the minimum monetary (in EUR) amount of the professional indemnity insurance (or comparable guarantee) ("PII") calculated in accordance with the European Banking Authority Guidelines on Professional Indemnity Insurance under PSD2.

**Element 82B:** Please enter the amount of coverage of the PII that is held by the AIS provider. This should be entered in EUR. Please use the same conversion rate entered at 'Element 53B'.

**Element 83B:** If the terms of the AIS provider's PII have changed in any respect since its authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount), what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

**Payment initiation services (PIS)**

Elements 84 – 89 should only be answered by firms providing account information services

**Element 84B:** Please enter number of payment accounts that the PIS provider

**Element 85B:** This should be the total number of payment transactions initiated using the provider's PIS in the reporting period.

**Element 86B:** This should be the total value (in EUR) of the payment transactions initiated using the provider's PIS in the reporting period.

**Element 87B:** State the minimum monetary amount (in EUR) of the professional indemnity insurance (or comparable guarantee) ("PII") calculated in accordance with the European Banking Authority Guidelines on Professional Indemnity Insurance under PSD2

**Element 88B:** Please enter the amount of coverage of the PII that is held by the PIS provider. This should be entered in EUR. Please use the same conversion rate entered at 'Element 53B'.

**Element 89B:** If the terms of the PIS provider's PII have changed in any respect since its authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount),

what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

After SUP 16 Annex 27D insert the following new Annex as SUP 16 Annex 27E. The text is not underlined.

**16 Annex REP017 Payments Fraud Report  
27ED**

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

**REP017 - Payments Fraud Report**

**Table 1 - Fraud relating to different means of payment**

Please provide data on the payment types subject to the most fraud (by value of fraudulent transactions)

	A	B	C	D	E	H	I	H
	Payment type	Total transaction volume for payment type (000s)	Total transaction value for payment type (£millions)	Fraudulent transaction volume for payment type (000s)	Fraudulent transaction value for payment type (£millions)	Volume of fraudulent transactions initiated through PISP using payment type	Top three fraud types which cause the highest value of fraudulent transactions for the payment type	Fraudulent transaction value (£millions)
<b>1</b>	Payment type which has the highest fraud rate by value of fraudulent transactions						Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud/Theft of card details (card not present)	
<b>2</b>	Payment type which has the second highest fraud rate by value of fraudulent transactions						Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud/Theft of card details (card not present)	

3 Payment type which has the third highest fraud rate by value of fraudulent transactions

Payment type	Total transaction volume for payment type (000s)	Total transaction value for payment type (£millions)	Fraudulent transaction volume for payment type (000s)	Fraudulent transaction value for payment type (£millions)	Volume of fraudulent transactions initiated through PISP using payment type	Top three fraud types which cause the highest value of fraudulent transactions for the payment type	Fraudulent transaction value (£millions)
BACS Direct Credit/BACS single payment/CHAPS credit transfer/Faster Payments (including standing orders)/SEPA credit transfer/Inter-bank transfer (On Us) payment/International SWIFT payment/BACS Direct Debits/SEPA Direct debit/Pre-paid Card/Credit Card/Charge card/Debit card or cash card						Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud/Theft of card details (card not present)	

**Table 2 - Fraud relating to account information services**

Please provide data on incidents of fraud relating to account information services

4 In respect of account information services only, please indicate:

A	B	C
Number of incidents of fraud	Total value of fraud across all incidents (or an estimation of the loss to the persons defrauded) (£millions)	Please provide a brief description of how fraud was most commonly committed - descriptions of up to three different fraud types, in order of those with the highest loss

After SUP 16 Annex 27E insert the following new Annex as SUP 16 Annex 27F. The text is not underlined.

## **16 Annex Notes on completing REP017 Payments Fraud Report 27FG**

### **REP017 Payments Fraud Report**

These notes contain guidance for payment service providers that are required to complete the Payments Fraud Report in accordance with Regulation 109(4) of the Payment Services Regulations 2017 and *SUP 16.13.7D*.

#### **What is a fraudulent transaction?**

For the purposes of this report, a fraudulent transaction is any payment transaction that the PSP has:

- executed;
- acquired; or
- in the case of a PISP, initiated;

and that the PSP deems to have been subject to one of the following fraud types:

(for credit transfers and direct debits)

- Manipulation of the payer to issue a payment order.
- Issuance of a payment order by the fraudster.
- Modification of a payment order by the fraudster.
- Account takeover.

(for credit cards)

- Lost and stolen card fraud.
- Card Not Received fraud.
- Counterfeit card fraud.
- Theft of card details (card not present)

If a payment transaction meets the conditions above it should be recorded as a fraudulent transaction for the purposes of this report irrespective of whether:

- the PSP had primary liability to the user;
- the fraudulent transaction would be reported as such by another PSP in the same payment chain; or
- the fraud is committed by the user (first party fraud) or by another person with whom the PSP does not have a contractual relationship (third party fraud).

## **Fraud types**

PSPs should use their discretion when determining the appropriate fraud type for each fraudulent transaction and should choose the fraud type that most closely matches the circumstances of the fraud. We have provided guidance on the fraud types for this purpose.

### **Credit transfers and direct debits:**

#### *Manipulation of the payer to issue a payment order*

This would cover fraud where the payer authorises a push payment to a fraudulent payee, also referred to as ‘malicious misdirection’; for example, when a scammer contacts the victim purporting to be from the victim’s bank. The scammer then convinces the victim to transfer money (using a credit transfer) to a different account in order to safeguard it but that account is in fact controlled by the scammer. (See Payment Systems Regulator response to Which? Super-complaint: <https://www.psr.org.uk/psr-publications/news-announcements/which-super-complaint-our-response-Dec-2016>).

#### *Issuance of a payment order by the fraudster*

This would cover fraud where the fraudster uses stolen personalised security credentials in order to issue a payment order, either through contacting the victim’s bank or accessing the victim’s online banking service. For example, where a victim’s online banking has been accessed using stolen personal identity details and credit transfers (such as Faster Payment or CHAPS payments) have been made or direct debits set up from the victim’s account to beneficiaries chosen by the fraudster.

#### *Modification of a payment order by the fraudster*

This would cover fraud where the fraudster has gained unauthorised access to the victim’s account in order to change the details of existing payment orders or payment instructions. For example, where a victim’s account has been accessed using stolen personalised security credentials in order to modify the beneficiary of the victim’s existing standing orders or direct debits or, for example, where a victim’s account has been accessed by a fraudster and a batch of payment details have been modified so that when payments are executed by the victim, the funds are unintentionally transferred to a beneficiary or beneficiaries chosen by the fraudster rather than the intended beneficiary. (See CIFAS paper, Table 2 Unlawful obtaining or disclosure of personal data: <https://www2.cipd.co.uk/NR/rdonlyres/710B0AB0-ED44-4BD7-A527-B9AC29B28343/0/empfraud.pdf>)

### **Credit cards:**

*Lost and stolen card fraud*

This would cover any fraud committed as a result of a lost or stolen card (except where Card non-receipt fraud has occurred). (See FFAUK Fraud Facts 2016 [https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud\\_the\\_facts.pdf](https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud_the_facts.pdf))

*Card non-receipt fraud*

This would cover fraud where a payment card is stolen (with or without the details of the PIN also being intercepted) whilst in transit – after the card company sends it out and before the genuine cardholder receives it. The payment card is then used by the fraudster to make transactions. (See FFAUK Fraud Facts 2016 [https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud\\_the\\_facts.pdf](https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud_the_facts.pdf))

*Counterfeit card fraud*

This would cover fraud where the fraudster uses a card which has been printed, embossed or encoded so as to purport to be a legitimate card but which is not genuine because the issuer did not authorise the printing, embossing or encoding. (See <https://www.financialfraudaction.org.uk/wp-content/uploads/2016/07/Fraud-the-Facts-A5-final.pdf>)

*Account takeover*

This would cover fraud using another person’s credit or debit card account, first by gathering information about the intended victim, then contacting their bank or credit card issuer whilst masquerading as the genuine cardholder. The fraudster will then arrange for funds to be transferred out of the account, or will change the address on the account and ask for new or replacement cards to be sent to the new address. (See <https://www.financialfraudaction.org.uk/wp-content/uploads/2016/07/Fraud-the-Facts-A5-final.pdf>)

*Theft of card details (card not present)*

This would cover fraud where card details have been fraudulently obtained through methods such as unsolicited emails or telephone calls or digital attacks such as malware and data hacks. The card details are then used to undertake fraudulent purchases over the internet, by phone or by mail order. It is also known as ‘card-not-present’ (CNP) fraud. (See <https://www.financialfraudaction.org.uk/fraudfacts16/>)

**Data elements**

<b>Payments Fraud Report - Table 1</b>		
1A	Please select the payment type which has the highest fraud	<p><b>Payment types</b></p> <p>The payment types available in the dropdown list are payment types provided by UK PSPs. These include</p>

	<p>rate by value of fraudulent transactions</p>	<p>different types of credit transfer, direct debit and card payment types.</p> <p><b>Credit transfers:</b></p> <p>BACS Direct Credit</p> <p>BACS single payment</p> <p>CHAPS credit transfer</p> <p>Faster Payments (including standing orders)</p> <p>SEPA credit transfer</p> <p>Inter-bank transfer (On-Us) payment</p> <p>International SWIFT payment</p> <p><b>Direct debits:</b></p> <p>BACS Direct Debits</p> <p>SEPA Direct debit</p> <p><b>Cards:</b></p> <p>Pre-paid Card</p> <p>Credit Card</p> <p>Charge card</p> <p>Debit card/cash card</p> <p>If the PSP provides three or fewer than three payment types it should complete the report in respect of each of those payment types.</p> <p><b>Calculating the value of fraudulent transactions</b></p> <p>In order to complete this report, PSPs should, throughout the reporting period, record for each payment type: the number and value of payment transactions and the number and value of payment transactions that are categorised as fraudulent transactions. PSPs should use this data to determine which payment type has the highest fraud rate.</p> <p>PSPs should convert values for non-sterling transactions into sterling using the average ECB reference exchange rate for the applicable reporting period, where available. In other instances PSPs should use the average of the applicable daily spot rate on the Bank of England's Statistical Interactive Database for the applicable reporting period.</p> <p>'Highest fraud rate' means the highest total value of fraudulent transactions.</p> <p>If the PSP executes more than one payment transaction in respect of the same funds (for example placing and transferring the same funds), the PSP should record this transaction and the corresponding value once only.</p>
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1B-1E	Volume and value of payment transactions and fraudulent transactions	<p>PSPs should report the following information in respect of the payment type selected at 1A:</p> <ul style="list-style-type: none"> <li>• Total transaction volume (i.e. the number of transactions) for payment type (000s)</li> <li>• Total transaction value for payment type (£ millions)</li> <li>• Fraudulent transaction volume (i.e. the number of transactions) for payment type (000s)</li> <li>• Fraudulent transaction value for payment type (£ millions)</li> </ul> <p>Figures should be entered in units of thousands (for volume) or millions (for value). If the figure is less than one thousand or one million, you should enter the figure as a decimal fraction: e.g. if the total fraudulent transaction value is £23,000 this should be entered as 0.023.</p>
1F	Volume of fraudulent transactions initiated through PISP using payment type	<p>PSPs that only provide payment initiation services (i.e. those that do not come into possession of user funds) do not need to answer this question. All other PSPs should enter the number of fraudulent transactions that were initiated by a third party PISP using the payment type selected at 1A. If there were none, PSPs should enter '0'.</p>
1G	Please select the three fraud types attributed to the highest value of fraudulent transactions for the payment type	<p>The PSP should select the three fraud types (from the drop down list given in the form) that cause the most fraud for the payment type selected at 1A. The three fraud types should be those with the three highest total values of fraudulent transactions.</p>
1H	Fraudulent transaction value	<p>For each of the fraud types selected at 1G, the PSP should enter the value of fraudulent transactions for that fraud type. This will allow us to understand the proportion of the total fraud transaction value (entered as 1F) that is attributable to that particular fraud type.</p>
2A and 3A	Please select the payment type which has the second and third highest fraud rate by value of fraudulent transactions	<p>The second and third highest fraud rate should be calculated as set out above in relation to 1A.</p> <p>If the PSP provides three or fewer than three payment types in the reporting period, it should complete the report only in respect of each of those payment types. For example, if the PSP provides two payment types, it should complete sections 1A to H and 2A to H only.</p>
2B-H		<p>PSPs should answer questions 2B to H and 3B to H as set out</p>

3B-H		above in respect of the payment types entered at 2A and 3A (where applicable).
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**Table 2 - Fraud relating to account information services**

This section should be answered by PSPs that provide account information services (AISPs). Registered account information service providers (i.e. PSPs that do not provide any other type of payment service) do not need to answer the questions in Table 1.

4A	Please indicate the number of incidents of fraud	This should be the total number of incidents of fraud that the AISP has recorded. If there are no incidents of fraud, please enter '0' (there is no need to complete the rest of Table 2).
4B	Total value of fraud	<p>Where known, the AISP should report the value of any fraudulent transactions that were executed or initiated (by a third party PSP) as a result of the fraud committed against the AIS user or the AISP.</p> <p>In all other circumstances the AISP should provide an estimation of the loss to the persons defrauded. In this context 'persons' would include the user of the AIS service, any other PSP (such as a credit institution that operated the payment account that the AISP accessed) or the AISP itself. 'Loss' would include loss of funds incurred as a result of fraudulent transactions or loss incurred as an indirect result of the fraud; for example by having to reissue new payment instruments or fix breached security systems.</p> <p>If the fraudulent incident(s) did not result in any financial loss, the AISP should still report the incident, enter '0' at 4B and explain the type of fraud at 4C.</p> <p>AISPs should convert values for non-sterling transactions into sterling using the average ECB reference exchange rate for the applicable reporting period, where available. In other instances AISPs should use the average of the applicable daily spot rate on the Bank of England's Statistical Interactive Database for the applicable reporting period.</p>
4C	Description of fraud	In this section we would expect AISPs to describe the type of fraud that has resulted in the highest total value of fraud (unless the AISP is reporting fraudulent incidents that did not result in any financial losses, as above). The AISP should also explain how the losses were incurred (on the basis that the AISP does not come into possession of the payment transaction funds and is not responsible for the execution of payment transactions).

After SUP 16 Annex 28B (Notes on Completing FSA057 (Payment Services Directive Transactions)) insert the following new Annex as SUP 16 Annex 28C. The text is not underlined.

**16 Annex Small Payment Institution Return  
28CD**

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

**FSA057 PAYMENT SERVICES DIRECTIVE TRANSACTIONS**

Currency Units: Single

**Introductory Matters**

Questions 11 to 13 must be answered in GBP

	A	B
11 Total income during the reporting period	<input type="text"/>	
12 Total income derived from payment services during the reporting period	<input type="text"/>	
13 Operating profit / loss of firm in the reporting period	<input type="text"/>	

**Transaction and User Information**

1 Please report the total number of payment transactions the firm has undertaken during the reporting period	<input type="text"/>
14 Please provide the exchange rate used to convert GBP to EUR in this return	<input type="text"/>
2 Please report the total value of these transactions <i>(The figure should be entered in single units and in both currencies)</i>	EUR <input type="text"/> GBP <input type="text"/>
3 Number of full months in the reporting period in which the firm was registered	<input type="text"/>
15 What is the monthly average of the total value of payment transactions executed over the reporting period including payment transactions executed through UK agents (EUR)?	<input type="text"/>
16 Number of new payment service users in the reporting period	<input type="text"/>

**Safeguarding of relevant funds**

4 Has your firm voluntarily adopted safeguarding arrangements?	<input type="text"/>
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If you have answered YES to question 4, please indicate which method(s) the firm uses to safeguard relevant funds  
*(Select all that apply and add the appropriate information)*

	A	B	C
5 Placed in a separate account with an authorised credit institution	<input type="text"/>	Credit institution name <input type="text"/>	Country where the account is located <input type="text"/>
6 Invested in approved secure liquid assets held in a separate account with an authorised custodian	<input type="text"/>	Custodian name <input type="text"/>	Country where the account is located <input type="text"/>
7 Covered by an insurance policy with an authorised insurer	<input type="text"/>	Insurer name <input type="text"/>	
8 Covered by a guarantee from an authorised insurer	<input type="text"/>	Insurer name <input type="text"/>	
9 Covered by a guarantee from an authorised credit institution	<input type="text"/>	Credit institution name <input type="text"/>	

**Number of Agents**

10 Please report the number of agents the firm has	A <input type="text"/>
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**Payment Systems**

17 Is the firm a member of any sterling interbank payment systems? <i>Select all that apply</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> LINK <input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> Other(s)
18 If Other(s), please specify	<input type="text"/>
19 Which, if any, sterling interbank payment systems does your firm access indirectly? <i>Select all that apply</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> Other(s)
20 If Other(s), please specify	<input type="text"/>
21 Which institution is your firm's primary provider of indirect access to sterling interbank payment systems?	<input type="text"/>

After SUP 16 Annex 28C insert the following new Annex as SUP 16 Annex 28D. The text is not underlined.

**16 Annex Notes on completing FSA057 (Small Payment Institution Return)  
28DG**

**FSA057 Payment Services Directive Transactions**

**Valuation**

Firms should follow their normal accounting practice wherever possible.

**Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR.

- Elements 11 to 13 should be completed in GBP.
- Element 15 should be completed in EUR.
- Element 2 should be answered in EUR and GBP.

The exchange rate entered at element 14 should be used throughout the return to convert GBP to EUR where required.

**Data elements**

These are referred to by row first, then by column, so data element 2A will be the element numbered 2 in column A.

**INTRODUCTORY MATTERS**

**Element 11A:** State, in GBP, the total income of the whole legal entity, across all activity, for the reporting period. Follow your firm's normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 12A:** State, in GBP, the total income for the reporting period which derived from payment services. Follow your normal accounting practice when answering this question.

**Element 13A:** State, in GBP, the total operating profit or loss of the whole legal entity for the reporting period. Operating profit or loss is calculated after ordinary operating expenses are

deducted from the gross profit, but before interest, tax, dividend payments and any extraordinary items are deducted.

## TRANSACTION AND USER INFORMATION

**Element 1A:** State the number of payment transactions executed by your firm during the reporting period. This includes payment transactions executed by UK agents of your firm. If your firm was not *FCA* authorised or registered for the entire year to which this return relates, you should only include transactions made since your firm was *FCA* authorised or registered.

**Element 14A:** Please provide the EUR equivalent value for 1 GBP to four decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 2:** State the total amount (i.e. value) of all payment transactions executed during the reporting period. This includes payment transactions executed by agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them. This figure should be provided in EUR and GBP.

**Element 3A:** Enter the full number of months during the reporting period that your firm was *FCA* registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the *FCA* on 15 October then you should enter '2'.

**Element 15A:** Enter the monthly average value of the total payment transactions executed over the reporting period. This should be the EUR figure entered at element 2 divided by the number of full months during the reporting period that your firm was registered (i.e. the number entered at element 3A). If the monthly average is inflated as a result of rounding to full months, you may calculate the monthly average by taking into account the partial month of registration in this figure only.

**Element 16A:** State the number of new users / customers who have used your firm's payment services during the reporting period. This means those users that have entered into framework contracts or single payment service contracts during the reporting period and includes all customer types, including individual consumers and any corporate customers.

## SAFEGUARDING OF CLIENT ASSETS

**Element 4A:** State whether you voluntarily safeguard relevant funds. Under the PSRs 2017, small PIs can choose to comply with safeguarding requirements in order to offer the same protections over customer funds as authorised PIs must provide. If an SPI does choose to safeguard they will need to apply the same levels of protection as are expected of an authorised PI. We will expect an SPI to tell us if it is choosing to safeguard funds. SPIs that answer 'No' to this question should move to the Number of Agents section.

If you answer 'Yes', to this question you must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds and answer the relevant questions

relating to this method. At least one of the boxes in elements 5 to 9 must be selected.

## NUMBER OF AGENTS

**Element 10A:** State the number of agents in the UK that you have registered to undertake payment services.

## PAYMENT SYSTEMS

**Element 17A:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 19A:** If your firm accesses, on an indirect basis, any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where the PSP indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 21A:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

After SUP 16 Annex 30G (Small electronic money institutions – total outstanding electronic money return) insert the following new Annex as SUP 16 Annex 30H. The text is not underlined.

**16 Annex    Authorised electronic money institution questionnaire  
30HD**

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

**FIN060 Authorised Electronic Money Institution Questionnaire**

**Section 1: Income Statement**

*Firm annual income for the legal entity only  
Section 1 must be answered in GBP*

- 1 Total income during reporting period
- 2 Total income during reporting period derived from e-money issuance and related payment services
- 3 (Where relevant) total income during reporting period derived from unrelated payment services
- 4 Total operating profit / loss of legal entity during reporting period

A


**Section 2: EMRs and PSRs 2017 activity**

**Section 2(a): EMRs activity**

- 5 How many full months in the reporting period has the firm been authorised?
- 6 E-money outstanding at the end of the reporting period (EUR)
- 7 Number of e-money accounts open at the start of the reporting period
- 8 Number of e-money accounts open at end of the reporting period


**Section 2(b): PSRs 2017 activity**

- 9 Do you carry out any unrelated payment services?
- 10 Number of unrelated payment transactions executed in reporting period
- 11 Total value of unrelated payment transactions executed in reporting period (EUR)


**Section 3: Capital resources**

*Section 3 must be answered in GBP, unless otherwise stated*

**Section 3(a): Common Equity Tier 1 (CET1) Capital**

- 12 CET1 items
- 13 Adjustments to CET1 due to the application of Prudential Filters
- 14 Deductions from CET1 items
- 15 Exemptions from and alternatives to deductions from CET1 items
- 16 Temporary waivers applied to CET1 deductions from own funds
- 17 Total CET1 Capital

B


**Section 3(b): Additional Tier 1 (AT1) Capital**

- 18 AT1 Items
- 19 Deductions from AT1 items
- 20 Temporary waivers applied to AT1 deductions from own funds
- 21 Total AT1 Capital


**Section 3(c): Tier 2 (T2) Capital**

- 22 T2 Items
- 23 Deductions from T2 items
- 24 Temporary waivers applied to T2 deductions from own funds
- 25 Total T2 Capital


**Section 3(d): Eligible capital for calculating own funds**

- 26 CET1 Capital
- 27 AT1 Capital
- 28 Tier 1 Capital
- 29 T2 Capital

A

Total amount

B

Eligible Amount

C

Excess

A	B	C
Total amount	Eligible Amount	Excess

**Section 3(e): Total capital resources**

- 30 Total capital resources (GBP)
- 31 £/€ exchange rate
- 32 Total capital resources (EUR)


**Section 4: Capital requirements for unrelated payment services**

*Sections 4(b) to 4(d) must be answered in EUR  
Please only answer the following questions if you have answered 'Yes' to Question 9*

**Section 4(a): Method used to calculate ongoing requirements**

A

- 33 Please indicate which method your firm uses to calculate its own funds requirement

--

**Section 4(b): Method A calculation**

- 34 Total fixed overheads for preceding year
- 35 Own funds requirement (10% of total fixed overheads)


**Section 4(c): Method B calculation**

- 36 Payment volume
- 37 4% of first €5m of payment volume
- 38 2.5% of payment volume between €5m and €10m
- 39 1% of payment volume between €10m and €100m
- 40 0.5% of payment volume between €100m and €250m
- 41 0.25% of any remaining payment volume
- 42 Total
- 43 Scaling factor
- 44 Own funds requirement


**Section 4(d): Method C Calculation**

**Section 4(d)(i): Relevant indicator**

45	Interest income	
46	Interest expenses	
47	Gross commissions and fees received	
48	Gross other operating income	
49	Total Relevant Indicator	

**Section 4(d)(ii): Multiplication factor**

50	10% of the first €2.5m of the total relevant indicator	
51	8% of the total relevant indicator between €2.5m and €5m	
52	6% of the total relevant indicator between €5m and €25m	
53	3% of the total relevant indicator between €25m and €50m	
54	1.5% of any remaining amount of the total relevant indicator	
55	Total Multiplication Factor	
56	Scaling factor	
57	Own funds requirement	

**Section 5: Overall capital requirements**

Section 5 must be answered in EUR

58	Average outstanding e-money	
59	Method D own funds requirement for e-money issuance and related payment services	
60	Total own funds requirement including for unrelated payment services	
61	Total capital requirements (the higher of €350,000 or the total own funds requirement)	
62	Capital surplus / deficit	
63	Have the firm's own funds been equal to or greater than its own funds requirement at all time throughout the reporting period?	

**Section 6: Method of Safeguarding**

	A	B	C	D
	E-money	Unrelated Payment Services	Credit institution name	Country where the account is located
64	Placed in a separate account with an authorised credit institution			
			Custodian name	Country where the account is located
65	Invested in approved secure liquid assets held in a separate account with an authorised custodian			
66	Covered by an insurance policy with an authorised insurer		Insurer name	
67	Covered by a guarantee from an authorised insurer		Insurer name	
68	Covered by a guarantee from an authorised credit institution		Credit institution name	

**Section 7: Agents**

69	Please report the number of agents the firm has	
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**Section 8: Payment systems**

70	Is the firm a member of any sterling interbank payment systems? <i>Select all that apply</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> LINK <input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> No <input type="checkbox"/> Other(s)
71	If Other(s), please specify	
72	Which, if any, sterling interbank payment systems does your firm access indirectly? <i>Select all that apply</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> None <input type="checkbox"/> Other(s)
73	If Other(s), please specify	
74	Which institution is the firm's primary provider of indirect access to sterling interbank payment systems?	

**Section 9: Providers of account information services and/or payment initiation services**

**Account information services (AIS)**

Please only answer the following questions if you provide account information services

	A	B
75	How many different payment accounts have been accessed by the firm in the reporting period for the purposes of providing AIS?	
76	How many customers have used the firm's AIS in the reporting period?	
77	Please enter the minimum monetary amount of the professional indemnity insurance (PII) or comparable guarantee calculated in accordance with the EBA's Guidelines (EUR)	
78	Please enter the amount of coverage of the PII policy or comparable guarantee (EUR)	
79	Has the minimum monetary amount, the insurance provider or the terms and conditions of the PII policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the FCA?	If yes, please explain

**Payment initiation services (PIS)**

Please only answer the following questions if you provide payment initiation services

80	How many different payment accounts have been accessed by the EMI in the reporting period for the purposes of providing PIS?	
81	How many payment transactions has the firm initiated in the reporting period?	
82	What is the total value of all payment transactions initiated by the firm during the reporting period? (EUR)	
83	Please enter the minimum monetary amount of the PII or comparable guarantee calculated in accordance with the EBA's Guidelines (EUR)	
84	Please enter the amount of coverage of the PII or comparable guarantee (EUR)	
85	Has the insurance provider or the terms and conditions of the PII policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the FCA?	If yes, please explain

After SUP 16 Annex 30H insert the following new Annex as SUP 16 Annex 30I. The text is not underlined.

## **16 Annex Notes on completing authorised electronic money institution questionnaire 30IG**

### **FIN060 Authorised Electronic Money Institution Questionnaire**

#### **Valuation**

Firms should follow their normal accounting practice wherever possible.

#### **Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR. The exchange rate entered at element 31 should be used throughout the return to convert GBP to EUR where required.

- Elements 1 to 4 and 12 to 30 must be completed in GBP.
- All other monetary answers must be in EUR.

Figures should be entered in single units in the currency specified. For example, €1,234,567.50 should be entered as 1234567.

#### **Section 1: Income Statement**

**Element 1:** State, in GBP, the total income of the legal entity, across all activity, for the reporting period. Follow your firm's normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 2:** State, in GBP, the total income for the reporting period, derived from the issuance of e-money and related payment services. Follow your normal accounting practice when answering this question. 'Related payment services' means those payment services that are related to the issuance of e-money.

**Element 3:** State, in GBP, the total income for the reporting period, derived from the provision of unrelated payment services. Follow your normal accounting practice when answering this question. 'Unrelated payment services' means those payment services (as defined in the Payment Services Regulations 2017) that are not related to the issuance of e-money. If you do not provide unrelated payment services, please enter '0'.

**Element 4:** State, in GBP, the total operating profit or loss of the legal entity for the reporting

period. Operating profit or loss is calculated after ordinary operating expenses are deducted from the gross profit, but before interest, tax, dividend payments and any extraordinary items are deducted.

## Section 2: EMRs and PSRs 2017 activity

### *Section 2(a): EMRs activity*

**Element 5:** Enter the full number of months during the reporting period that your firm was *FCA* authorised or registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the *FCA* on 15 October then you should enter '2'.

**Element 6:** State (in EUR) the amount of e-money that was outstanding at the end of the period to which this return relates.

**Elements 7 and 8:** State the number of e-money accounts open at the start and end of the reporting period. This includes all customer types (consumers and corporates). If a customer has multiple accounts, you should include each account in the total.

### *Section 2(b): PSRs 2017 activity*

**Element 9:** 'Unrelated payment services' means payment services as defined in the PSRs 2017 that are not related to the issuance of e-money. If the answer to this question is 'No' you do not need to answer questions 10 and 11 or Section 4: Capital requirements for unrelated payment services.

**Element 10:** State the number of unrelated payment transactions executed by your firm during the reporting period. This includes payment transactions executed by agents of your firm.

**Element 11:** State, in EUR, the total value of all the unrelated payment transactions executed during the reporting period. This includes payment transactions executed by agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them.

## Section 3: Net capital resources

### *Section 3 (a-d)*

For the purposes of Section 3, please provide, in GBP, a value for Common Equity Tier 1, Additional Tier 1 and Tier 2 capital items. You will also need to provide values for adjustments, deductions, exemptions, and temporary waivers (entering zero where not relevant).

To understand the items that may be used to form 'own funds', firms should consult the PSRs 2017, the Capital Requirements Regulation (EU) 575/2013 (CRR), and the Payment Services and Electronic Money Approach Document.

Regulation 2 of the PSRs 2017 sets out that own funds has the definition given in the CRR Article 4(1)(118). Own funds consist of Tier 1 and Tier 2 items. Tier 1 is formed of Common

Equity Tier 1 and Additional Tier 1. At least 75% of Tier 1 capital must be held as Common Equity Tier 1 capital and Tier 2 capital must be equal to or less than one third of Tier 1 capital. The return will take into account these limits when automatically calculating figures for eligible amounts in elements 26B to 29B – these do not need to be manually entered.

*Section 3 (e)*

**Element 30:** This should be the sum of the capital items listed at 28B to 29B.

**Element 31:** Please provide the EUR equivalent value for 1 GBP to four decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 32:** State the EUR equivalent of element 30 above.

#### **Section 4: Capital requirements for unrelated payment services**

These questions are only applicable to an authorised EMI that has answered ‘Yes’ to Q9.

*Section 4(a): Method used to calculate ongoing requirements*

**Element 33:** Firms should indicate which of the three methods (Methods A/B/C) they use to calculate their own funds requirement for unrelated payment services (Part 2 of Schedule 2 of the Electronic Money Regulations 2011).

Firms only need to complete those parts of the form that apply to their chosen method of calculating own funds.

If your firm has not completed a full financial year of business, then, in lieu of the figure for the ‘preceding year’ or the ‘previous financial year’, you must use the projected figure(s) that your firm submitted to the *FCA* when applying for authorisation (subject to any adjustments that the *FCA* required or may require).

Please refer to Chapter 9 (Capital resources and requirements) of our Payment Services and Electronic Money Approach Document for further detail on how to calculate the own funds requirement.

*Section 4(b): Method A calculation*

**Element 34:** State, in EUR, the total fixed overheads for the preceding year. Please refer to Chapter 9 of our Payment Services and Electronic Money Approach Document for further guidance on fixed overheads.

**Element 35:** State, in EUR, the figure equal to 10% of the figure you have reported in element 34.

*Section 4(c): Method B calculation*

**Element 36:** ‘Payment volume’ means the total value, in EUR, of unrelated payment transactions executed by the firm in the preceding financial year divided by the number of months in that year (paragraph 9(3), Part 2, Schedule 3 of the PSRs 2017). This figure should

include unrelated payment transactions executed by agents.

**Element 37:** State, in EUR, the figure that equals 4% of the first €5m of payment volume.

**Element 38:** State, in EUR, the figure that equals 2.5% of payment volume between €5m and €10m. If your firm has undertaken less than €5m in payment volume, insert a zero in this box.

**Element 39:** State, in EUR, the figure that equals 1% of payment volume between €10m and €100m. If your firm has undertaken less than €10m in payment volume, insert a zero in this box.

**Element 40:** State, in EUR, the figure that equals 0.5% of payment volume between €100m and €250m. If your firm has undertaken less than €100m in payment volume, insert a zero in this box.

**Element 41:** State, in EUR, the figure that equals 0.25% of all payment volume over €250m. If your firm has undertaken less than €250m in payment volume, insert a zero in this box.

**Element 42:** State, in EUR, the sum of the values from elements 37 to 41 above.

**Element 43:** The ‘scaling factor’ is:

- 0.50 for an authorised EMI that is providing a payment service specified in paragraph 1(f) of Schedule 1 of the PSRs 2017 (money remittance); and
- 1.00 for an authorised EMI that is providing any other payment service specified in paragraph 1(a) to (e) of Schedule 1 of the PSRs 2017.

The scaling factor should be entered to two decimal places.

**Element 44:** This figure is calculated using the following equation – element 42 x element 43.

*Section 4(d): Method C calculation*

*Relevant Indicator*

**Element 45 – Element 48:** these figures should be entered in EUR and should cover the expenses or income generated over the reporting period. Please refer to Chapter 9 (Capital resources and requirements) of our Payment Services and Electronic Money Approach Document for further detail on the elements that make up the relevant indicator.

Firms should have regard to paragraphs 10(4)(a)-(d), Part 2, Schedule 3 of the PSRs 2017 for the purposes of calculating the relevant indicator:

- each element must be included in the sum with its positive or negative sign;
- income from extraordinary or irregular items must not be used;
- expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
- the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;

- the relevant indicator must be calculated over the previous financial year; and
- audited figures must be used unless they are not available in which case business estimates may be used.

**Element 49:** The ‘total relevant indicator of income’ is the sum of the amounts stated in elements 45 to 48 above.

#### *Multiplication Factor*

**Element 50:** State, in EUR, the figure that equals 10% of the first €2.5m of the ‘total relevant indicator of income’ (i.e. the figure in element 49).

**Element 51:** State, in EUR, the figure that equals 8% of the ‘total relevant indicator of income’ between €2.5m and €5m. If your firm’s total relevant indicator of income is less than or equal to €2.5m, you should enter zero in this box.

**Element 52:** State, in EUR, the figure that equals 6% of the ‘total relevant indicator of income’ between €5m and €25m. If your firm’s total relevant indicator of income is less than or equal to €5m, you should enter zero in this box.

**Element 53:** State, in EUR, the figure that equals 3% of the ‘total relevant indicator of income’ between €25m and €50m. If your firm’s total relevant indicator of income is less than or equal to €25m, you should enter zero in this box.

**Element 54:** State, in EUR, the figure that equals 1.5% of the ‘total relevant indicator of income’ over €50m. If your firm’s total relevant indicator of income is less than or equal to €50m, you should enter zero in this box.

**Element 55:** State, in EUR, the sum of the values of elements 50 to 54 above (the Multiplication Factor).

**Element 56:** The ‘scaling factor’ is:

- 0.50 for an authorised EMI that is providing a payment service specified in paragraph 1(f) of Schedule 1 PSRs 2017 (money remittance); and
- 1.00 for an authorised EMI that is providing any other payment service specified in paragraph 1(a) to (e) of Schedule 1 PSRs 2017.

The scaling factor should be entered to two decimal places.

**Element 57:** The own funds requirement is calculated by multiplying the total relevant indicator of income (element 49) by the multiplication factor (element 55) and the scaling factor (element 56).

### **Section 5: Overall capital requirements**

**Element 58:** You should enter, in EUR, the average outstanding e-money for the last month of the reporting period. ‘Average outstanding e-money’ means the average total amount of

financial liabilities related to e-money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.

**Element 59:** This figure is 2% of the average outstanding e-money (method D). This figure should be provided in EUR.

**Element 60:** Total own funds: for firms that do not provide unrelated payment services, this is the same figure as Element 59. For firms that do provide unrelated payment services, this is the sum of the own funds requirement for unrelated payment services (method A/B/C) as calculated above and the method D own funds requirement at element 59 above. This figure should be provided in EUR.

**Element 61:** Total capital requirement: enter the higher of €350,000 or the total own funds figure at element 60 (in EUR).

**Element 62:** This is calculated by subtracting the total capital requirement (element 61) from the total net capital resources (element 32). You must enter the figure with a minus symbol if it is of negative value.

**Element 63:** Firms are reminded that method D own funds is based on average outstanding e-money, which involves monthly calculations and the figure entered above at element 59 provides a snapshot for that month. Firms must confirm whether own funds have been equal to or greater than the own funds requirement in all months of the reporting period. If the answer to this question is 'No' you should notify us separately with an explanation.

## **Section 6: Method of Safeguarding**

You must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds. You must provide separate safeguarding information for relevant funds received in exchange for e-money that has been issued and (where relevant) relevant funds received for the purposes of executing unrelated payment transactions.

If you do not provide unrelated payment services you do not need to answer elements 64 to 68.

## **Section 7: Agents**

**Element 69:** State the number of agents that you have registered to undertake payment services (whether unrelated or related).

## **Section 8: Payment systems**

**Element 70:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 72:** If your firm accesses, on an indirect basis, any sterling interbank payment systems,

select the appropriate system(s) from the drop-down list. This means where the EMI indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 74:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

## **Section 9: Providers of account information services or payment initiation services**

### *Account information services (AIS)*

(i) Elements 75 to 79 should only be answered by firms providing AIS.

**Element 75:** State the number of payment accounts that your firm has accessed for the purposes of providing AIS during the reporting period. You should count each individual payment account once, even where it has been accessed multiple times.

**Element 76:** State the number of customers that have used your firm's AIS in the reporting period. Each customer should be counted once (including where the customer has used the AIS multiple times).

**Element 77:** State the minimum monetary amount (in EUR) of the professional indemnity insurance (or comparable guarantee) ('PII') calculated in accordance with the European Banking Authority Guidelines on Professional Indemnity Insurance under PSD2.

**Element 78:** Please enter the amount of coverage of the PII that is held. This should be entered in EUR. Please use the same conversion rate entered at element 31A.

**Element 79:** If the terms of your firm's PII have changed in any respect since its authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount), what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

### *Payment initiation services (PIS)*

(ii) Elements 80 to 85 should only be answered by firms providing PIS.

**Element 80:** State the number of payment accounts that your firm has accessed for the purposes of providing PIS during the reporting period. You should count each individual payment account once, even where it has been accessed multiple times.

**Element 81:** This should be the total number of payment transactions initiated using your firm's PIS in the reporting period.

**Element 82:** This should be the total value of the payment transactions initiated using your firm's PIS in the reporting period.

**Element 83:** State the minimum monetary amount (in EUR) of the professional indemnity insurance (or comparable guarantee) ('PII') calculated in accordance with the European

Banking Authority Guidelines on Professional Indemnity Insurance under PSD2.

**Element 84:** Please enter the amount of coverage of the PII that is held. This should be entered in EUR.

**Element 85:** If the terms of your firm's PII has changed in any respect since its authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount), what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

After SUP 16 Annex 30I insert the following new Annex as SUP 16 Annex 30J. The text is not underlined.

## 16 Annex Small electronic money institution questionnaire 30JD

This annex consists only of one or more forms. Firms are required to submit the returns using the electronic means made available by the FCA.

### FIN060 Small E-money Institution Questionnaire

#### Section 1: Income Statement

*Firm annual income for the legal entity only  
Section 1 must be answered in GBP*

	A
1 Total income during reporting period	
2 Total income during reporting period derived from e-money issuance and related payment services	
3 Total income during reporting period derived from unrelated payment services	
4 Total operating profit / loss of legal entity during reporting period	

#### Section 2: EMRs and PSRs 2017 activity

##### Section 2(a): EMRs activity

5 How many full months in the reporting period has the firm been registered?	
6 Total e-money outstanding at the end of the reporting period (EUR)	
7 Average outstanding e-money for the last month in the reporting period (EUR)	
8 Number of e-money accounts open at the start of the reporting period	
9 Number of e-money accounts open at the end of the reporting period	

##### Section 2(b): PSRs 2017 activity

*If your firm does not provide unrelated payment services, please enter "0" for each of these questions.*

10 Number of unrelated payment transactions executed in reporting period	
11 Total value of unrelated payment transactions executed in reporting period (EUR)	
12 What is the monthly average of the total amount of unrelated payment transactions executed over the reporting period (including payment transactions executed through UK agents)?	

#### Section 3: Capital requirements for e-money

13 Has the firm generated average outstanding e-money of €500,000 or more at any point during the reporting period?	Yes/No
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*If yes, please answer the following questions on capital requirements and resources*

14 Capital requirement as at the end of the reporting period (EUR)	
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#### Section 4: Capital resources

*Section 4 must be answered in GBP, unless otherwise stated*

##### Section 4(a): Common Equity Tier 1 (CET1) Capital

	B
15 CET1 items	
16 Adjustments to CET1 due to the application of Prudential Filters	
17 Deductions from CET1 items	
18 Exemptions from and alternatives to deductions from CET1 items	
19 Temporary waivers applied to CET1 deductions from own funds	
20 Total CET1 Capital	

##### Section 4(b): Additional Tier 1 (AT1) Capital

21 AT1 Items	
22 Deductions from AT1 items	
23 Temporary waivers applied to AT1 deductions from own funds	
24 Total AT1 Capital	

##### Section 4(c): Tier 2 (T2) Capital

25 T2 Items	
26 Deductions from T2 items	
27 Temporary waivers applied to T2 deductions from own funds	
28 Total T2 Capital	

##### Section 4(d): Eligible capital for calculating own funds

	A	B	C
	Total amount	Eligible amount	Excess
29 CET1 Capital			
30 AT1 Capital			
31 Tier 1 Capital			
32 T2 Capital			

##### Section 4(e): Total capital resources

33 Total capital resources (GBP)	
34 £/€ exchange rate	
35 Total capital resources (EUR)	

##### Section 4(f): Total capital surplus / deficit

36 Capital surplus / deficit (EUR)	
37 Have the firm's own funds been equal to or greater than its own funds requirement (where applicable) at all times throughout the reporting period?	Yes / No

#### Section 6: Method of Safeguarding

	A	B	C	D
	Electronic Money	Unrelated Payment Services	Credit institution name	Country where the account is located
38 Placed in a separate account with an authorised credit institution				
39 Invested in approved secure liquid assets held in a separate account with an authorised custodian			Custodian name	Country where the account is located
40 Covered by an insurance policy with an authorised insurer			Insurer name	
41 Covered by a guarantee from an authorised insurer			Insurer name	
42 Covered by a guarantee from an authorised credit institution			Credit institution name	

**Section 7: Agents**

43 Please report the number of agents the firm has

A
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**Section 8: Payment systems**

44 Is the firm a member of any sterling interbank payment systems?  
*Select all that apply*

Bacs
CHAPS
Cheque and Credit
Faster Payments
LINK
MasterCard
Visa
No
Other(s)

45 If Other(s), please specify

--

46 Which, if any, sterling interbank payment systems does your firm access indirectly?  
*Select all that apply*

Bacs
CHAPS
Cheque and Credit
Faster Payments
None
Other(s)

47 If Other(s), please specify

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48 Which institution is the firm's primary provider of indirect access to sterling interbank payment systems?

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After SUP 16 Annex 30J insert the following new Annex as SUP 16 Annex 30K. The text is not underlined.

**16 Annex Notes on completing small e-money institution questionnaire  
30KG**

**FIN060 Small E-Money Institution Questionnaire**

**Valuation**

Firms should follow their normal accounting practice wherever possible.

**Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR. The exchange rate entered at element 34 should be used throughout the return to convert GBP to EUR where required.

- Elements 1 to 4 and 15 to 33 must be completed in GBP.
- All other monetary answers must be in EUR.

Figures should be entered in single units in the currency specified. For example, €1,234,567.50 should be entered as 1234567.

**Section 1: Income Statement**

**Element 1:** State, in GBP, the total income of the legal entity, across all activity, for the reporting period. Follow your firm's normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 2:** State, in GBP, the total income for the reporting period, derived from the issuance of e-money and related payment services. Follow your normal accounting practice when answering this question. 'Related payment services' means those payment services that are related to the issuance of e-money.

**Element 3:** State, in GBP, the total income for the reporting period, derived from the provision of unrelated payment services. Follow your normal accounting practice when answering this question. 'Unrelated payment services' means those payment services (as defined in the Payment Services Regulations 2017) that are not related to the issuance of e-money. If you do not provide unrelated payment services, please enter '0'.

**Element 4:** State, in GBP, the total operating profit or loss of the legal entity for the reporting

period. Operating profit or loss is calculated after ordinary operating expenses are deducted from the gross profit, but before interest, tax, dividend payments and any extraordinary items are deducted.

## **Section 2: EMRs and PSRs 2017 activity**

### *Section 2(a): EMRs activity*

**Element 5:** Enter the full number of months during the reporting period that your firm was *FCA* authorised or registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the *FCA* on 15 October then you should enter '2'.

**Element 6:** State, in EUR, the amount of e-money that was outstanding at the end of the period to which this return relates.

**Elements 7:** You should enter, in EUR, the average outstanding e-money for the last month of the reporting period. 'Average outstanding e-money' means the average total amount of financial liabilities related to e-money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.

**Element 8 and 9:** State the number of e-money accounts open at the start and end of the reporting period. This includes all customer types (consumers and corporates). If a customer has multiple accounts, you should include each account in the total.

### **Section 2(b): PSRs 2017 activity**

'Unrelated payment services' means payment services as defined in the PSRs 2017 that are not related to the issuance of e-money. If you do not provide unrelated payment services please enter '0' for each of these questions.

**Element 10:** State the number of unrelated payment transactions executed by your firm during the reporting period. This includes payment transactions executed by agents of your firm.

**Element 11:** State, in EUR, the total value of all the unrelated payment transactions executed during the reporting period. This includes payment transactions executed by UK agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them.

**Element 12:** Enter, in EUR, the monthly average value of the total unrelated payment transactions executed over the reporting period. This should be the figure entered at element 11 divided by the number of full months during the reporting period that your firm was registered (i.e. the number entered at element 10). If the monthly average is inflated as a result of rounding to full months, you may calculate the monthly average by taking into account the partial month of registration in this figure only.

### Section 3: Capital requirements for e-money

**Element 13:** ‘Average outstanding e-money’ means the average total amount of financial liabilities related to e-money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month. If your firm has generated average outstanding e-money of €500,000 or more for any month of the reporting period you should enter ‘Yes’. This triggers the requirement to hold own funds (regulation 19(2) of the Electronic Money Regulations 2011).

If the answer to Element 13 is ‘Yes’ you must answer elements 30 to 37.

**Element 14:** This figure is 2% of the average outstanding e-money (element 7). This figure should be provided in EUR.

### Section 4: Net capital resources

#### *Sections 4(a-d)*

For the purposes of Section 4, please provide a value for Common Equity Tier 1, Additional Tier 1 and Tier 2 capital items. You will also need to provide values for adjustments, deductions, exemptions, and temporary waivers (entering zero where not relevant).

To understand the items that may be used to form ‘own funds’, firms should consult the PSRs 2017, the Capital Requirements Regulation (EU) 575/2013 (CRR), and the Payment Services and Electronic Money Approach Document.

Regulation 2 of the PSRs 2017 sets out that own funds has the definition given in the CRR Article 4(1)(118). Own funds consist of Tier 1 and Tier 2 items. Tier 1 is formed of Common Equity Tier 1 and Additional Tier 1. At least 75% of Tier 1 capital must be held as Common Equity Tier 1 capital and Tier 2 capital must be equal to or less than one third of Tier 1 capital. The return will take into account these limits when calculating a figure for total capital resources.

#### *Section 4(e): Total capital resources*

**Element 30:** This should be the sum of the capital items listed at 31B to 32B.

**Element 31:** Please provide the EUR equivalent value for 1 GBP to four decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 32:** State the EUR equivalent of element 30 above.

#### *Section 4(f): Total capital surplus / deficit*

**Element 36:** This is calculated by subtracting the capital requirement (element 14) from the total net capital resources (element 32). You must enter the figure with a minus symbol if it is of negative value.

**Element 37:** Firms are reminded that the capital requirement (or own funds) is based on average outstanding e-money, which involves monthly calculations. The figures entered above at elements 14 and 36 provide a snapshot as at the end of the reporting period. Firms must confirm whether own funds have been equal to or greater than the own funds requirement in all months of the reporting period. If the answer to this question is 'No' you should notify us separately with an explanation.

### **Section 6: Method of Safeguarding**

You must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds. You must provide separate safeguarding information for relevant funds received in exchange for e-money that has been issued and (where relevant) relevant funds received for the purposes of executing unrelated payment transaction.

If you do not provide unrelated payment services you do not need to answer elements 36 to 42.

### **Section 7: Agents**

**Element 43:** State the number of agents that you have registered to undertake payment services in the UK (whether unrelated or related).

### **Section 8: Payment systems**

**Element 44:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 46:** If your firm accesses, on an indirect basis, any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where your firm indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 48:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

Amend the following as shown.

**TP 1 Transitional provisions**

...

**TP 1.11 Payment services and electronic money returns**

<b><u>(1)</u></b>	<b><u>(2) Material to which the transitional provision applies</u></b>	<b><u>(3)</u></b>	<b><u>(4) Transitional provision</u></b>	<b><u>(5) Transitional provision: dates in force</u></b>	<b><u>(6) Handbook provision: coming into force</u></b>
1	<u>SUP 16.3.3D to SUP 16.3.4D and SUP 16.15.8D</u>	D	<u>The changes effected by the Payment Services Instrument 2017 to SUP 16.3.3D to SUP 16.3.4D and SUP 16.15.8D do not apply where a <i>payment institution or electronic money institution</i> is required to submit a return covering a reporting period ending on 12 January 2018 or earlier. SUP 16.3.3D to SUP 16.3.4D and SUP 16.15.8D apply as they stood immediately before 13 January 2018 with respect to periodic reporting of information to the FCA covering a period ending before 12 January 2018.</u>	<u>13 January 2018 to 1 April 2018</u>	<u>13 January 2018</u>
2	<u>SUP 16.3.3D to SUP 16.3.4D and SUP 16.15.8D</u>	G	<u>The effect of (1) is that an <i>authorised payment institution</i> or a <i>small payment institution</i> should submit the annual return FSA056 or FSA057 in the pre-13 January 2018 format in respect of a reporting period that ends on or before 12 January 2018. The due dates for submission after the end of the reporting period are the same before and after 13 January 2018.</u>  <u>The effect of (1) is also that an <i>authorised electronic money institution</i> should submit FSA059 to FSA063 in the pre-13 January 2018 formats (rather than the new return FIN060) in respect of a</u>	<u>13 January 2018 to 1 April 2018</u>	<u>13 January 2018</u>

			<p><u>reporting period that ends on or before 12 January 2018. The reporting frequencies for these returns are half-yearly, calculated from the <i>authorised electronic money institution's accounting reference date</i>, and the due dates for submission are within 30 <i>business days</i> following the end of the reporting period.</u></p> <p><u>A <i>small electronic money institution</i> should submit FSA064 in the pre-13 January 2018 format (rather than the new return FIN060) in respect of a reporting period that ends on or before 12 January 2018. The reporting frequency for this return is half-yearly, calculated from the <i>small electronic money institution's accounting reference date</i>, and the due date for submission is within 30 <i>business days</i> following the end of the reporting period.</u></p>		
<u>3</u>	<u>SUP 16.3.3D to SUP 16.13.4D and SUP 16.15.8D</u>	<u>D</u>	<p><u>(1) This direction applies to an <i>authorised payment institution, registered account information service provider, authorised electronic money institution, or small electronic money institution with an accounting reference date falling between 13 January 2018 and 30 March 2018 (inclusive).</i></u></p> <p><u>(2) A <i>person to whom this direction applies</i> must, in respect of the reporting period that ends on the <i>accounting reference date</i> between 13 January 2018 and 30 March 2018, complete and submit the return specified in the second column of the table in SUP 16.13.4D or SUP 16.15.8D (as applicable) within 30 <i>business days</i> of 31 March 2018.</u></p>	<u>13 January 2018 to 18 May 2018</u>	<u>13 January 2018</u>
<u>4</u>	<u>SUP 16.3.3D to SUP 16.3.4D and</u>	<u>G</u>	<u>The effect of (3) is that an <i>authorised payment institution or registered account information</i></u>	<u>13 January 2018 to 18 May 2018</u>	<u>13 January 2018</u>

	<u>SUP</u> <u>16.15.8D</u>		<p><u>service provider</u> should submit the return FSA056 by 11 May 2018 if the return relates to a reporting period that ends between 13 January 2018 and 30 March 2018 (inclusive).</p> <p>The effect of (3) is also that an <u>authorised electronic money institution</u> or <u>small electronic money institution</u> should submit the return FIN060 by 11 May 2018 if the return relates to a reporting period that ends between 13 January 2018 and 30 March 2018 (inclusive).</p>		
<u>5</u>	<u>SUP</u> <u>16.13.4D</u> and <u>SUP</u> <u>16.15.8D</u>	<u>D</u>	<p><u>An authorised payment institution, registered account information service provider, authorised electronic money institution, or small electronic money institution</u> required to submit a return covering a reporting period beginning before and ending after 13 January 2018 is required to answer the ‘new return questions’ only in respect of the period beginning on the 13 January 2018 and ending on its <u>accounting reference date</u>.</p> <p>‘New return questions’ means:</p> <p>(a) for an <u>authorised payment institution</u>, questions 68, 76,-80 and 84-86 in FSA056 (Authorised Payment Institution Capital Adequacy Return);</p> <p>(b) for a <u>registered account information service provider</u>, question 68 in FSA056 (Authorised Payment Institution Capital Adequacy Return);</p> <p>(c) for an <u>authorised electronic money institution</u>, questions 2–3, 10-11, 75-76 and 80-82, in FIN060 (Authorised Electronic Money Institution Questionnaire); and</p> <p>(d) for a <u>small electronic money</u></p>	<u>13 January</u> <u>2018 to 1</u> <u>April 2019</u>	<u>13 January</u> <u>2018</u>

			<u>institution, questions 2-3 and questions 10-12 in FIN060 (Small E-Money Institution Questionnaire).</u>		
<u>6</u>	<u>SUP 16.13.4D and SUP 16.15.8D</u>	<u>G</u>	<u>The effect of (5) is that, even if part of the reporting period to be covered by a return falls earlier than 13 January 2018, the authorised payment institution, registered account information service provider, authorised electronic money institution or small electronic money institution is nonetheless required to submit the return in the new form set out in the Payment Services Instrument 2017, but is only required to answer the new questions added by the Payment Services Instrument 2017 in relation to the part of the reporting period that falls on or after 13 January 2018.</u>	<u>13 January 2018 to 1 April 2019</u>	<u>13 January 2018</u>
<u>7</u>	<u>SUP 16.15.8D</u>	<u>G</u>	<u>Electronic money institutions are reminded that the return FIN060 is to be completed in respect of a reporting period of 12 months. This means that electronic money institutions using FIN060 for the first time should include in that report data from the preceding 12 months, irrespective of whether some of that data has already been reported to the FCA as a result of the previous half yearly reporting frequency.</u>	<u>13 January 2018 to 1 April 2019</u>	<u>13 January 2018</u>

**Part 2: Comes into force on 1 April 2018**

**16 Annex 27A**

In this Annex, the entire data item FSA056 is deleted, and replaced by ‘[deleted]’.

**16 Annex 27B**

In this Annex, the guidance notes relating to FSA056 are deleted and replaced, in each case, by '[deleted]'.

**16 Annex 28A**

In this Annex, the entire data item FSA057 is deleted, and replaced by '[deleted]'.

**16 Annex 28B**

In this Annex, the guidance notes relating to FSA057 are deleted and replaced, in each case, by '[deleted]'.

**16 Annex 30A**

In this Annex, the entire data item FSA059 is deleted, and replaced by '[deleted]'.

**16 Annex 30B**

In this Annex, the entire data item FSA060 is deleted, and replaced by '[deleted]'.

**16 Annex 30C**

In this Annex, the entire data item FSA061 is deleted, and replaced by '[deleted]'.

**16 Annex 30D**

In this Annex, the entire data item FSA062 is deleted, and replaced by '[deleted]'.

**16 Annex 30E**

In this Annex, the entire data item FSA063 is deleted, and replaced by '[deleted]'.

**16 Annex 30F**

In this Annex, the entire data item FSA064 is deleted, and replaced by '[deleted]'.

**Annex H**

**Amendments to the Decision Procedure and Penalties manual (DEPP)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**2 Annex 1 Warning notices and decision notices under the Act and certain other enactments**

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk \* (see *DEPP* 2.4)

...

<b>Payment Services Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
Regulations 9(7) <del>and 14, 15 and 19</del>	when the <i>FCA</i> is proposing to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration as a <i>small payment institution</i> , <u>or for registration as an <i>account information service provider</i></u> , or to impose a requirement, or to refuse an application to vary an authorisation <u>or existing registration</u>		<i>Executive procedures</i>
Regulations 9(8)(a) <del>and 14, 15 and 19</del>	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , <u>or for registration as an <i>account information service provider</i></u> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>

	<u>or existing registration</u>		
Regulations <del>10(2), and 10(3)(a) and 14,</del> <u>15 and 19</u>	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution's institution or account information service provider's</i> registration, otherwise than at that institution's own request*		<i>RDC</i>
Regulations <del>24(2)</del> <u>28(1) and 26</u>	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i>		<i>Executive procedures</i>
Regulations <del>24(3)(a)</del> <u>28(2)(a) and 26</u>	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations <del>24(2) and 24(3)(a)</del> <u>28(1), 28(2)(a) and 26</u>	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch*</i> or an <i>EEA registered account information service provider</i>		<i>RDC</i>
Regulation <del>29(9)</del> <u>34(8)</u>	when the <i>FCA</i> is proposing to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i>
Regulation <del>29(10)(a)</del> <u>34(9)(a)</u>	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i> where no representations are made in

			response to a warning notice, otherwise by the <i>RDC</i>
Regulations <del>30(2)</del> <u>35(2)</u> and <del>30(3)(a)</del> <u>35(3)(a)</u>	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of a <i>payment institution</i> *		<i>RDC</i>
Regulations <del>86(1)</del> <u>112(1)</u> and <del>86(3)</del> <u>112(3)</u>	when the <i>FCA</i> is proposing or deciding to impose a financial penalty*		<i>RDC</i>
Regulations <del>86(1)</del> <u>112(1)</u> and <del>86(3)</del> <u>112(3)</u>	when the <i>FCA</i> is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>Payment Services Regulations</i> *		<i>RDC</i>
Regulations <del>89(1)</del> <u>115(1)</u> and <del>89(3)</del> <u>115(3)</u>	when the <i>FCA</i> is proposing, or deciding, to exercise its powers to require restitution*		<i>RDC</i>
<del>Regulation 121(7)</del>	<del>when the <i>FCA</i> is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</del>		<i>Executive Procedures</i>
<del>Regulation 121(8)</del>	<del>when the <i>FCA</i> is deciding that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</del>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>

Schedule 4A <u>5</u> paragraph 5(6)	when the <i>FCA</i> is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures</i>
Schedule 4A <u>5</u> paragraph 5(7)	when the <i>FCA</i> is deciding to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures</i> , where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Schedule <u>5</u> <u>6</u> paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Payment Services Regulations</i> (Note 2)		<i>RDC</i>
Schedule <u>5</u> <u>6</u> paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 2)		<i>RDC</i>
Notes: (2) The <i>Payment Services Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.			

...

## 2 Annex 2 Supervisory notices

...

Payment Services	Description	Handbook	Decision maker
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Regulations		reference	
<del>11(6)</del> <del>11(9)</del> <del>11(10)(b)</del> <del>14</del> <u>12(6), 12(9),</u> <u>12(10)(b), 15 and</u> <u>19</u>	<del>When</del> <u>when</u> the <i>FCA</i> is exercising its powers to vary a person's authorisation on its own initiative		<i>RDC</i> or <i>Executive procedures</i>  See also <i>DEPP</i> 3.4 (Note 1)
Schedule 4A <u>5</u> , paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7)	when <u>the FCA is</u> exercising its power to impose a prohibition or restriction, or to vary a restriction		<i>RDC</i> or <i>executive procedures</i> (Note 2)  See also <i>DEPP</i> 3.4
...			

## Annex I

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

#### INTRO 1 Introduction

...

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes rules and directions made by the *FCA* and rules made (and standard terms set) by *FOS Ltd* with the consent or approval of the *FCA*.

The powers to make rules and directions (or set *standard terms*) relating to *firms*, *payment service providers*, *electronic money issuers*, *CBTL firms*, *designated credit reference agencies*, *designated finance platforms* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

#### 1 Treating complainants fairly

##### 1.1 Purpose and application

...

Application to firms

...

##### 1.1.3 R ...

##### 1.1.3A D The complaints reporting directions apply to a firm that provides payment services or issues electronic money in respect of:

(1) complaints from payment service users; and

(2) complaints from electronic money holders that are eligible complainants

concerning activities carried on from an establishment maintained by the firm in the United Kingdom.

...

- 1.1.5A R DISP 1.6.2A, DISP 1.6.2B (rules relating to EMD complaints and PSD complaints), the ~~The~~ complaints reporting rules, the complaints reporting directions and the complaints data publication rules do not apply to a credit union.

...

Application to payment services providers that are not firms

- 1.1.10A R This chapter (except ~~the complaints record rule, the complaints reporting rules and the complaints data publication rules~~) applies to payment service providers that are not firms in respect of complaints from eligible complainants concerning activities carried on from an establishment maintained by ~~it~~ that payment service provider or its agent in the United Kingdom.

- 1.1.10AB D The complaints reporting directions apply to a payment service provider that is not a firm in respect of complaints from payment service users concerning activities carried on from an establishment maintained by that payment service provider or its agent in the United Kingdom.

- 1.1.10B G (1) In this sourcebook, the term payment service provider does not include ~~full~~ credit institutions (which are covered by this sourcebook as firms), but it does include small electronic money institutions and registered account information service providers.
- (2) ~~Although payment service providers are not required to comply with the complaints record rule, it is in their interest to retain records of complaints so that these can be used to assist the Financial Ombudsman Service should this be necessary. [deleted]~~

Application to electronic money issuers that are not firms

- 1.1.10C R This chapter (except ~~the complaints record rule, the complaints reporting rules and the complaints data publication rules~~) applies to an electronic money issuer that is not a firm in respect of complaints from eligible complainants concerning activities carried on from an establishment maintained by ~~it~~ that electronic money issuer or its agent in the United Kingdom.

- 1.1.10CA D The complaints reporting directions apply to an electronic money issuer that is not a firm in respect of complaints from eligible complainants concerning activities carried on from an establishment maintained by that electronic money issuer or its agent in the United Kingdom.

- 1.1.10D G (1) In this sourcebook, the term electronic money issuer does not include credit institutions, credit unions or municipal banks (which will be carrying on a regulated activity if they issue electronic money and will be covered by this sourcebook as firms in those circumstances), but it does include small electronic money institutions and persons who meet the conditions set out in regulation 75(1) or regulation

76(1) of the *Electronic Money Regulations*.

- (2) ~~Although *electronic money institutions* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should this be necessary.~~ [deleted]

...

## 1.2 Consumer awareness rules

Publishing and providing summary details, and information about the Financial Ombudsman Service

- 1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:

...

- (2) refer *eligible complainants* to the availability of this information:

- (a) in relation to a *payment service*, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations ~~36(2)(e)~~ 43(2)(e) (Information required prior to the conclusion of a single payment service contract) or ~~40 48~~ (Prior general information for framework contracts) of the *Payment Services Regulations*; or

...

- (b) otherwise, in writing at, or immediately after, the point of sale; and

- (c) in relation to a *payment service*, at the *branch* where the service is provided;

...

[**Note:** article 15 of the *UCITS Directive*, article 13(2) of the *ADR Directive*, article 14(1) of the *ODR Regulation*, ~~and~~ regulation 19 of the *ADR Regulations*; and article 101 of the *Payment Services Directive*]

...

- 1.2.2A R ...

- 1.2.2B R To the extent that it applies to an *EMD complaint* or a *PSD complaint*, the information specified in *DISP* 1.2.1R must be available in an official language of each such *EEA State* where the *respondent* offers *payment services* or issues *electronic money*, or in another language if agreed between the *respondent* and the *payment service user* or *electronic money*

holder.

[Note: article 101 of the *Payment Services Directive*]

...

## 1.6 Complaints time limit rules

...

1.6.1A     G    To the extent that a *complaint* is in part an *EMD complaint* or a *PSD complaint* and the *respondent* has chosen to deal with it in parts, keeping the complainant informed of progress includes informing the complainant that this is the approach that the *respondent* will take.

...

Final or other response within eight weeks

1.6.2     R    The Subject to *DISP 1.6.2AR*, the *respondent* must, by the end of eight weeks after its receipt of the *complaint*, send the complainant:

...

EMD and PSD Complaints

1.6.2A     R    Where a *complaint* is an *EMD complaint* or a *PSD complaint*, the *respondent* must:

- (1)    send a *final response* to the complainant by the end of 15 *business days* after the day on which it received the *complaint*; or
- (2)    in exceptional circumstances, if a *final response* cannot be given in accordance with paragraph (1) for reasons beyond the control of the *respondent*:
  - (a)    send a holding response to the complainant by the end of 15 *business days* after the day on which it received the *complaint*, clearly indicating the reasons for the delay in answering the *complaint* and specifying the deadline by which it will send the *final response*; and
  - (b)    send a *final response* to the complainant by the end of 35 *business days* after the day on which it received the *complaint*.

A *final response* sent under (1) or (2) above must be on paper, or if agreed between the *respondent* and the complainant, on another *durable medium*.

[Note: article 101 of the *Payment Services Directive*]

1.6.2B     R    Where only part of a *complaint* is an *EMD complaint* or a *PSD complaint*,

that part must be treated in accordance with DISP 1.6.2AR.

- 1.6.2C R As the time limits in DISP 1.6.2AR are shorter than those in DISP 1.6.2R a respondent may choose to treat the whole complaint in accordance with DISP 1.6.2AR (see also DISP 2.8AR).

...

Complainant's written acceptance

- 1.6.4 R ...

- 1.6.4A G DISP 1.6.4R does not affect the requirements imposed by DISP 1.6.2AR. Where a complaint is an EMD complaint or a PSD complaint and DISP 1.6.2AR applies a final response must always be sent unless DISP 1.5.1R applies.

...

- 1.6.6A G The information regarding the *Financial Ombudsman Service*, required to be provided in responses sent under the *complaints time limit rules* (DISP 1.6.2 R, DISP 1.6.2AR and DISP 1.6.4R), should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[**Note:** article 13 of the *ADR Directive*]

...

## 1.8 Complaints time barring rule

- 1.8.1 R If a *respondent* receives a *complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see DISP 2.8) it may reject the complaint without considering the merits, but must explain this to the *complainant* in a final response in accordance with DISP 1.6.2R or DISP 1.6.2AR.

## 1.9 Complaints record rule

- 1.9.1 R A *firm*, including, in the case of ~~MiFID business~~ or *collective portfolio management services* for a *UCITS scheme* or an *EEA UCITS scheme*, a *branch of a UK firm in another EEA state* ~~State~~, a *payment service provider* or an *e-money issuer*, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

...

...

After DISP 1.10A (Complaints data publication rules) insert the following new section as DISP 1.10B. The text is not underlined.

**1.10B Payment services and electronic money complaints reporting**

- 1.10B.1 D (1) Once a year a *credit institution* that provides *payment services* or issues *electronic money* must provide the *FCA* with a complete report concerning *complaints* received about *payment services* and *electronic money*.
- (2) Once a year an *electronic money institution*, an *EEA authorised electronic money institution*, a *payment institution*, a *registered account information service provider* or an *EEA registered account information service provider* must provide the *FCA* with a complete report concerning *complaints* received about *payment services* and *electronic money*.
- (3) The report required by (1) and (2) must be set out in the format in *DISP 1 Annex 1AD*.
- 1.10B.2 G (1) In contrast to the other provisions in *DISP 1* which generally apply only to *complaints* from *eligible complainants*, the *complaints reporting directions* apply in addition to *complaints* from *payment service users* that are not *eligible complainants*.
- (2) *Payment service providers* are reminded that regulation 101 of the *Payment Services Regulations* contains requirements relating to complaints resolution procedures applicable to *complaints* from *payment service users* that are not *eligible complainants*.

Forwarded complaints

- 1.10B.3 D A *respondent* must not include in the report a *complaint* that has been forwarded in its entirety to another *respondent* under the complaints forwarding rules.
- 1.10B.4 D Where a *respondent* has forwarded to another *respondent* only part of a *complaint* or where two *respondents* may be jointly responsible for a *complaint*, then the *complaint* should be reported by both *respondents*.

Joint Reports

- 1.10B.5 D *Respondents* that are part of a group may submit a joint report to the *FCA*. The joint report must contain the information required from all *respondents* concerned and clearly indicate the *respondents* on whose behalf the report is submitted. The obligation to provide a report, and the responsibility for the report, remains with each *respondent* in the group.
- 1.10B.6 G Not all the *respondents* in the group need to submit the report jointly. *Respondents* should only consider submitting a joint report if it is logical to

do so, for example, where the *firms* have a common central *complaints* handling team and the same *accounting reference date*.

#### Information requirements

- 1.10B.7 D *DISP* 1 Annex 1AD requires, for the relevant reporting period and in respect of particular categories of products:
- (1) in Table 1, information about the total number of *complaints* received by the *respondent* and the cause of the *complaint*;
  - (2) in Table 2, information about the number of *complaints* that were:
    - (a) closed or upheld within different periods of time; and
    - (b) the total amount of redress paid by the *respondent* in relation to *complaints* upheld and not upheld in the relevant reporting period; and
  - (3) in Table 3, information providing context about the *complaints* received.
- 1.10B.8 G When completing the return, the *respondent* should take into account the following matters.
- (1) If a *complaint* could fall into more than one category, the *complaint* should be recorded in the category which the *respondent* considers to form the main part of the *complaint*.
  - (2) Under *DISP* 1.10B.7D(2)(a), a *respondent* should report information relating to all *complaints* which are closed and upheld within the relevant reporting period, including those resolved under *DISP* 1.5 (Complaints resolved by close of the third business day). Where a complaint is upheld in part, or where the *respondent* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *respondent* should treat the *complaint* as upheld for reporting purposes. However, where a *respondent* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the complaint should be recorded as 'rejected'.
  - (3) If a *respondent* reports on the amount of redress paid under *DISP* 1.10B.7D(2)(b) redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
    - (a) amounts paid for distress and inconvenience;
    - (b) a free transfer out to another provider which transfer would normally be paid for;

- (c) goodwill payments and goodwill gestures;
  - (d) interest on delayed settlements;
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the complainant back into the position the complainant should have been in had the act or omission not occurred.
- (4) If a *respondent* reports on the amount of redress paid under *DISP* 1.10B.7D(2)(b) the redress should not include the amount of a non-executed, defective or unauthorised payment transaction but should include any redress paid as a result of losses incurred by the complainant as a result of the non-executed, defective or unauthorised payment transaction.
- 1.10B.9 D The relevant reporting period is the year immediately following:
- (1) where the *respondent* has an *accounting reference date*, its *accounting reference date*; and
  - (2) where the *respondent* does not have an *accounting reference date*, 31 December each year.
- 1.10B.10 D Reports are to be submitted to the *FCA* within 30 *business days* of the end of the relevant reporting periods through, and in the electronic format specified in, the *FCA* complaints reporting system or the appropriate section of the *FCA* website.
- 1.10B.11 D If a *respondent* is unable to submit a report in electronic format because of a systems failure of any kind, the *respondent* must notify the *FCA*, in writing and without delay, of that systems failure.
- 1.10B.12 R
- (1) If a *respondent* does not submit a complete report by the date on which it is due, in accordance with *DISP* 1.10B.10D, the *respondent* must pay an administrative fee of £250.
  - (2) The administrative fee in (1) does not apply if the *respondent* has notified the *FCA* of a systems failure in accordance with *DISP* 1.10B.11R.
- 1.10B.13 D A closed *complaint* is a *complaint* where:
- (1) the *respondent* has sent a *final response*; or
  - (2) the complainant has indicated in writing acceptance of the *respondent's* earlier response under *DISP* 1.6.4R (where applicable).
- 1.10B.14 G
- (1) To improve *consumer* awareness and to help *respondents* compare their performance against their peers, the *FCA* may publish:

- (a) *complaints* data about the *payment services* and *electronic money* sector as a whole; and
  - (b) *respondent* level *complaints* data and information giving context to the *complaints* data for those *respondents* that provide appropriate consent in the electronic money and payment services complaints return form at *DISP* 1 Annex 1AD.
- (2) Although the *complaints data publication rules* do not apply to a report submitted under *DISP* 1.10B.1, the electronic money and payment services complaints return form asks for the *respondent's* consent to the publication by the *FCA* of the data contained in the report.

After *DISP* 1 Annex 1R (Complaints return form) insert the following new Annex as *DISP* 1 Annex 1AD. The text is not underlined.

**1 Annex      Electronic money and payment services complaints return form**  
**1AD**

Electronic Money and Payment Services Complaints Return

GROUP REPORTING

1 Does the data reported in this return cover complaints relating to more than one entity? (NB: You should always answer "No" if your firm is not part of a group)

34 If 'Yes' then list the firm reference numbers (FRNs) of all of the additional entities included in this return. Use the 'add' button to add additional FRNs

NIL RETURN DECLARATION

2 We wish to declare a nil return (if yes, leave all questions on complaints activities, including contextualisation, blank)

RETURN DETAILS REQUIRED

3 Total payment services and electronic money issuance complaints outstanding at reporting period start date

COMPLAINTS DATA PUBLICATION BY FCA AND FIRMS

47 Do you consent to the FCA publishing respondent level complaints data and information giving context to the complaints data?

Part C, DISP 1 Annex 1R

Table 1

Complaints opened

	A	Total
230 Direct debits		
231 Standing orders		
232 Pre-paid cards and e-money payments		
233 Credit cards		
234 Credit transfer (i.e. Bacs, Chaps, FPS, SEPA)		
235 Money remittance		
236 Debit cards/ cash cards		
237 Payment initiation services		
238 Account information services		
239 ATM withdrawals		
240 Merchant acquiring		
241 Other payment service - Please provide details		
241x Sample1		
Sample2		
242 Issuing or redemption of e-money		
243 Total complaints about payment services and e-money issuance		

Table 2

Complaints closed, upheld and redress paid

	A	B	C	D	E	F	G	H	I	J
	Closed within 3 business days	Closed > 3 business days but within 15 business days	Closed > 15 business days but within 35 business days	Closed > 35 business days but within 8 weeks	Closed > 8 weeks	Total closed	Total upheld	Total redress paid for upheld complaints (single units)	Total redress paid for complaints not upheld (single units)	Total redress paid (single units)
244 Complaints about payment services or electronic money										

Table 3

Contextualisation metrics

	A	B	C
Service	Payment volume in the reporting period (thousands)	How many customers have used the firm's account information services in the reporting period (thousands)?	Value of e-money in the reporting period (thousands)
245 Direct debits			
246 Standing orders			
247 Pre-paid cards and e-money payments			
248 Credit cards			
249 Credit transfer (i.e. Bacs, Chaps, FPS, SEPA)			
250 Money remittance			
251 Complaints about payment services			
Debit cards/ cash cards			
252 Payment initiation services			
253 Account information services			
254 ATM withdrawals			
255 Merchant acquiring			
256 Issuing or redemption of e-money			

After DISP 1 Annex 1AD insert the following new Annex as DISP 1 Annex 1AAG. The text is not underlined.

**1**            **Notes on completing electronic money and payment services complaints**  
**Annex**      **return form**  
**1AAG**

**Payment Services Complaints Return**

**Nil returns**

If no complaints concerning payment services or electronic money have been received during the reporting period and no such complaints were outstanding at the beginning of the period, the respondent may submit a NIL RETURN by clicking on the relevant box.

**Valuing data to be reported**

Respondents should report the actual data requested in this complaints return, using single units, apart from in Table 3 where data should be reported in thousands. If the figure is less than one thousand, respondents should enter the figure as a decimal fraction: e.g. if the payment volume for a service is 200, this should be entered as ‘.2’.

**Service groupings**

In Table 1 and Table 3 complaints should be allocated to the service groupings based on the service the complaint relates to. If a single complaint relates to more than one category of service, respondents should allocate that complaint to the category that it most closely relates to, rather than reporting such a complaint twice. For example, if a complaint is about ATM withdrawal with a credit card, but the complaint is primarily about the ATM withdrawal, it should be recorded under the ATM withdrawal category.

The service groupings do not correspond directly with those set out in the Payment Services Regulations.

If a respondent has not received any complaints relating to a particular product or service during the reporting period, the relevant box should be left blank.

If complaints relate to the issuing or redemption of e-money and not a payment service executed using e-money, these complaints should be allocated to the ‘issuing or redemption of e-money’ category.

The ‘other payment service’ category should only be used in exceptional circumstances when none of the specific service categories are appropriate. A PSP should provide information for up to a maximum of five payment services.

### **Tables 1 2 and 3**

In Tables 1 2 and 3 respondents should report all complaints relating (either wholly or in part) to payment services and electronic money. Note that this is a wider category than PSD complaints and EMD complaints as defined in the glossary, and would include, for example, complaints about breaches of the Principles for Businesses (for firms) or breaches of contract in connection with the issuance of electronic money or provision of payment services.

The complaints time limit rules (*DISP* 1.6) require EMD complaints and PSD complaints to be closed (by way of a final response) within 15 business days after the day on which the complaint is received (or, in exceptional circumstances, by the end of 35 business days after the day on which the complaint is received).

However PSPs must complete Table 2 with data on all complaints about payment services or electronic money (including those that are not EMD complaints and PSD complaints).

### **Contextualisation (Table 3)**

When providing information giving context to its complaints data, respondents should provide payment volumes for payment services and e-money issuance in the reporting period, as indicated in the form.

The contextualisation metric for pre-paid cards and e-money payments, credit cards, debit cards / cash cards, direct debits, standing orders, credit transfers, money remittance, payment initiation services, merchant acquiring and ATM withdrawal is number of transactions in the reporting period (in thousands).

The contextualisation metric for ATM withdrawals should include withdrawals from the PSP's ATM network in the reporting period for both the PSP's own and other PSPs' customers.

The contextualisation metric for issuing or redemption of e-money is the value of e-money issued or redeemed in the reporting period (in thousands).

The contextual information for account information services should be the number of customers that have used the firm's account information services (AIS) in the reporting period. For authorised PIs this figure should be the same as that provided by payment and e-money institutions in Q80 of the Authorised Payment Institution Capital Adequacy Return and for authorised EMIs, in Q76 of the Authorised Electronic Money Institution Questionnaire.

### **DISP 1 Annex 1R**

This return (Payment Services Complaints Return) only relates to complaints made in relation to payment services or electronic money. All complaints should be reported in *DISP* 1 Annex 1R.

### **Transparency**

To improve consumer awareness and to help payment service providers compare their performance against their peers, the *FCA* may publish aggregated and

anonymised complaints data.

The *FCA* may also publish respondent level complaints data where it has the respondent's consent. If the respondent ticks the 'Yes' box in this report it is consenting to the *FCA* publishing the complaints data.

Amend the following as shown.

**1 Annex    Application of DISP 1 to type of respondent / complaint**  
**2G**

...

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
<i>firm in relation to complaints concerning non-MiFID business (except as specifically provided below)</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> ( <i>DISP 1.3.4G</i> does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<u>Applies in relation to <i>payment services for payment service users</i> and in relation to <i>electronic money for eligible complainants</i></u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
<i>firm</i> in relation to <i>MiFID</i> complaints concerning <i>MiFID</i> business carried on from an establishment in the UK	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP</i> 1.1A.6R)	Does not apply	Does not apply	<i>DISP</i> 1.7 applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EU)	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	<u>Does not apply</u>
UK UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme provided under the	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<u>Does not apply</u>

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
freedom to provide <i>cross border services</i>								
<i>branch of a UK UCITS manageme nt company in another EEA State in relation to complaints concerning collective portfolio manageme nt services in respect of an EEA UCITS scheme</i>	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Does not apply	Applies for <i>unitholders</i>	Does not apply	Does not apply	<u>Does not apply</u>
<i>branch of a UK firm (other than a UK UCITS manageme nt company</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
when providing <i>collective portfolio management</i> services in respect of an <i>EEA UCITS scheme</i> ) in another <i>EEA State</i> in relation to <i>complaints concerning non-MiFID business</i>								
<i>branch</i> of a <i>UK firm</i> in another <i>EEA State</i> in relation to <i>MiFID complaints</i>	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP 1.1A.6R</i> )	Does not apply	Does not apply	Does not apply	Does not apply (but see <i>DISP 1.1A.37EU</i> )	Does not apply	Does not apply	<u>Does not apply</u>
<i>incoming branch</i> of an <i>EEA</i>	Does not apply	Applies for <i>eligible complainant</i>	Applies for <i>eligible complainant</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	<u>Does not apply</u>

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B</u> <u>Complaints reporting</u> <u>directions</u>
<i>firm</i> (other than an <i>EEA UCITS management company</i> when providing <i>collective portfolio management</i> services in respect of an <i>EEA UCITS scheme</i> ) in relation to <i>complaints</i> concerning non- <i>MiFID</i> business		s	s					
<i>incoming branch</i> of an <i>EEA firm</i> in relation to <i>MiFID</i> complaints	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP 1.1A.6R</i> )	Does not apply	Does not apply	Applies as set out in <i>DISP 1.1A</i>	Does not apply (but see <i>DISP 1.1A.37EU</i> )	Applies as set out in <i>DISP 1.1A</i>	Does not apply	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme</i>	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Does not apply	<u>Does not apply</u>
<i>incoming EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect</i>	Does not apply	Does not apply	Does not apply	Applies for <i>eligible complainants</i>	Does not apply	Applies for <i>eligible complainants</i>	Does not apply	<u>Does not apply</u>

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B</u> <u>Complaints reporting</u> <u>directions</u>
of a <i>UCITS</i> scheme provided under the freedom to provide <i>cross border services</i>								
<i>incoming EEA firm</i> providing <i>cross border services</i> from outside the <i>UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>equivalent business of a third country investment firm</i> in relation to <i>MiFID complaints</i>	Applies as set out in <i>DISP</i> 1.1A	Does not apply	Does not apply	Applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EU)	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	<u>Does not apply</u>
<i>branch of an overseas</i>	Does not apply	Applies for <i>eligible</i>	Applies for <i>eligible</i>	Applies for <i>eligible</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible</i>	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
<i>firm (in relation to all other complaints)</i>		<i>complainants</i>	<i>complainants</i>	<i>complainants</i>			<i>complainants</i>	
<i>payment service provider that is not a firm in relation to complaints concerning payment services</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<del>Does not apply</del> <u>Applies for <i>eligible complainants</i></u>	Does not apply	Does not apply	<u>Applies for <i>payment service users</i></u>
<i>EEA branch of a UK payment service provider in relation to complaints concerning payment services</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>incoming branch of an EEA</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<del>Does not apply</del> <u>Applies for <i>eligible complainants</i></u>	Does not apply	Does not apply	<u>Applies for <i>payment service users</i></u>

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
<i>authorised payment institution in relation to complaints concerning payment services</i>		s	s					
<i>incoming EEA authorised payment institution providing cross border payment services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>electronic money issuer <u>that is not a firm</u> in relation to complaints concerning</i>	Does not apply	Applies for <i>eligible complainant</i> s	Applies for <i>eligible complainant</i> s	Applies for <i>eligible complainants</i>	<del>Does not apply</del> Applies for <i>eligible complainants</i>	Does not apply	Does not apply	<u>Applies for <i>eligible complainants</i></u>

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
issuance of <i>electronic money</i>								
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
incoming <i>branch of an EEA authorised electronic money institution</i>	Does not apply	Applies for <i>eligible complainant s</i>	Applies for <i>eligible complainant s</i>	Applies for <i>eligible complainants</i>	<del>Does not apply</del> Applies for <i>eligible complainants</i>	Does not apply	Does not apply	<u>Applies for <i>eligible complainants</i></u>

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
in relation to <i>complaints</i> concerning issuance of <i>electronic money</i>								
incoming <i>EEA authorised electronic money institution</i> providing cross border <i>electronic money</i> issuance services from outside the <i>UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>VJ participant</i>	Does not apply	Applies for <i>eligible complainant s</i>	Applies for <i>eligible complainant s (DISP 1.3.4G to DISP 1.3.5G do</i>	Applies for <i>eligible complainants (DISP 1.6.8G does not apply)</i>	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
			not apply)					
<i>complaints relating to auction regulation bidding</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>a full-scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate (unless it is a collective investment scheme)</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>authorised AIF</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> ( <i>DISP 1.3.4G</i> does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<u>Does not apply</u>
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>charity AIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i> )	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> ( <i>DISP 1.3.4G</i> does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<u>Does not apply</u>
a <i>depository</i> ,	Does not apply	Applies for <i>eligible</i>	Applies for <i>eligible</i>	Applies for <i>eligible</i>	Applies for <i>eligible</i>	Applies for <i>eligible</i>	Applies for <i>eligible</i>	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>UK ELTIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i> )		<i>complainants</i>	<i>complainants</i> ( <i>DISP 1.3.4G</i> does not apply)	<i>complainants</i>	<i>complainants</i>	<i>complainants</i>	<i>complainants</i>	
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is not a <i>charity AIF</i> or a <i>UK ELTIF</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>body corporate</i> (other than a <i>collective investment scheme</i> ).	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning <i>AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <i>UK ELTIF</i> under the	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> ( <i>DISP 1.3.4G</i> does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	<u>Does not apply</u>

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	<u>DISP 1.10B Complaints reporting directions</u>
freedom to provide <i>cross-border services</i>								
a <i>CBTL firm</i> in relation to <i>complaints concerning CBTL business</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
a <i>designated credit reference agency</i> in relation to <i>complaints about providing credit information</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

...

(2) in relation to a *complaint* that is not an *EMD complaint* or a *PSD complaint*, eight weeks have elapsed since the *respondent* received the *complaint*; or

(2A) in relation to a *complaint* that is an *EMD complaint* or a *PSD complaint*:

(a) 15 business days have elapsed since the *respondent* received the *complaint* and the complainant has not received a holding response as described in *DISP* 1.6.2A R(2)(a); or

(b) where the complainant has received a holding response, 35 business days have elapsed since the *respondent* received the *complaint*; or

...

(4) the *respondent* consents and:

(a) the *Ombudsman* has informed the complainant that the *respondent* must deal with the *complaint* within eight weeks (or for *EMD complaints* and *PSD complaints* 15 business days or, in exceptional circumstances, 35 business days) and that it may resolve the ~~complaint~~ *complaint* more quickly than the *Ombudsman*; and

...

...

2.8.1A R Where a *respondent* has chosen to treat a *complaint* in its entirety in accordance with *DISP* 1.6.2AR, notwithstanding that parts of it fall outside *DISP* 1.6.2AR, *DISP* 2.8 will apply as if the whole *complaint* were an *EMD complaint* or a *PSD complaint*.

...

## 3 Complaint handling procedures of the Financial Ombudsman Service

...

### 3.2 Jurisdiction

...

3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* (or for *EMD complaints* and *PSD complaints* the time specified by *DISP 2.8.1R(2A)*) or issued a *final response* or *summary resolution communication*, the *Ombudsman* will refer the *complaint* to the *respondent* (except where *DISP 2.8.1R(4)* applies).

...

#### 4 Standard terms

...

#### 4.2 Standard terms

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

(1) *DISP 1* (Treating complainants fairly), except:

...

(ba) *DISP 1.10A* (Complaints data publication rules); and

(bb) *DISP 1.10B* (Payment services and electronic money complaints reporting); and

...

...

#### TP 1 Transitional provisions

##### TP 1.1 Transitional Provisions provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
41	<u>DISP 1</u>	R	With respect to a <i>complaint</i> received on or after 13 January 2018 concerning an act or omission that occurred before that date, the definition of <i>PSD</i>	From 13 January 2018	13 January 2018

			<i>complaint</i> in the <i>Glossary</i> is to be read as if the reference to <u>Parts 6 and 7 of the <i>Payment Services Regulations</i> were a reference to Parts 5 and 6 of the <i>Payment Services Regulations 2009</i> (SI 2009/209).</u>		
<u>42</u>	<u>DISP 1.10B.9D</u>	<u>D</u>	<p>The first relevant reporting period is the period commencing on 13 July 2018 and ending:</p> <p>(i) where the <i>respondent</i> has an <i>accounting reference date</i>, the <i>first accounting reference date</i> following 30 November 2018;</p> <p>(ii) where the <i>respondent</i> does not have an <i>accounting reference date</i>, 31 December 2018.</p>	<u>13 January 2018 to 30 November 2019</u>	<u>13 January 2018</u>
<u>43</u>	<u>DISP 1.10B.9D</u>	<u>G</u>	<p>The effect of (42) is that, if a <i>firm</i> has an <i>accounting reference date</i> that falls shortly after 13 July 2018 (i.e. between 13 July 2018 and 30 November 2018), the first electronic money and payment services complaints return form that it is required to submit should cover a period of more than one year, from 13 July 2018 to the <i>accounting reference date</i> in 2019.</p>	<u>13 January 2018 to 30 November 2019</u>	<u>13 January 2018</u>

## Annex J

### Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Conduct of business standards: general

### 2.7 Distance marketing

...

Exception: contracts for payment services

- 2.7.13 G Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in *CONC 2.7.2R(2)* applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part ~~5~~ 6 of the *Payment Services Regulations*.

...

### 2.9 Prohibition of unsolicited credit tokens

...

- 2.9.3 G ~~Section 51 of the CCA was repealed by article 20(15) of the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No 2) Order 2013 (SI 2013/1881). However, section 51 is saved for the purposes of regulation 52 of the *Payment Services Regulations*, the effect being that the section continues to apply in relation to a *regulated credit agreement* in place of regulation 58(1)(b) of the *Payment Services Regulations*. [deleted]~~

## Annex K

### Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 19 Non-FSMA powers

...

#### 19.20 Payment Services Regulations ~~2009~~ 2017

...

19.20.4 The *FCA* also has the power to prohibit or restrict the carrying out of certain *regulated activities* by *EEA authorised payment institutions* and *EEA registered account information service providers*.

...

#### 19.21 The conduct of investigations under the Payment Services Regulations

...

19.21.2 ...

19.21.3 The *Payment Services Regulations* also apply much of Part 13 of the *Act*. The effect of this is that the *FCA* has the power to deal with an *EEA authorised payment institution* or an *EEA registered account information service provider* (‘*incoming firm*’) that is likely to contravene a requirement which is imposed on it by or under the *Payment Services Regulations*. Under the *Payment Services Regulations* the *FCA* will be able to use the power of intervention to:

(1) impose a requirement on an incoming *firm* as it considers appropriate;  
and

(2) impose a variation on the permissions of an incoming *firm*.

#### 19.22 Decision making under the Payment Services Regulations

19.22.1 The *RDC* is the *FCA*’s decision maker for some of the decisions under the *Payment Services Regulations* as set out in *DEPP* 2 Annex 1G. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3 and 3.4. *DEPP* 3.4 applies for urgent notices under ~~Regulations 14~~ regulations 12(6), 12(9), and 12(10)(b) (including as applied by ~~Regulation 14~~ regulations 15 and 19).

...

## Annex L

### Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 3A Guidance on the scope of the Electronic Money Regulations 2011

...

##### 3A.2 General issues

#### Q2. Why does it matter whether or not we fall within the scope of the Electronic Money Regulations?

It matters because if you issue *electronic money* in the *United Kingdom* and do not fall within an exclusion or exemption you must be:

an *authorised electronic money institution*; or

a *small electronic money institution*; or

an *EEA authorised electronic money institution*; or

a ~~full~~ *credit institution*; or

the Post Office Limited; or

the Bank of England or a central bank when not acting in its capacity as a monetary authority or other public authority; or

a government department or local authority when acting in its capacity as a public authority; or

a *credit union*, municipal bank or the National Savings Bank.

Otherwise you risk committing a criminal offence under regulation 63.

...

#### Q7. As an electronic money institution how will the Payment Services Regulations apply to us?

The issuance of *electronic money* is not itself a *payment service* but it is likely to entail the provision of *payment services*.

...

The conduct of business requirements in Parts ~~5 and 6~~ and 7 of the *Payment Services Regulations* apply to ~~all payment service providers, including~~ *electronic money issuers*.

Transitional arrangements may also be relevant; see PERG 3A.7.

...

##### 3A.5 Exclusions

**Q26. Are there any exclusions from the definition of electronic money that we should be aware of?**

Yes. The *Electronic Money Regulations* have two express exclusions:

the first covers monetary value stored on specific payment instruments that may be used to purchase goods and services only in the issuer's premises or within a limited network of service providers or for a limited range of goods or services only in a limited way (the 'limited network' exclusion) (regulation 3(a)). See *PERG 15 Q40 & Q41* which deal deals with the same ~~term~~ exclusion for the purposes of the *Payment Services Regulations*; and the second covers monetary value used to make certain payment transactions executed by means of any telecommunication, digital or IT device where the goods or services are delivered to and used through such a device but only where the operator of the device does not act only as an intermediary between the user and the supplier resulting from services provided by a provider of electronic communications networks or services in addition to their provision of electronic communications services, where the payment is charged to the related bill (the 'electronic communications exclusion') (regulation 3(b)). See *PERG 15 Q23* for guidance on what 'acting only as an intermediary' might include See *PERG 15 Q41A* which deals with the same exclusion for the purposes of the *Payment Services Regulations*.

**Q27. We offer branded prepaid cards which consumers can use to purchase goods in a particular shopping mall-centre. Are we issuing electronic money?**

Yes, it is likely that you will be issuing *electronic money* unless you are able to fall within an exclusion. The most likely exclusion is ~~if the card is only used to purchase goods and services in your premises or within a~~ the limited network exclusion (see Q26) of service providers. In our view you will ~~only~~ not be able to take advantage of this exclusion here if unless:

it is made clear in the relevant terms and conditions of the card that the purchaser of the value is only permitted to use the card to buy from merchants located within that particular shopping mall centre with whom you have direct commercial agreements; and

the facility to use the card to purchase goods and services outside this shopping ~~mall centre~~ has been disabled does not exist. A card that can be used at a number of different shopping centres, or where use is restricted only by the terms and conditions that apply to the card and is not functionally restricted to one shopping centre is unlikely to fall within this exclusion.

**Q28. For the purposes of the second exclusion referred to at Q26, can you explain when goods or services are "used through" a telecommunication, digital or IT device ("a relevant device")? [deleted]**

~~It is important to realise that it is the good or service purchased on a relevant device that must be used through that device for the purposes of this exclusion.~~

~~So, for example, where a person purchases travel or cinema tickets using prepaid credit on a mobile phone and the ticket is sent to this phone and then used to gain entry onto a transport system or into a cinema, what is being purchased are rights to travel or to watch a film. The ticket itself is a form of receipt confirming the purchase of such rights. Accordingly, as the travel rights or the visit to the cinema cannot be experienced on a relevant device, such a purchase is likely to fail the "used through" part of the regulation 3(b) exclusion.~~

~~Examples of the sorts of goods and services that could meet the "used through" part of the~~

~~regulation 3(b) exclusion are music, online newspaper or video content, electronic books and mobile phone applications. This is because these products are all capable of being enjoyed through the relevant device they have been delivered to.~~

~~For more guidance on this exclusion see *PERG 15, Q23* and *24*.~~

Insert the following new section after PERG 3A.6 (Territorial scope). The text is not underlined.

### **3A.7 Transitional arrangements**

**Q30. We were authorised as an electronic money institution before 13 January 2018 (when the Payment Services Regulations 2017 (PSRs 2017) came into force). Can we continue to provide services under the *Electronic Money Regulations*?**

Yes, but only for a limited time. The PSRs 2017 amend the *Electronic Money Regulations* to require *authorised electronic money institutions* and *small electronic money institutions* that wish to continue to provide services under the *Electronic Money Regulations* on or after 13 July 2018 to provide additional information to the *FCA* before 13 April 2018 (section 78A of the *Electronic Money Regulations*). The *FCA* must then determine whether the institution's authorisation or registration should be continued.

**Q31. We are an authorised electronic money institution. Can we provide account information services and payment initiation services after 13 January 2018?**

In relation to the *payment services* introduced by the PSRs 2017 (account information services and payment initiation services), from 13 January 2018 all *electronic money institutions* authorised before that date will be treated as if the *FCA* had imposed a requirement to refrain from providing those services for an indefinite period. Institutions wishing to provide those services must comply with a number of requirements before they can apply for a variation of this requirement.

More information on these transitional arrangements can be found in Chapter 3 (Authorisation and Registration) of the Payment Services and Electronic Money Approach Document.

Amend the following as shown.

## **15 Guidance on the scope of the Payment Services Regulations ~~2009~~ 2017**

### **15.1 Introduction**

The purpose of this chapter is to help businesses in the UK consider whether they fall within the scope of the Second Payment Services Directive (2007/64 2015/2366/EC) (PSD PSD2), as given effect to in the Payment Services Regulations ~~2009~~ 2017 (the PSD regulations 'PSRs 2017'). The ~~PSD regulations~~ PSRs 2017 create a separate authorisation and

registration regime which differs from the authorisation requirements under the Financial Services and Markets Act. In particular, it is aimed at helping these businesses consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK. References to individual regulations are to the PSD regulations PSRs 2017, unless otherwise stated.

## Background

~~PSD~~ PSD2 provides the legal framework for the operation of a single market in payment services. This includes ~~the creation of~~ a harmonised authorisation regime, designed to establish a single licence for payment service providers which are neither deposit-takers nor ~~e-money issuers~~ electronic money institutions. ~~Authorised payment institutions can provide services on a cross-border or branch basis, using passport rights acquired under the PSD.~~

The relevant payment services, as transposed in the ~~PSD regulations~~ PSRs 2017, are set out fully in Annex 2 to this chapter and include, amongst other things, services relating to the operation of payment accounts (for example, cash deposits and withdrawals from current accounts and flexible savings accounts), execution of payment transactions, card issuing, merchant acquiring and money remittance ~~and certain mobile phone based payment services~~. The ~~directive~~ Directive focuses on electronic means of payment including direct debit, debit card, credit card, standing order, mobile or fixed phone payments and payments from other digital devices as well as money remittance services; it does not apply to cash-only transactions or paper cheque-based transfers.

PSD2 also creates authorisation and registration regimes for firms who provide holders of online payment accounts with payment initiation services and account information services.

Authorised payment institutions and registered account information service providers can provide services on a cross-border basis, using passport rights acquired under PSD2.

All payment service providers (including credit institutions and electronic money institutions) must comply with the conduct of business requirements of the PSRs 2017.

## Scope

In terms of scope, the ~~PSD regulations~~ PSRs 2017 are likely to be of relevance to a range of firms including credit institutions, ~~e-money issuers~~ electronic money institutions, the Post Office Limited, money remitters, certain bill payment service providers, card issuers, merchant acquirers, payment initiators, account aggregators and certain ~~telecommunications~~ electronic communication network operators service providers. They are also likely to be relevant to those agents of the above businesses which provide payment services.

Generally speaking, depending on the nature and size of its activities, a business to which the ~~PSD regulations~~ PSRs 2017 apply (other than a credit institution, ~~e-money issuer or an electronic money institution~~, an EEA authorised payment institution or an EEA authorised electronic money institution and their agents) will need to be:

authorised by the FCA as an authorised payment institution; or

registered as a 'small payment institution'; or

registered as a registered account information services provider; or

registered as an agent of an authorised payment institution, an EEA authorised payment institution ~~or a~~, a small payment institution or a registered account information services provider.

The conditions for authorisation as a payment institution are set out in regulation 6. In addition to the authorisation regime for payment institutions, there is an alternative regime for those which fall within the category of small payment institutions (that is businesses which meet the conditions in regulation 13(14)). Broadly, the category of small payment institutions will only be relevant to firms executing payment transactions with a monthly average of 3 million euros (or an equivalent amount) or less, over a 12 month period and that do not carry on account information services or payment initiation services. Broadly, small payment institutions are not subject to the requirements in Part 3 of the PSD regulations PSRs 2017 (including capital requirements), but they are subject to a registration regime and the conduct of business provisions in Parts 5 ~~and 6~~ and 7. There is a further registration regime for payment service providers providing no payment services other than account information services. The conditions for registration are set out in regulation 18. Registered account information services providers must comply with certain conduct provisions, as set out in the regulations.

The ~~PSD regulations~~ PSRs 2017 also provide for the appointment of agents by authorised payment institutions ~~and~~, small payment institutions and registered account information services providers. These agents are ~~exempt from the authorisation requirements in~~ not required to be authorised under regulation 6 but they are required to be registered on the Financial Services Register by their principal (or each of their principals). When the agent's principal is an EEA authorised payment institution, it needs to be registered on the register of the Home State register of that payment institution. A business can also provide payment services as an agent of a credit institution ~~or e-money issuer~~, in which case there are no registration requirements under the ~~PSD regulations~~ PSRs 2017. Electronic money institutions can provide payment services through agents, in which case the registration requirements of the Electronic Money Regulations 2011 apply (see PERG 3A).

### **Exemptions and exclusions**

As well as small payment institutions, registered account information services providers and agents, the ~~PSD regulations~~ PSRs 2017 make provision for a limited number of exempt bodies, notably credit unions and municipal banks. The regulations do not apply to these bodies although municipal banks are required to notify the FCA if they propose to provide payment services.

More generally, there is a broad range of activities which do not constitute payment services under Schedule 1 Part 2 to the ~~PSD regulations~~ PSRs 2017. Amongst these excluded activities, set out more fully in Annex 3, are:

payment transactions through commercial agents acting on behalf of either the payer or the payee;

~~money exchange business~~ cash-to-cash currency exchange activities (for example, bureaux de change);

payment transactions linked to securities asset servicing (for example, dividend payments, share sales or unit redemptions);

services provided by technical service providers (which does not include account information services or payment initiation services);

payment services based on instruments used within a limited network of service providers or for a very limited range of goods or services ('limited network exclusion'); and

~~payment services provided by telecommunications operators other than as an intermediary~~

between payer and payee transactions for certain goods or services up to certain value limits, resulting from services provided by a provider of electronic communication networks or services ('electronic communications exclusion').

These and other activities are the subject of Q&A in *PERG* 15.5. A firm will be exempt from authorisation and registration requirements under the regulations to the extent that its activities fall within one or more of the exclusions in Schedule 1 Part 2 to the regulations. In each case, it will be for businesses to consider their own circumstances and whether they fall within the relevant exclusions. However, firms making use of the limited network exclusion must notify us when the total value of payment transactions executed through relevant services exceeds 1 million euros in any 12 month period beginning on or after 13 January 2018, and we will assess whether the notified services fall within this exclusion. Providers of electronic communications networks or services providing services falling within the electronic communications exclusion must notify us and provide us with an annual audit opinion which testifies that the transactions comply with the value limits set out in that exclusion as directed. See <https://www.fca.org.uk/firms/electronic-communications-exclusion>.

### **Other scope issues**

As explained in *PERG* 15.2, Q13, the regulations also apply in limited circumstances to non-payment service providers, if they provide a currency conversion service. Likewise, a non-payment services provider which imposes charges or offers reductions for the use of a given payment instrument is required to provide information on any such charges or reductions (see regulations ~~50~~ 58 and ~~113~~ 141).

### **Transitionals**

Subject to the exclusions and exemptions outlined above, a ~~payment institution with an establishment in the UK~~ person (other than an EEA payment services provider and its agents, a credit institution, an electronic money institution and certain other specified bodies such as the Post Office) is caught by the authorisation and registration requirements of the ~~PSD regulations~~ PSRs 2017 when it provides payment services, ~~by way of business as a regular occupation or business activity~~, in or from the UK. That said, there are important transitional provisions which delay the need for businesses authorised or registered under the Payment Services Regulations 2009 to re-apply for authorisation or registration under the PSRs 2017, before and during an initial period after the commencement of regulation on 4 November 2009 13 January 2018. There is also a transitional provision applying to providers of account information services and payment initiation services which were providing those services before 12 January 2016 – see 15.7.

### **How does this chapter work?**

The chapter is made up of Q&As divided into the following sections:

General (*PERG* 15.2)

Payment services (*PERG* 15.3)

Small payment institutions, agents and exempt bodies (*PERG* 15.4)

Negative scope/exclusions (*PERG* 15.5)

Territorial scope (*PERG* 15.6)

Transitional arrangements (*PERG* 15.7)

~~Flowcharts and tables~~ Tables (~~PERG 15 Annex 1~~, PERG 15 Annex 2 and PERG 15 Annex 3)

## Definitions

The ~~PSD regulations~~ PSRs 2017 contain their own definitions which you can find in regulation 2. We refer to some of these in the Q&A including ‘payment transaction’, ‘payment account’, ‘payment instrument’ and ‘money remittance’.

## 15.2 General

### Q1. Why does it matter whether or not we fall within the scope of the ~~PSD regulations~~ PSRs 2017?

Broadly, when you provide payment services, ~~by way of business as a regular occupation or business activity~~, in the UK and these services do not fall within an exclusion or exemption, you must be:

- an authorised payment institution; or
- an EEA authorised payment institution; or
- a small payment institution; or
- a registered account information services provider or an EEA registered account information service provider; or
- a credit institution (either one with a Part 4A permission to accept deposits or an EEA credit institution where it is exercising passport rights under paragraph 4 of Annex 1 to the *CRD*); or
- an ~~electronic money issuer~~ electronic money institution or an EEA authorised electronic money institution; or
- the Post Office Limited, Bank of England, a central bank or government departments and local authorities; or
- an exempt person (that is a credit union, municipal bank and the National Savings Bank); ~~or~~
- ~~an agent of a person listed in (a) to (g) above.~~

Unless you are one of the above (or acting as an agent – see PERG 15.4), subject to transitional provisions you risk committing a criminal offence under regulation ~~410~~ 138.

### Q2. Is there anything else we should be reading?

The Q&As complement, and should be read in conjunction with, the ~~Payment Services Regulations 2009~~ PSRs 2017. The FCA provides guidance on its regulatory approach under the PSRs 2017 in its Approach Document.

### Q3. How much can we rely on these Q&As?

The answers given in these Q&As represent the FCA’s views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of the ~~PSD~~

~~regulations~~ PSRs 2017 affects the regulatory position of any particular person will depend on ~~his~~ the person's individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation. In addition to FCA guidance, some ~~PSD~~ PSD2 provisions may be the subject of guidance or communications by the European Commission or the European Banking Authority.

**Q4. We are a UK firm not authorised under FSMA providing payment services to our clients, as a regular business activity. Are we required to be authorised or registered under the regulations?**

Yes, unless the exclusions or exemptions in the regulations apply to you or you are an ~~e-money issuer~~ electronic money institution, an EEA authorised electronic money institution, the Post Office Limited or an agent of a credit institution or ~~e-money issuer~~ electronic money institution. If this is not the case, you need to be:

- authorised by the FCA as an authorised payment institution; or
- registered as a small payment institution; or
- registered as an account information services provider; or
- registered as an agent of an authorised payment institution, EEA authorised payment institution or a small payment institution.

~~You might find helpful the overview, in the form of flowcharts, of the authorisation and registration requirements in the PSD regulations as they apply to payment institutions (that is payment service providers other than credit institutions, e-money issuers and their agents), set out in PERG 15 Annex 1.~~

**Q5. As a payment institution rather than a credit institution, are we right in thinking that our maintenance of payment accounts does not amount to accepting deposits?**

Yes, articles 9AB and 9L of the *Regulated Activities Order* provide that funds received by payment institutions from payment services users with a view to the provision of payment services shall constitute neither deposits nor *electronic money*.

~~As an authorised~~ a payment institution, any funds payment accounts you hold must only be used in relation to payment transactions (see regulation 2833 of the PSD regulations PSRs 2017). A 'payment transaction' for these purposes is defined in regulation 2 of the PSD regulations PSRs 2017 as meaning 'an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee'. Our view is that this means that a payment institution cannot hold funds for a payment service user unless accompanied by a payment order for onward transfer (whether to be executed immediately or on a future date). Funds cannot be held indefinitely. They should not be held for longer than is necessary for operational and technical reasons.

The fact that a payment account operated by a payment institution can only be used for payment transactions distinguishes it from a deposit. A deposit can nevertheless be a form of payment account ~~and for~~ (for example a bank current account is both a deposit and a payment account). For guidance on what constitutes a deposit for the purposes of the regulated activity of 'accepting deposits' and guidance on the regulated activity itself, see *PERG 2.6.2G to 2.6.4G and PERG 2.7.2G*.

A payment institution is not prohibited from paying interest on a payment account but such interest cannot be paid from funds received from customers. More generally, if a payment institution were to offer savings facilities to its customers in the accounts it provides, in our view it would be holding funds not simply in relation to payment transactions and so would be in breach of regulation ~~28~~ 33.

**Q6. We are a credit card company and a payment institution. We are not a bank. Sometimes our customers will have a positive balance on their account because they have accidentally overpaid or because of refunds. Would this put us in breach of the requirement in regulation ~~28~~ to use a payment account 33 that payment accounts held by payment institutions may be used only in relation to payment transactions?**

No. In our view, this does not amount to a breach of regulation ~~28~~ 33 and nor does the handling of credit balances in the circumstances constitute the activity of accepting deposits.

**Q7. We are a credit institution. Do the ~~PSD regulations~~ PSRs 2017 apply to us?**

Yes. If you are a credit institution, you will be subject to the conduct of business requirements in the ~~PSD regulations~~ PSRs 2017 to the extent that you provide payment services. ~~In our view, the~~ The authorisation process applying to UK and non-EEA credit institutions remains that imposed by Part 4A of the ~~Act~~ Act. Authorised credit institutions ~~will do~~ not though need to apply for a separate ~~Part 4A permission~~ Part 4A permission, in order to provide payment services. In other words, if a UK credit institution has a Part IV permission to carry on the regulated activity of accepting deposits, it will not need to be separately authorised to provide payment services in the UK. However, credit institutions intending to provide account information services or payment initiation services should have regard to the notification requirements in SUP 15.8. ~~We are aware that the Commission has indicated that branches of non-EEA credit institutions are unable to provide payment services in the EEA, in this legal form. Whilst it is for firms to consider their own position, in our view~~ The UK branch of a non-EEA credit institution with a Part 4A permission to accept deposits is also authorised to provide payment services in the UK.

An EEA credit institution wishing to provide payment services through a UK branch must exercise its passport rights under paragraph 4 of the Annex to the *CRD*. Similarly, a UK credit institution which wishes to provide payment services in other Member States may exercise its *CRD* passport rights to do so.

**Q8. We are an electronic money institution issuer. Do the ~~PSD regulations~~ PSRs 2017 apply to us?**

Yes. If you are an electronic money institution ~~issuer~~, you will be subject to the conduct of business requirements in the ~~PSD regulations~~ PSRs 2017. ~~The authorisation and registration regime applying to UK electronic money issuers is split between that imposed by the Act (see PERG 2.6.4A) and that imposed~~ If you are a credit institution, a credit union or a municipal bank, issuing electronic money is a regulated activity and you will require permission under the Act (see PERG 2.6.4A). The authorisation and registration requirements for any other person intending to issue electronic money are governed by the *Electronic Money Regulations* Electronic Money Regulations (see PERG 3A for guidance on the scope of the *Electronic Money Regulations* Electronic Money Regulations). If you are an authorised or small electronic money institution or an EEA authorised electronic money

institution, the PSRs 2017 introduce a transitional provision into the Electronic Money Regulations which affects your right to continue to provide services in the UK after 12 July 2018 – see PERG 3A.7.

**Q9. If we provide payment services to our clients, will we always require authorisation or registration under the regulations?**

Not necessarily; you will only be providing payment services, for the purpose of the regulations, when you carry on one or more of the activities in PERG 15 Annex 2:

- as a regular occupation or business activity; and
- these are not excluded or exempt activities.

Simply because you provide payment services as part of your business does not mean that you require authorisation or registration. You have to be providing payment services, themselves, as a regular occupation or business to fall within the scope of the regulations (see definition of ‘payment services’ in regulation 2(1)). In our view this means that the services must be provided as a regular occupation or business activity in their own right and not merely as ancillary to another business activity. Accordingly, we would not generally expect the following to be providing payment services as a regular occupation or business activity:

- solicitors or broker dealers, for example, to be providing payment services for the purpose of the regulations merely through operating their client accounts in connection with their main professional activities;
- letting agents, handling tenants’ deposits or rent payments in connection with the letting of a property by them;
- debt management companies, receiving funds from and making repayments for a customer as part of a debt management plan being administered for that customer;
- individuals initiating payments and dealing with payment account information for another person under a power of attorney they have entered into in a personal capacity, for example for a family member; and
- operators of loan or investment based crowd funding platforms transferring funds between participants as part of that activity.

The fact that a service is provided as part of a package with other services does not, however, necessarily make it ancillary to those services – the question is whether that service is, on the facts, itself carried on as a regular occupation or business activity.

**Q10. ~~We are a "financial institution" under the CRD . How does PSD apply to us?~~  
[deleted]**

~~Financial institutions are only subject to the authorisation and conduct of business requirements of the regulations where they provide payment services by way of business and are unable to rely on any of the statutory exclusions. For those financial institutions which are subject to the regulations, they may be able to benefit from transitional relief from the requirement to be authorised or registered as a payment institution if their parent undertaking is subject to consolidated supervision.~~

~~A "financial institution" for the purposes of the PSD regulations, as for the CRD, is an undertaking other than a credit institution, the principal activity of which is to acquire~~

~~holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex 1 to the CRD (see SUP App 3.9.4G). It may include, for example, an authorised person under the Act which is neither a credit institution nor an e-money issuer.~~

**Q11. Is it possible to be both an authorised person under FSMA and the agent of an authorised payment institution ~~or~~, a small payment institution or a registered account information provider?**

Yes. There is nothing in the ~~PSD regulations~~ PSRs 2017 or the ~~Act~~ Act (for example section 39) which prevents a person from being both an ~~authorised person~~ authorised person and the agent of an authorised payment institution ~~or~~, a small payment institution or a registered account information provider.

**Q11A. Is it possible to be both an authorised person under FSMA and an authorised payment institution, a small payment institution or a registered account information provider?**

Yes. There is nothing in the PSRs 2017 or the Act which prevents a person from being both an authorised person and an authorised payment institution, a small payment institution or a registered account information provider. In some cases, for example if you issue credit cards (see further Q20A), it is likely that you will need permissions under the Act and the PSRs 2017 in order to provide your services.

**Q11B. Is it possible to be both an authorised payment institution and the agent of an authorised payment institution, a small payment institution or a registered account information provider?**

Yes. There is nothing in the PSRs 2017 which prevents a person from being both an authorised payment institution or electronic money institution and the agent of an authorised payment institution, a small payment institution or a registered account information provider. However, businesses will need to make clear to payment service users the capacity in which they are providing services, in accordance with regulation 34(16) and consumer protection legislation.

~~Q12~~ **Q12. We provide electronic foreign exchange services to our customers/clients. Will this be subject to the PSD regulations PSRs 2017?**

Not necessarily, as providing foreign exchange services is not itself a payment service. Foreign exchange transactions may exist as part of, or independent from, payment services. You will fall within the scope of the ~~PSD regulations~~ PSRs 2017 if you are providing payment services, by way of business, in the UK. For example, where a customer instructs ~~his~~ their bank to make payment in euros from ~~his~~ the customer's sterling bank account to a payee's bank account, we expect conduct of business requirements in the regulations to apply to the transfer of funds including information requirements relating to the relevant exchange rate.

By contrast, we would not expect the conduct of business provisions (including the right of cancellation) in the Payment Services ~~regulations~~ Regulations to apply to a spot or forward fx transaction itself. That said, the electronic transmission, for example, by a bank on behalf of a customer to an fx services provider is likely to be subject to the PSD, because this is a transfer of funds executed by the bank. Similarly, the onward payment by a bank or fx

services provider, on behalf of a client, to a third party of currency purchased in an fx transaction may amount to a payment service.

If you are a small payment institution or an authorised payment institution under the PSRs 2017, you may provide foreign exchange services that are closely related and ancillary to your payment services. However, that does not allow you to provide foreign exchange derivative services that would otherwise require authorisation under MiFID. You therefore need to consider the availability of MiFID exclusions for your foreign exchange business (see PERG 13 Q31K).

**Q.13** We are a business that does not provide payment services. We usually accept **Q13.** payment in sterling for our goods and services but also offer a facility to our customers who prefer to pay us in euros other currencies, to do so on the basis of a sterling/euro currency conversion when making electronic payments via their payment service provider. Do the regulations apply to us?

Generally no. You are not required to be authorised or registered under the regulations. You will though be required to disclose information relating to your currency conversion service, including charges and the exchange rate to be used (for further information including details of criminal sanctions, see regulations ~~49~~ 57 and ~~113~~ 141).

### 15.3 Payment Services services

**Q14.** Where do we find a list of payment services?

In Schedule 1 Part 1 to the ~~PSD regulations~~ PSRs 2017. There are ~~seven~~ eight payment services, set out in full in Annex 2 to this chapter (including six activities which were payment services under the PSD regulations and the two new activities of payment initiation services and account information services). References to categories of payment services below adopt the structure of Schedule 1 to the ~~PSD regulations~~ PSRs 2017: for example, paragraph (1)(f) refers to ‘money remittance’.

The payment service referred to in paragraph (1)(g) of Schedule 1 to the PSD regulations does not appear as a separate payment service in the PSRs 2017. Telecommunications, IT system or network operators with a paragraph (1)(g) permission should consider which permission(s) they require under the PSRs 2017, such as executing a payment transaction within (1)(c) or issuing a payment instrument under (1)(e). If the services within your paragraph 1(g) permission are also of the type described in paragraph 1(c), under the transitional provisions in regulation 152 of the PSRs 2017 you will be treated as an authorised payment institution, subject to the requirement to provide us (or your home state competent authority if you are an EEA firm) with evidence, by 13 January 2020, that you hold the required own funds.

**Q15.** When might we be providing services enabling cash to be placed on a payment account (paragraph 1(a))?

When you are accepting cash electronically or ~~over the~~ over the counter or through ATMs which is placed on a payment account which you operate.

The crediting of interest to a payment account is not a service enabling cash to be placed on

a payment account.

If you are a professional cash in transit business, or a non-professional cash collector in the not-for-profit sector, you may benefit from one of the exclusions in Schedule 1 paragraphs 2(b) and (c) of the PSRs 2017 (see Q33B and Q34A below).

**Q16. What is a payment account?**

...

Accordingly, in our view, 'payment accounts' can include, for example, current accounts, e-money accounts, flexible savings accounts, credit card accounts, other running-account credit accounts and current account mortgages. On the other hand, in our view fixed term deposit accounts (where there are restrictions on the ability to make withdrawals), child trust fund deposit accounts and certain cash Individual Savings Accounts (ISAs) are not payment accounts.

...

In our view, mortgage or loan accounts do not fall within the scope of the regulations. This is on the basis that the simple act of lending funds or receiving funds by way of repayment of that loan does not amount to provision of a payment service.

The definition of 'payment account' in the PSRs 2017 is different to (and wider than) that in the Payment Accounts Regulations 2015.

If you are a provider of non-payment accounts, you may still be carrying on the payment services in paragraphs 1(c) and (d), for example if you execute payment transactions out of those non-payment accounts. Chapter 8 of the Approach Document provides guidance on how the PSRs 2017 conduct of business requirements apply to you.

...

**Q18. When might we be providing execution of payment transactions, including transfers of funds on a payment account with a user's payment service provider or with another payment service provider: (i) direct debits, including one-off direct debits, or (ii) payment transactions through a payment card or a similar device, or (iii) credit transfers, including standing orders (paragraph 1(c))?**

When you transfer funds from or to your clients, enabling them to pay or receive payment ~~provide a service to clients enabling them to complete payment~~ by way, for example, of direct debit, payment card (such as a debit card), electronic cheque or credit transfer (such as a standing order). Where the funds are covered by these services are provided using a credit line, though, you will be providing the service in paragraph 1(d).

In our view, the simple act of accepting payment by way of debit card or credit card for supply of your own goods or services does not generally amount to the provision of the service of execution of payment transactions through a payment card. For instance, where a restaurant accepts payment from a customer using ~~his~~ the customer's payment card it is not providing a payment service to the customer, but simply accepting payment for the price of the meal. It is merely a payment service user receiving payment from the customer. The firm providing the merchant acquiring service, enabling the restaurant to process the card transaction and receive payment, is providing a payment service in this instance.

As regards a 'direct debit', regulation 2 defines this as meaning 'a payment service for debiting the payer's payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider'. As well as the likes of utility and other household bills, in our view this definition extends to a case where sender and recipient are the same person, for example where the person holds two bank accounts in two different banks.

Providers of electronic communications networks or services may be providing this service or the service in paragraph 1(d). For example, where a subscriber to a mobile network can buy digital content from a third party via premium SMS services and the payment transactions do not fall within the exemption in PERG 15 Annex 3(1), the service in paragraph (c) may be provided (this may be the case where the payment is made from the subscriber's prepaid account) or (if the provider is giving the subscriber credit to finance the purchase) the service in paragraph (d) may be provided (this may be the case where the payment is charged to the subscriber's monthly bill).

...

#### **Q20. When might we be issuing payment instruments (paragraph 1(e))?**

Issuing of payment instruments is defined in regulation 2 as 'a payment service by a payment service provider contracting with a payer to provide a payment instrument to initiate payment orders and to process the payer's payment transactions'.

A payment instrument is defined in regulation 2 and means any (a) personalised device or (b) personalised set of procedures agreed between the payment service user and the payment service provider, in both cases where used by the payment service user in order to initiate a payment order.

Examples of persons issuing payment instruments, for the purposes of Schedule 1 to the regulations, include credit card and debit card issuers and ~~e-money issuers~~ electronic money institutions. In addition to the issue of physical instruments such as cards, arrangements by way of telephone call with password, online instruction or a mobile telephone application by which a payment order can be initiated could also amount to issuing payment instruments, depending on the service being provided (see further the Court of Justice of the European Union decision in T-Mobile Austria GmbH v Verein für Konsumenteninformation, C-616/11).

In our view, it is the person who agrees the set of procedures with the payer and agrees that the payer can use those procedures to initiate an instruction to them requesting that they transfer funds to a payee that is issuing the payment instrument. So, for example, a business that provides a payer with a mobile application that transmits the payer's card details (or a number or series of numbers that will be recognised by the recipient as corresponding to that card, which may sometimes be described as a 'token'), along with a payment order, for processing by another person who is a payment service provider, is not issuing a payment instrument.

We would not generally expect you to be issuing payment instruments (or providing other payment services) if all you do is issue direct debit mandates simply for the purpose of being paid for the goods or services you provide to your customers or clients. ~~Nor if the payment transaction is initiated by paper, would that document be considered to be a payment instrument.~~

**Q20A We are applying to become an authorised payment institution. Do we also need to be authorised under FSMA in order to issue credit cards?**

Probably yes. While regulation 32(2) of the PSRs 2017 permits authorised payment institutions and small payment institutions to grant credit as an ancillary activity in certain circumstances, this regulation does not exempt you if you otherwise need to be an authorised person under FSMA. If you issue payment instruments and provide a credit line under a regulated credit agreement which covers transactions initiated using those payment instruments, you are likely to need to be an authorised person under FSMA (see PERG 2.7 and CONC generally), with permission to carry on credit-related regulated activity, in addition to being authorised or registered under the PSRs 2017.

This is not necessarily the case, however, if you do not provide credit to individuals or relevant recipients of credit, or if the credit agreements are exempt agreements or an exclusion applies. There is, for example, a specific FSMA exclusion for activities carried on by an EEA authorised payment institution exercising passport rights in the United Kingdom in accordance with article 18(4) of the Payment Services Directive. Those activities are excluded from the regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (see PERG 2.8.14ZB G and article 60JA of the FSMA Regulated Activities Order).

**Q21. When might we be acquiring payment transactions (paragraph 1(e))?**

Acquiring of payment transactions is defined in regulation 2 as “a payment services provided with a payment service provider contracting with a payee to accept and process payment transactions which result in a transfer of funds to the payee.”

~~If your business includes~~ This includes traditional ‘merchant acquiring’. ~~This will typically include providing~~ services enabling suppliers of goods, services, accommodation or facilities to be paid for purchases arising from card scheme transactions. However, as set out in Recital 10 of PSD2 it is designed to be technology neutral and capture different business models, in particular:

- those where more than one acquirer is involved (and so you may be acquiring payment transactions even if you are not the ‘acquirer of record’ from the point of view of the card scheme);
- regardless of the payment instrument used to initiate the transaction (for example where the instrument is a mobile telephone application); and
- those where there is no actual transfer of funds from acquirer to payee, because another form of settlement is agreed.

In our view, this definition is likely to capture ‘master merchants’ or ‘payment facilitators’ that contract with payees for the provision of acquiring services and activities carried out by businesses that aggregate carrier billing transactions. However, provision of merely technical services to merchants, such as processing or storage of data and provision of terminals or online gateways, will not itself constitute acquiring.

**Q22. When might we be providing money remittance services (paragraph 1(f))?**

Money remittance is defined in regulation 2 as: ‘... a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or payee, where

- funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or
- funds are received on behalf of, and made available to, the payee.’

The service of money remittance cannot therefore involve the creation of payment accounts. Recital 79 of PSD PSD2 describes money remittance as ‘a simple payment service that is usually based on cash provided by a payer to a payment service provider, which remits the corresponding amount, for example, via a communication network, to a payee or to another payment service provider acting on behalf of the payee’.

This service is likely therefore to be relevant, for example, to money transfer companies and hawala brokers.

Although money remittance is traditionally a cash-based service, the definition is technology neutral and may therefore apply to business models where funds are received and transferred electronically.

**Q23. We are a mobile network operator offering our client facilities to transfer funds make payments - how do we tell whether and when the regulations apply to us (paragraph 1(g))?**

You will be subject to the regulations if you provide a payment ~~execution service to~~ customers and:

- ~~customer consent to execute payment is provided by means of the mobile device you provide; and~~
- ~~you receive payment for transmission to a supplier of goods and services, acting only as intermediary between the payment service user and supplier~~

service as a regular occupation or business activity in the UK and this service does not fall within an exclusion.

~~By contrast, when you add value to the good or service being purchased from a third party, you will not be acting only as an intermediary and hence will not be subject to the regulations (see PERG 15 Annex 3, paragraph (1)). Adding value may take the form of adding intrinsic value to goods or services supplied by a third party, for instance by providing access (including an SMS centre), search or distribution facilities. Nor will you~~ You will not be providing this a payment service when a customer uses ~~his~~ their mobile device merely as an authentication tool to execute payment from ~~his bank~~ the customer’s payment account held with another provider (for example, simply providing instructions to ~~his~~ their bank via SMS or a payment application), and ~~does not transmit payment is not made~~ via you. Mobile phone top-ups also fall outside the scope of the regulations.

If your client can use pre-paid airtime to make purchases, you should also consider whether you are issuing electronic money, see PERG 3A.

Mobile network operators and other electronic communication network operators may be

able to take advantage of the exclusion set out in PERG 15 Annex 3(l), see Q41A.

**Q24 ~~Do the same provisions apply to other types of telecommunications providers as they do to mobile network operators? [deleted]~~**

~~Yes, paragraph 1(g) and PERG 15 Annex 3(l) refer to payment transactions executed by means of any telecommunications, digital or IT device. These could include, for example, desktop and laptop computers, personal digital assistants and interactive television sets. Our guidance for mobile phone operators in relation to these provisions applies, by analogy, to other types of telecommunication provider.~~

**Q25. We are a bill payment firm. Do the PSD regulations PSRs 2017 apply to us?**

...

**Q25A. When might we be providing an account information service?**

The service of providing account information is an online service to provide consolidated information on one or more payment accounts held by the payment service user with another payment service provider or with more than one payment service provider. This includes whether information is provided in its original form or after processing; and whether it is provided only to the payment service user or to the payment service user and to another person in accordance with the payment service user's instructions.

Account information service providers include businesses that provide users with an on-line 'dashboard' where they can view information from various payment accounts in a single place, businesses that use payment account data to provide users with personalised comparison services supported by presentation of account information, and businesses that provide information from the user's various payment accounts to both the user and another party (such as a lender or a financial advisor) on a user's instruction.

Whether a service is an account information service depends on whether there has been access to payment accounts. The account information service provider is subject to rights and obligations concerning such access under the PSRs 2017 (see Chapter 17 of the Approach Document). For a service to be an account information service it is also necessary for it to involve the provision of payment account information to the payment service user that has been consolidated in some way (although a service may be an account information service even if the information relates to only one payment account).

More than one business may be involved in obtaining, processing and using payment account information to provide an online service to a customer. However, the business that requires authorisation or registration to provide the account information service is the one that provides consolidated account information to the payment service user (including through an agent) in line with the payment service user's request to that business.

**Q25B. When might we be providing a payment initiation service?**

The service of payment initiation is defined in regulation 2 as 'an online service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider'.

This includes businesses that contract with online merchants to enable customers to purchase goods or services through their online banking facilities, instead of using a payment card or

other payment method. However, it is not limited to arrangements where the service provider has a pre-existing relationship with the merchant. Any business offering payment initiation services as a regular occupation or business activity will require this permission unless exempt under Schedule 1 Part 2.

In our view, the provider of a service that transmits a payer's card details, along with a payment order, to the payer's payment service provider, but does not come into possession of personalised security credentials, is not carrying out a payment initiation service.

#### 15.4 Small payment institutions, agents and exempt bodies

##### Q26. What criteria must we meet to be a 'small payment institution'?

The conditions are set out in regulation ~~13~~ 14 and include the following:

- the average of the preceding 12 months' total amount of payment transactions executed by you, including your agents in the UK, does not exceed 3 million euros (or an equivalent amount) per month;
- your business must not include the provision of account information services or payment initiation services;
- none of the individuals responsible for the management or operation of your business has been convicted of offences relating to money laundering or terrorist financing, the ~~Act~~ Act, the PSRs 2017 or the PSD regulations or financial crimes;
- if you are a partnership, an unincorporated association, or a body corporate, you must satisfy us that any persons having a qualifying holding in your business are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution;
- you must satisfy us that your directors (if you are a body corporate), any persons responsible for the management of your business, and where relevant the persons responsible for the management of your payment services, are of good repute and possess appropriate knowledge and experience to provide payment services;
- if you are a body corporate you must satisfy us that any close links you have with another person are not likely to prevent our effective supervision of you. If it appears to us that you have any close links that are subject to the laws, regulations or administrative provisions of a territory outside of the EEA ('the foreign provisions') you must satisfy us that neither the foreign provisions, nor any deficiency in their enforcement, would prevent our effective supervision of you;
- your head office, registered office or place of residence, as applicable, is in the UK; and
- you must comply with the registration requirements of the Money Laundering Regulations ~~2007~~ 2017, where they apply to you.

##### Q27. We satisfy the conditions for registration as a small payment institution - does that mean we have to register as one?

No, there are other options available to you. If you register as a small payment institution, you cannot acquire passport rights under the regulations, so you may wish to become an

authorised payment institution if you wish to take advantage of the passport. You may also choose to become an agent of a payment services provider. ~~An overview of the options available to you is set out in PERG 15 Annex 1, Flowcharts 1 and 2.~~

**Q28. We only wish to be an agent of a payment institution. Do we need to apply to the FCA and/or PRA for registration?**

No. If your principal is a payment institution, it is its responsibility to ~~apply for registration on your behalf~~ register you as its agent. Assuming your principal is not an EEA firm, you are required to be registered on the Financial Services Register before you provide payment services, ~~subject to any relevant transitional provisions (see PERG 15.7) which may delay or avoid the need for registration.~~ If your principal is an EEA firm, your principal will need to comply with the relevant Home State legislation relating to your appointment. You will not be able to provide payment services in the UK on behalf of an EEA firm unless it has also complied with the relevant requirements for the exercise of its passport rights.

You may act for more than one principal, but each principal must register you as its agent.

**Q29. We are an agent of a credit institution for the purpose of providing payment services. Do we need to apply to the FCA and/or PRA for registration?**

No. If you are such an agent of a credit institution which is permitted to provide payment services in the UK, you are not required to be registered under the ~~PSD regulations~~ PSRs 2017. A credit institution will be permitted to provide payment services if it has a Part 4A permission to accept deposits, or if it is an EEA credit institution exercising passport rights under paragraph 4 of the Annex I to the ~~Banking Consolidation directive~~ Fourth Capital Requirements Directive.

**Q30. We are an agent of an electronic money institution for the purpose of providing payment services. Do we need to apply to the FCA for registration under the PSD regulations PSRs 2017?**

As such an agent you will need to be registered by your principal under the *Electronic Money Regulations*, see PERG 3A Q21. ~~However, in our view you do not need to be registered as an agent under the PSD PSD2 regulations unless you are also providing payment services on behalf of another payment institution.~~

**Q31. We are a credit union. Are we exempt from the regulations?**

Yes. You are exempt from the ~~regulations~~ PSRs 2017 by virtue of regulation 3. Note, however, that as a consequence of this the conduct requirements set out in the FCA's Banking: Conduct of Business sourcebook (BCOBS) will apply to you in circumstances in which they would not apply to other payment service providers.

**Q32. We are a municipal bank. Are we exempt from the regulations?**

Yes. You are exempt from the ~~regulations~~ PSRs 2017 (together with credit unions and the National Savings Bank), by virtue of regulation 3. Unlike credit unions, you are required to notify us if you wish to provide payment services, although you only need to do this once.

## 15.5 Negative scope/exclusions

Schedule 1 Part 2 to the regulations PSRs 2017 contains a list of activities which do not constitute payment services. The following questions only deal with a selection of these. You should consult Annex 3 to this chapter for a full list of provisions, if you require more details.

### **Q33. Our business consists of cash payments directly from or to our customers - do the regulations apply to us?**

No. The regulations PSRs 2017 do not apply to payment transactions made in cash, without the intervention of an intermediary (see *PERG 15 Annex 3*, paragraph (a)).

### **Q33A. We are an e-commerce platform that collects payments from buyers of goods and services and then remits the funds to the merchants who sell goods and services through us – do the regulations apply to us?**

Recital 11 of PSD2 makes it clear that some e-commerce platforms are intended to be within the scope of regulation. Whether an e-commerce platform is in or out of scope of the PSRs 2017 will depend on its business model.

An e-commerce platform may not be carrying on payment services at all: for example, if the platform is a re-seller of the goods or services (i.e. is acting as principal in the sale or supply of goods or services having purchased them from a third party), such that it is the intended recipient of the funds paid by the customer and there is no contract between the customer to whom the goods or services are now being sold and the third party from whom the platform purchased the goods or services.

If they are providing payment services, the platform should consider whether they are doing so as a regular occupation or business activity (see Q9).

The platform should also consider whether they fall within the exclusion at *PERG 15 Annex 3*, paragraph (b). The PSRs 2017 do not apply to payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee.

An example of where a platform will be acting for both the payer and the payee would be where the platform allows a payer to transfer funds into an account that it controls or manages, but this does not constitute settlement of the payer's debt to the payee, and then the platform transfers corresponding amounts to the payee, pursuant to an agreement with the payee.

In our view, you have the authority to conclude the sale or purchase of goods or services on behalf of the payer or the payee only if you have the authority to affect the legal relations of your principal, who is the payer or the payee, with third parties and to bind the payer or payee to a purchase or sale of goods or services. This would not be fulfilled simply by providing the technical means by which a payer places or a payee accepts an order.

If an e-commerce platform is providing payment services as a regular occupation or business activity and does not benefit from an exclusion or exemption, it will need to be authorised or registered by us.

**Q33B. We are a professional cash collection company. We collect coins and banknotes from our customers and then remit them electronically to our customers' bank accounts – do the regulations apply to us?**

No. The PSRs 2017 do not apply to the professional physical transport of banknotes and coins, including their collection, processing and delivery (*PERG 15 Annex 3, paragraph (c)*). In our view, the exclusion applies to the delivery of funds to the customer, whether in physical or electronic form. However, it does not extend to the remitting of funds to third parties on the customer's behalf.

**Q34. We are a charity which collects cash donations in the form of coins, banknotes and electronic payments and transmits funds via bank transfer to the causes that we support intended recipients do the regulations apply to us?**

No. The ~~regulations~~ PSRs 2017 do not apply to payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity (see *PERG 15, Annex 3, paragraph (d)*).

**Q34A. We are an online fundraising platform which collects donations in the form of electronic payments and transmits funds electronically to the causes and charities that have an agreement with us - do any of the exclusions apply to us?**

Persons collecting cash on behalf of a charity and then transferring the cash to the charity electronically do not fall within the exclusion in *PERG 15 Annex 3, paragraph (d)*, unless they themselves are carrying this out both non-professionally and as part of a not-for-profit or charitable activity. For example, a group of volunteers that organises regular fundraising events to collect money for charities would fall within this exclusion. On the other hand, an online fundraising platform that derives an income stream from charging charities a percentage of the money raised for them (whether or not this is for profit) is unlikely to fall within this exclusion.

Nor will an online fundraising platform accepting donations and then transmitting them to the intended recipient be able to take advantage of the exclusion in paragraph (b), as they are not a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee.

Online fundraising platforms should also consider the guidance in Q33A.

**Q35. We provide a 'cashback' service to our customers when they pay for their goods at the checkout - do the regulations apply to us?**

No. The ~~regulations~~ PSRs 2017 do not apply to cashback services (see *PERG 15, Annex 3, paragraph (e)*).

**Q36. We are a bureau de change providing cash only forex services and our clients do not have accounts with us - are these services outside the scope of the regulations?**

Yes. The ~~regulations~~ PSRs 2017 do not apply to ~~money exchange business consisting of~~ cash-to-cash currency exchange operations where the funds are not held on a payment

account (see *PERG 15*, Annex 3, paragraph (f)). If you allow a customer to pay for foreign currency using a payment card, this does not mean that you will be providing a payment service. The regulations will though apply to the payment transaction made using the payment card and the payment service provided to you by the merchant acquirer. In other words, the regulations apply to the merchant acquirer's services but yours remain outside the scope of authorisation or registration.

The ~~regulations~~ PSRs 2017 do not affect your obligations under the Money Laundering Regulations 2007.

**Q37. Do the regulations distinguish between (i) payment transactions between payment service providers and (ii) payment services provided to clients?**

Yes, broadly the object of the ~~regulations~~ PSRs 2017 is the payment service provided to specific clients and not the dealings among payment service providers to deliver the end payment arising from that service. The PSRs 2017 do not apply to payment transactions carried out between payment service providers, their agents or branches for their own account (see *PERG 15* Annex 3, paragraph (m)). This would include, for example, electronic payment from one payment services provider to another acting as such, in discharge of a debt owed by one to the other.

A payment transaction may involve a chain of payment service providers. Where a bank, for example, provides a cash withdrawal or execution of payment transaction service to its customer which involves the use of a clearing bank, it will still be providing a payment service to its customer.

...

**Q38. We are an investment firm providing investment services to our clients - are payment transactions relating to these services caught by the regulations?**

Generally, no. Where payment transactions only arise in connection with ~~your~~ the main activity of providing investment services, in our view it is unlikely that you will be providing payment services by way of business. In those limited cases where you are, the ~~regulations~~ PSRs 2017 do not apply to securities assets servicing, including dividends, income or other distributions and redemption or sale (see *PERG 15* Annex 3, paragraph (i)).

**Q39. We are a firm simply providing IT support in connection with payment system infrastructures - are these services subject to the regulations?**

No. There is an exclusion for technical service providers which simply provide IT support for the provision of payment services (see *PERG 15* Annex 3, paragraph (j)). Other support services excluded from the regulations that may be provided by technical service providers include data processing, storage and authentication. This does not mean that where these services form part of a payment service they are not regulated, but in that case it is the payment service provider that is responsible under the PSRs 2017 for the provision of these services, not the person they have outsourced these technical services to.

Providers of payment initiation services or account information services are not technical service providers.

**Q40. Which types of payment card could fall within the so-called ‘limited network’ exclusion (see PERG 15, Annex 3, paragraph (k))?**

The ‘limited network’ exclusion forms part of a broader exclusion which applies to services based on specific payment instruments that can be used to acquire goods or services only in a limited way and -

~~in or on the instrument issuer’s premises; or~~

~~under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services...”~~

(a) allow the holder to acquire goods or services only in the issuer’s premises;

(b) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;

(c) may be used only to acquire a very limited range of goods or services; or

(d) are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

As regards (a), examples of excluded instruments could include:

staff catering cards - reloadable cards for use in the employer’s canteen or restaurant;

tour operator cards - issued for use only within the tour operator’s holiday village or other premises (for example, to pay for meals, drinks and sports activities);

store cards – for example, a ‘closed-loop’ gift card, where the card can only be used at the store’s issuer’s premises or website (so where a store card is co-branded with a third party debit card or credit card issuer and can be used as a debit card or credit card outside the store, it will not benefit from this exclusion).

In order to meet the test in (b), recital 13 of PSD2 states that the instrument must be limited to use at a ‘specific retailer or specific retail chain, where the entities involved are directly linked by a commercial agreement which for example provides for the use of a single payment brand and that payment brand is used at the points of sale and appears, where feasible, on the payment instrument that can be used’. It also states that to help limit risks to consumers, it should not be possible to use the same instrument to make payment transactions to acquire goods and services within more than one limited network.

Recital 14 of PSD2 goes on to state that ‘instruments which can be used for purchases in stores of listed merchants should not be excluded from the scope of this Directive as such instruments are typically designed for a network of service providers which is continuously growing.’

In our view, examples of excluded instruments falling within (b) include: ~~As regards (b), this exclusion has two discrete limbs and so applies either to instruments that can be used only:~~

~~within a limited network of service providers; or~~

~~for a limited range of goods or services.~~

Petrol-fuel cards (including pan-European cards) - where these are issued for use at a

specified chain of ~~petrol~~ fuel stations and forecourts at these stations;  
membership cards - where a card can only be used to pay for goods or services offered by a specific club or organisation;  
store ~~card~~ cards - where the card can be used at a specified chain of stores ~~at their premises or on their website~~ sharing a common brand under a franchise agreement between the store owners and the issuer.

We would not generally expect 'city cards' to fall within this exclusion, to the extent that participation is open to all a city's shops and businesses.

'Mall cards' may fall within this exclusion if, on the facts, the criteria are met. In our view you will not be able to take advantage of this exclusion unless: it is made clear in the relevant terms and conditions of the card that the purchaser of the value is only permitted to use the card to buy from merchants located within that particular shopping centre with whom you have direct commercial agreements; and the card is functionally restricted to one shopping centre. A card that can be used at a number of different shopping centres, or where use is restricted only by the terms and conditions that apply to the card and is not functionally restricted is unlikely to fall within this exclusion.

In relation to (c), recital 13 states that it should only be possible to purchase a 'very limited range of goods or services, such as where the scope of use is effectively limited to a closed number of functionally connected goods or services regardless of the geographical location of the point of sale'.

Examples of instruments falling within (c) could be:

fuel cards - where these can only be used to purchase fuel and a closed number of goods or services that are functionally connected to fuel (such as engine oil and brake fluid), including where the cards can be used at multiple retail chains;

transport cards – where these are used only for purchasing travel tickets (for example, the Oyster card which provides access to different service providers within the London public transport system);

In our view, instruments falling within (d) could include:

pre-paid cards provided by local authorities to benefit recipients for use at a specified chain of grocery stores;

government-issued childcare vouchers.

Instruments for the purpose of this exclusion can include, ~~for example,~~ vouchers, mobile applications, cards and other devices.

Service providers relying on this exclusion are required to notify the FCA where the total value of payment transactions executed through such services exceeds 1 million euros in any 12 month period as directed: see <https://www.fca.org.uk/firms/limited-network-exclusion>.

**Q41. ~~Do the regulations specify or define what a "limited network" is for these purposes?~~ [deleted]**

~~Neither the PSD nor consequently the PSD regulations provide any definition, conditions or criteria for determining what is a "limited network of service providers". The issue of whether or not a "limited network" is in existence is ultimately a question of judgement that, in our view, should take account of various factors (none of which is likely to be conclusive in itself). These include the number of service providers involved, the scale of the services~~

~~provided, whether membership of the network is open-ended, the number of clients using the network and the nature of the services being offered.~~

~~While a "limited network" could include transport cards, petrol cards, membership cards and store cards, we would not generally expect "city cards" to fall within this exclusion, to the extent that these tend to provide users with access to a broad range of goods and services offered by a city's shops and businesses.~~

**Q41A. In what circumstances are payments made via a mobile phone excluded?**

The 'electronic communications exclusion' (see PERG 15 Annex 2 paragraph (1)) applies to payment transactions resulting from services provided by a provider of electronic communications networks or services.

For this exclusion to apply the service must be provided in addition to electronic communications services for a subscriber to the network or service and the payment must be charged to the related bill.

Where the provider of the network or service allows the customer to pay for eligible transactions out of a prepaid balance that is also used to purchase the electronic communications services, in our view this will amount to the payment transaction being charged to the related bill.

The exclusion only applies:

- to the purchase of digital content and voice-based services (such as music and other digital downloads and premium rate services), regardless of the device used for the purchase or consumption of the digital content; or
- when performed from or via an electronic device for donations to charity (for example SMS donations) or for the purchase of tickets.

In all cases the value of any single payment transaction must not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month must not exceed £240.

A electronic communications network or service provider providing services falling within the electronic communications exclusion must notify the FCA and provide it with an annual audit opinion that the transactions to which the services relate comply with the financial limits - as directed. See: <https://www.fca.org.uk/firms/electronic-communications-exclusion>. For the purpose of application of the financial limits, the FCA will expect notification on the basis of individual telephone numbers or SIM cards being treated as separate 'subscribers', rather than account holders.

In practice electronic network operators often do not deal directly with suppliers of digital goods and services, but via carrier billing platforms that act as intermediaries or aggregators. The PSRs 2017 make clear that where a network operator benefits from the exclusion with respect to a particular transaction, the provider of any other payment service resulting from that transaction will also benefit from the exclusion. The service provided by the billing platform to merchants will amount to a payment service (for example merchant acquiring or operation of a payment account) only where it results from transactions that do not fall within this exclusion.

Where a provider of a network or service sells subscribers additional goods or services itself (i.e. where it is acting as principal) this exclusion will not be relevant, as no payment service is being provided by the provider of the network or service even if the payment is charged to

the related bill.

**Q42. ~~We are a payment services provider which carries out payment transactions for our own account – are these payment transactions excluded from the scope of the regulations? [deleted]~~**

~~Yes. Payment transactions carried out between payment service providers, or their agents or branches, for their own account, are all excluded from the scope of the regulations (see *PERG 15 Annex 3*, paragraph (m)). This would include, for example, electronic payment from one payment services provider to another, in discharge of a debt owed by one to the other.~~

**Q43. We are a company which performs a group treasury function, including providing payment services directly to other group companies - are these intra-group payment services excluded from the regulations?**

Yes. Intra-group payment transactions and related services are excluded from the ~~regulations~~ *PSRs 2017*, where payment is made direct from one group company to another (see *PERG 15 Annex 3*, paragraph (n)). This includes the case where the group company providing the payment service is, itself, a payment service provider otherwise subject to the regulations. However, it does not include intra-group payment transactions that are made through a payment service provider that does not belong to the group.

In our view, this exclusion is likely to extend to payment initiation services and account information services where these are provided by one group company to another member of the same group as part of a group treasury function.

**Q44. We are an independent ATM deployer offering cash dispensing facilities to users on behalf of card issuers. We are not a bank. Are we subject to the regulations?**

No, assuming you do not provide other payment services listed in Schedule 1 Part 1 to the ~~regulations~~ *PSRs 2017* and are not party to the framework contract with the customer withdrawing money (see *PERG 15 Annex 3*, paragraph (o)). However, you must still provide the customer with the information referred to in regulation 61 of the *PSRs* on withdrawal charges. If other payment services are provided, all your payment services (including the ATM cash dispensing facilities) will be subject to the regulations, to the extent that other exclusions are inapplicable.

## 15.6 Territorial scope

**Q45. We are a UK payment institution - when will we need to make a passport notification?**

...

As to the circumstances in which you may need to exercise these rights, this gives rise to issues of interpretation both under the ~~PSD regulations~~ *PSRs 2017* and the local law of the EEA State in which you wish to do business. Our guidance below relates only to the ~~PSD regulations~~ *PSRs 2017* and may differ from the approach in other EEA States. We cannot give guidance on the local law of other EEA States and you may therefore wish to take

professional advice if you think your business is likely to be affected by these issues (for instance, if you are soliciting clients in other EEA States).

...

The establishment of a physical presence (for example, offices) in another EEA State, for use by you, triggers the need for ~~a branch~~ an establishment notification.

...

**Q46. We are a non-EEA payment institution providing payment services to UK customers from a location outside the EEA. Do we require authorisation or registration under the regulations?**

No. When considering whether you fall within the scope of the ~~regulations~~ PSRs 2017, our starting point is to consider whether a UK payment services provider would be providing cross-border services in analogous circumstances (for example, when it provides payment services to EEA customers from a location in the UK). Accordingly, we would not generally expect a payment services provider incorporated and located outside the EEA to be within the scope of the regulations, if all it does is to provide internet-based and other services to UK customers from that location. A non-EEA payment institution for these purposes would include firms incorporated in the Isle of Man or Channel Islands, both of which are outside the scope of the Second Payment Services Directive.

#### **15.7 Transitional provisions**

**Q47. We are a provider of account information and payment initiation services who was providing those services before 12 January 2016. Can we continue to provide those services after the PSRs 2017 come into force?**

Yes, initially. Providers of account information services and payment initiation services which were providing those services before 12 January 2016 and which continue to provide such services immediately before 13 January 2018 will be able to continue to do so after that date without registration or authorisation until the EBA's Regulatory Technical Standards on strong customer authentication and common and secure communication apply. However, while provided in reliance on this transitional provision, those services will be treated under the PSRs 2017 as if they were not account information services or payment initiation services. More information can be found in Chapters 3 and 17 of our Approach Document.

PERG 15 Annex 1 is deleted in its entirety. The deleted text, except the title, is not shown.

**15 Annex 1** [deleted]

**15 Annex** **Payment Services in Schedule 1 Part 1 to the ~~PSD regulations~~ PSRs 2017**  
2

(a)	Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account
(b)	Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account
(c)	The execution of <del>the following types of payment transaction</del> <u>payment transactions, including transfers of funds on a payment account with the user's payment service provider or another payment service provider-</u>
	(i) <u>execution of</u> direct debits, including one-off direct debits;
	(ii) <u>execution of</u> payment transactions through a payment card or a similar device;
	(iii) <u>execution of</u> credit transfers, including standing orders
(d)	The execution of <del>the following types of payment transaction</del> <u>payment transactions</u> where the funds are covered by a credit line for the payment user-
	(i) <u>execution of</u> direct debits, including one-off direct debits;
	(ii) <u>execution of</u> payment transactions <del>executed</del> through a payment card or a similar device;
	(iii) <u>execution of</u> credit transfers, including standing orders
(e)	Issuing payment instruments or acquiring payment transactions
(f)	Money remittance
(g)	The execution of payment transactions where the consent of the payer to execute <del>the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment user and the supplier of the goods or services</del> <u>Payment initiation services</u>
(h)	<u>Account information services</u>

**15 Annex 3 Schedule 1 Part 2 to the PSD regulations PSRs 2017: Activities which do not constitute payment services**

(a)	Payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention.
(b)	Payment transactions between the payer and the payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee.
(c)	The professional physical transport of banknotes and coins, including their collection, processing and delivery.
(d)	Payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity.
(e)	Services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction.
(f)	<del>Money exchange business consisting of eCash-to-cash</del> currency exchange operations where the funds are not held on a payment account.
(g)	Payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee-
	(i) paper cheques of any kind, including travellers' cheques;
	(ii) bankers' drafts;
	(iii) paper-based vouchers;
	(iv) paper postal orders.
(h)	Payment transactions carried out within a payment or securities settlement system between payment services providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.
(i)	Payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in sub-paragraph (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments.
(j)	Services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, <u>excluding payment initiation services or account</u>

	<u>information services but including-</u>
(i)	the processing and storage of data;
(ii)	trust and privacy protection services;
(iii)	data and entity authentication;
(iv)	information technology;
(v)	communication network provision; and
(vi)	the provision and maintenance of terminals and devices used for payment services.
(k)	Services based on <u>specific payment instruments that can only be used in a limited way and meet one of the following conditions: <del>to acquire goods or services only-</del></u>
(i)	<u>allow the holder to acquire goods or services only in <del>or on</del> the issuer's premises; <del>or</del></u>
(ii)	<u>are issued by a professional issuer and allow the holder to acquire goods or services only under a commercial agreement with the issuer, either within a limited network of service providers <u>which have direct commercial agreements with the issuer;</u><del>or for a limited range of goods or services,</del></u>
(iii)	<u>may be used only to acquire a very limited range of goods or services; or</u>
(iv)	<u>are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer,</u>
and for these purposes the 'issuer' is the person who issues the instrument in question.	
(l)	<u>Payment transactions resulting from services provided by a provider of electronic communications networks or services, including transactions between persons other than that provider and a subscriber, where those services are provided in addition to electronic communications services for a subscriber to the network or service and where the additional service is- <del>executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.</del></u>
(i)	<u>for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and</u>

		<u>charged to the related bill; or</u>
	(ii)	<u>performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere.</u>
		<u>provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240.</u>
(m)		Payment transactions carried out between payment service providers, or their agents or branches, for their own account.
(n)		Payment transactions <u>and related services</u> between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group.
(o)		<del>Cash withdrawal services provided through Services by providers to withdraw cash by means of automated teller machines, where acting on behalf of one or more card issuers, which are not party to the framework contract with the customer withdrawing money from a payment account, where no other payment service is conducted by the provider;</del>
	(i)	<u>is acting on behalf of one or more card issuers;</u>
	(ii)	<u>is not party to the framework contract with the customer withdrawing money from a payment account; and</u>
	(iii)	<u>does not conduct any other payment service.</u>



# Appendix 2

## Final non-Handbook directions for excluded providers

## **Direction under regulation 39 of the Payment Services Regulations 2017 (Notification of use of electronic communications exclusion)**

### **Purpose and statutory context**

Under regulation 39 of the Payment Services Regulations 2017 ("PSRs 2017"), if a person (a "service provider") provides, or intends to provide, a service for payment transactions falling within paragraph 2(l) of Schedule 1 to the PSRs 2017 (activities involving electronic communications networks which do not constitute payment services), the service provider must:

- (a) notify the Financial Conduct Authority ("FCA"), including with such notification a description of the service;
- (b) provide an annual audit opinion testifying that the transactions for which the service is provided comply with the limits mentioned in paragraph 2(l) of Schedule 1 to the PSRs 2017.

The purpose of this document is to direct the form in which the information required by regulation 39 of the PSRs 2017 must be submitted to the FCA and the manner in which it must be verified.

The provisions of paragraph 2(l) of Schedule 1 to the PSRs 2017, read alongside the definition of "payment service" in regulation 2(1) of the PSRs 2017, are referred to as the "electronic communications exclusion" in this Direction. References to activities falling within the electronic communications exclusion in this Direction include activities carried on before 13 January 2018 if such activities would fall within the exclusion if they were carried out after the 13 January 2018.

### **The Direction**

The FCA directs that an electronic communications network or service provider to which regulation 39 of the PSRs 2017 applies (a "service provider") must provide the information required by that regulation in the form, at the time and verified in the manner described below.

This Direction may be amended by further Direction to all service providers, to a class of service providers or to an individual service provider. For the avoidance of doubt, such amendments are likely to be made only where necessary in exceptional circumstances.

### **Powers exercised**

The FCA makes this Direction in exercise of the following powers under the PSRs 2017:

- Regulations 39(3) and (4); and
- Regulation 109(1).

## **Background to this Direction**

The revised Payment Services Directive (“PSD2”) entered into force in January 2016. PSD2 updates the regulation of payment services in Europe and departs from the original Payment Services Directive 2007 in a number of ways, including changing the scope of the exclusions and introducing notification and registration requirements for certain excluded providers. PSD2 was transposed into UK law through the PSRs 2017.

The FCA is the authority with responsibility for monitoring and enforcing compliance with a majority of the provisions of the PSRs 2017.

## **Who does this Direction apply to?**

This Direction concerns an electronic communications network or service provider who provides, or intends to provide, a service, additional to the electronic communications network or service, that falls within the following exclusion:

*“Payment transactions resulting from services provided by a provider of electronic communications networks or services, including transactions between persons other than that provider and a subscriber, where those services are provided in addition to electronic communications services for a subscriber to the network or service, and where the additional service is—*

- i. for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or*
- ii. performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere,*

*provided that the value of any single payment transaction does not exceed £40, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed £240.”*

A payment transaction that falls within this category does not constitute a payment service to which the prohibition in regulation 138 of the PSRs 2017 (Prohibition on provision of payment services by persons other than payment service providers) applies. A person carrying out payment transactions within the electronic communications exclusion may or may not be authorised or registered by the FCA in respect of other services or activities.

Regulation 39 of the PSRs 2017 only applies to the electronic communications network or service provider. Nonetheless, the electronic communications exclusion applies to all payment transactions resulting from the services falling within paragraph 2(l) of Schedule 1 to the PSRs 2017, including transactions between persons other than the electronic communications network or service provider and a subscriber. For the

avoidance of doubt, this means that a business carrying out payment transactions that benefit from the electronic communications exclusion but which is not the electronic communications network or service provider does not have to notify the FCA or provide an annual audit opinion. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5 Q41A) for further information about the scope of the electronic communications exclusion.

### **What information is required?**

An electronic communications network or service provider who provides or intends to provide a service falling within the electronic communications exclusion must submit the following information to the FCA:

- a notification including a description of that service ("services notification");
- an annual audit opinion testifying that the transactions for which the service is provided comply with the applicable financial limits ("audit opinion").

### **The timing of the services notification**

*Persons providing a service before 13 January 2018 that would fall within the electronic communications exclusion and who continue to do so afterwards:*

A service provider who provides a service falling within the electronic communications exclusion prior to 13 January 2018 must submit the services notification on or before 13 January 2018 in accordance with regulation 39(2)(a) of the PSRs 2017. If a service provider wishes to submit a services notification before the deadline then the service provider may do so at any time after 13 October 2017.

*Persons providing a service falling within the electronic communications exclusion only on or after 13 January 2018:*

If a service provider intends to begin providing a service falling within the electronic communications exclusion on or after 13 January 2018 then the service provider must submit the services notification before the commencement of the service in accordance with regulation 39(2)(b) of the PSRs 2017.

### **How to submit the services notification**

A service provider must use Connect to submit the services notification.

### **The audit opinion**

A service provider must also submit to the FCA an annual audit opinion testifying that the transactions for which the service is provided comply with the limits mentioned in paragraph 2(1) of Schedule 1 to the PSRs 2017.

### **The form of the audit opinion**

The audit opinion must:

- be prepared by an independent auditor with the skills, resources and experience commensurate with the nature, scale and complexity of the service provider's business and that is eligible for appointment as an auditor under the applicable law;
- confirm whether, in the auditor's opinion, the transactions for which the service is provided comply with the limits mentioned in paragraph 2(1) of Schedule 1 to the PSRs 2017;
- specify the period to which the opinion relates, the information and records on which the opinion was based and (where relevant) the industry standards or methodology used;
- set out any assumptions, limitations, caveats, or explanations as necessary; and
- be signed on behalf of the audit firm by the individual with primary responsibility for the audit opinion and in that individual's own name.

Service providers and auditors are reminded that sections 341 (Access to books etc.) to 346 (Provision of false or misleading information to auditor or actuary) of the Financial Services and Markets Act 2000 apply to the preparation and submission of the annual audit opinion under regulation 39(3) of the PSRs 2017 (see paragraph 6 of Schedule 6 of the PSRs 2017).

The FCA expects the application of the financial limits to be based on treating individual telephone numbers or SIM cards, rather than account holders, as separate 'subscribers'.

### **The timing of the audit opinion**

In this Direction, "accounting reference date" means: (a) in relation to a company incorporated in the United Kingdom under the Companies Acts, the accounting reference date of that company determined in accordance with section 391 of the Companies Act 2006; and (b) in relation to any other body, the last day of its financial year.

A person to whom regulation 39 of the PSRs 2017 applies must submit an annual audit opinion to the FCA from 13 January 2018.

*Persons providing a service before 13 January 2018 that would fall within the electronic communications exclusion and who continue to do so afterwards*

- (a) Unless (b) applies, the service provider must submit the first audit opinion to the FCA no later than 3 months after its accounting reference date that immediately follows 13 January 2018.
- (b) If the service provider has an accounting reference date that falls less than three months after the 13 January 2018, it must submit the first audit opinion to the FCA no later than 3 months after the next accounting reference date i.e. the accounting reference date that immediately follows the accounting reference date in early 2018.

In either case, the first audit opinion must cover the entire period from 13 January 2018 until the relevant accounting reference date.

- (c) Unless (d) applies, the service provider must submit further audit opinions to the FCA no later than three months after each subsequent accounting reference date. The audit opinions must cover consecutive periods beginning on the day after the end of the period to which the previous audit opinion related and ending on the next accounting reference date.
- (d) The service provider is not required to continue to submit annual audit opinions if it has ceased to provide services in respect of which it relies on the electronic communications exclusion and all such transactions have been the subject of an earlier audit opinion submitted to the FCA. A service provider that has ceased to provide services in respect of which it relies on the electronic communications exclusion should notify us in accordance with the provisions below.

*Persons providing a service falling within the electronic communications exclusion only on or after 13 January 2018*

- (a) Unless (b) applies, a service provider who first begins providing a service falling within the electronic communications exclusion on or after 13 January 2018 must submit the first audit opinion to the FCA no later than three months after its accounting reference date that immediately follows the commencement of the service.
- (b) If the service provider has an accounting reference date that falls less than three months after the date on which it began to provide the service, it must submit the first audit opinion to the FCA no later than three months after the next accounting reference date i.e. the accounting reference date that immediately follows the accounting reference date that fell within three months of the commencement of the service.

In either case, the first audit opinion must cover the entire period from the date on which the service commenced until the relevant accounting reference date.

- (c) Unless (d) applies, the service provider must submit further audit opinions to the FCA no later than three months after each subsequent accounting reference date. The audit opinions must cover consecutive periods beginning on the day after the end of the period to which the previous audit opinion related and ending on the next accounting reference date.
- (d) The service provider is not required to continue to submit annual audit opinions if it has ceased to provide services in respect of which it relies on the electronic communications exclusion and all such transactions have been the subject of an earlier audit opinion submitted to the FCA.

### **How to submit the audit opinion**

The annual audit opinion must be submitted electronically (for example as a PDF) using [Connect](#) alongside a completed services notification form.

## **Notification when ceasing to provide services**

If a service provider is registered with the FCA as a provider of services falling within the electronic communications exclusion and ceases to provide such services, it must notify the FCA:

- using the regulation 39 form and Connect; and
- no later than 10 business days after the date on which it ceased to provide the excluded services.

On receipt of such notification, the FCA will update the register of service providers accordingly (see below).

## **The FCA's powers and responsibilities**

In accordance with regulation 4(1) of the PSRs 2017, the FCA will maintain a register of service providers that have submitted a notification pursuant to regulation 39 of the PSRs 2017 and this Direction. The register will be publicly available and will display the following information about each service provider: name; registered address; and a brief outline of the services provided/the applicable exclusion.

The European Banking Authority ("EBA") will also maintain a register which includes the information covered in our public register, together with information provided by the competent authorities in other EEA Member States. This will be available free of charge on the EBA's website.

If (on the basis of the notification or otherwise) the FCA determines that the service provider has exceeded the applicable limits or is not eligible for the electronic network exclusion for any other reason it may take such action as it considers appropriate in the circumstances.

If the FCA considers that a service provider is obliged to submit a notification under regulation 39 of the PSRs 2017, but has not done so, the FCA may rely on its powers of enforcement set out in Part 9 of the PSRs 2017 (which apply to excluded providers as well as authorised payment service providers). For example, the FCA may publish a statement that the service provider has contravened the relevant requirement imposed by the PSRs 2017, may impose a financial penalty or may apply to court for an injunction.

## Notification of the use of the electronic communications exclusion under the Payment Services Regulations 2017

Legal name of service provider

### **Important information you should read before completing this form**

For the purposes of complying with the Data Protection Act 1998, any personal information provided to us will be used to discharge our functions under the Payment Services Regulations 2017 (as amended) and other relevant legislation; it may be disclosed to third parties for those purposes and/or where there is an applicable gateway permitting disclosure (ie specific circumstances in which the FCA is permitted to disclose confidential information to a third party).

**It is important that you provide accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence.**

### **Terms in this form**

In this form the FCA uses the following terms:

- **'electronic communications exclusion'** refers to the provisions of paragraph 2(l) of Schedule 1 to the PSRs 2017, read alongside the definition of "payment service" in regulation 2(1) of the PSRs 2017;
- **'FCA', 'we', 'our', or 'us'** refers to the Financial Conduct Authority
- **'PSRs 2017'** refers to the Payment Services Regulations 2017
- **'regulation'** refers to the relevant provision of the PSRs 2017 unless otherwise specified
- **'service provider'** refers to the business or entity notifying the FCA that it is providing payment services of a type falling within the electronic communications exclusion
- **'you'** refers to the individual completing this notification form who has the authority to do so on behalf of the service provider

### **Purpose of this form**

This notification form sets out the information that must be submitted by a service provider that is providing or is intending to provide services for payment transactions falling within paragraph 2(l) of Schedule 1 of the PSRs 2017. Further instructions on completing and submitting this form are available on our website (<https://www.fca.org.uk/firms/electronic-communication-exclusion>) in the Direction relating to this notification. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5) for further information about the scope of the electronic communications exclusion.

**If the FCA determines that the notified service falls within the electronic communications exclusion, information provided in this notification will form the basis of the entry on the FCA Financial Services Register under regulation 4(1)d of the PSRs 2017. This information will also be notified to the EBA under regulation 4(6)d.**



**1.6 Has the service provider previously submitted a notification of the use of the electronic communications exclusion to a competent authority in another member state?**

- No  
 Yes ▶ Please provide details below.

Date submitted

		/			/				
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Member State

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Competent authority

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**1.7 Has the service provider previously submitted a services notification (detailing the types of services provided) to the FCA?**

- Yes  
 No ▶ Continue to Section 2. Please note that if this is your first services notification you do not need to complete Section 3 or submit an auditor's opinion alongside this form. Please refer to the Direction relating to this notification for guidance on when the audit opinion becomes due <https://www.fca.org.uk/firms/electronic-communications-exclusion>

**1.8 Have the services changed in any material respect since the last notification?**

- No ▶ Continue to Section 3.  
 Yes ▶ Please give details of the change(s) below and complete Section 2 (in respect of the new or changed services only) and, where relevant, Section 3.

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# 2

## Description of electronic communication service(s)

**2.1 Please select the type of service(s) that the service provider provides**

'Electronic communication networks' as defined in article 2(a) of Directive 2002/21/EC (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0021>)

'Electronic communication services' as defined in article 2(c) of Directive 2002/21/EC

Other ▶ Please provide a description of the service provider's main business activities.

**2.2 Name of service that results in the payment transactions that are considered to be excluded**

**2.3 Are the payment transactions to which this notification relates for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill?**

No

Yes ▶ Please provide a brief description of what those goods or services are under the relevant headings.

**Digital content**

**Voice-based services**

**2.4 Are the payment transactions to which this notification relates performed from or via an electronic device and charged to the related bill for the purchase of tickets or for donations to organisations which are registered or recognised as charities by public authorities, whether in the United Kingdom or elsewhere?**

- No
- Yes ▶ Please provide a brief description of what those goods or services are under the relevant headings.

**Charitable activities**

**Tickets**

**2.5 Is the service provider already providing the services?**

- Yes
- No ▶ Please specify the date on which it expects to begin providing the services (dd/mm/yyyy).

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**2.6 Please briefly set out the grounds on which the service provider is able to rely on the electronic communications exclusion (including details of the payment transactions that are carried out).**

# 3

## Auditor's opinion on transaction values

This section should be completed by service providers that are submitting an audit opinion and have already notified the FCA of the services that they provide that fall within the electronic communications exclusion. The Auditor's report should be submitted on Connect as an additional supporting document.

### 3.1 Accounting reference date of service provider (dd/mm)

		/			
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### 3.2 Name of auditor

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### 3.3 Period to which the audit opinion applies (dd/mm/yyyy)

From

		/			/				
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To

		/			/				
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### 3.4 Please confirm that you have attached an audit opinion with this form that meets the requirements set out in the Direction.

Attached

### 3.5 Did the audit opinion contain any information to suggest that the transactions to which the service relates do not comply with the limits mentioned in paragraph 2(1) Schedule 1 of the PSRs 2017?

Yes ▶ Please provide details below.

No

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## **Direction under regulation 38 of the Payment Services Regulations 2017 (Notification of use of limited network exclusion)**

### **Purpose and statutory context**

Under regulation 38 of the Payment Services Regulations 2017 (“PSRs 2017”), if a person (a “service provider”) provides services of the type falling within paragraphs 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017 (activities involving limited network payment instruments which do not constitute payment services) and the total value of the payment transactions executed through such services in any period of 12 months exceeds €1million, the service provider must:

- (a) notify the Financial Conduct Authority (“FCA”);
- (b) include with such notification a description of the service and the exclusion by virtue of which the services are not payment services.

The purpose of this document is to direct the form in which the information required by regulation 38 of the PSRs 2017 must be submitted to the FCA and the manner in which it must be verified.

The provisions of paragraphs 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017, read alongside the definition of “payment service” in regulation 2(1) of the PSRs 2017, are referred to as the “limited network exclusion” in this Direction.

### **The Direction**

The FCA directs that a service provider to which regulation 38 of the PSRs 2017 applies must provide the information required by that regulation in the form, at the time and verified in the manner described below.

This Direction may be amended by further Direction to all service providers, to a class of service providers or to an individual service provider. For the avoidance of doubt, such amendments are likely to be made only where necessary in exceptional circumstances.

### **Powers exercised**

The FCA makes this Direction in exercise of the following powers under the PSRs 2017:

- Regulation 38(4)
- Regulation 109(1)

## **Background to this Direction**

The revised Payment Services Directive ("PSD2") entered into force on 12 January 2016. PSD2 updates the regulation of payment services in Europe and departs from the original Payment Services Directive 2007 in a number of ways, including changing the scope of the exclusions and introducing notification and registration requirements for certain excluded providers. PSD2 was transposed into UK law through the PSRs 2017.

The FCA is the authority with responsibility for monitoring and enforcing compliance with the majority of the provisions of the PSRs 2017.

## **Who does this Direction apply to?**

This direction concerns a person who provides services that are:

*"based on specific payment instruments that can be used only in a limited way and meet one of the following conditions:*

- (i) allow the holder to acquire goods or services only in the issuer's premises;*
- (ii) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or*
- (iii) may be used only to acquire a very limited range of goods or services..."*

A payment transaction that falls within this category does not constitute a payment service to which the prohibition in regulation 138 of the PSRs 2017 (Prohibition on provision of payment services by persons other than payment service providers) applies. The service provider in question may or may not be authorised or registered by the FCA in respect of other services or activities. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5 Q40) for further information about the scope of the limited network exclusion.

## **Assessing the €1 million threshold**

Service providers that provide services falling into the limited network exclusion above must carry out ongoing assessments to determine whether the total value of payment transactions executed through such services exceeds €1 million over any period of 12 months.

In calculating the total value of the payment transactions, a service provider should:

- include all of those services that are provided in the UK and are considered by the service provider to fall within the limited network exclusion. The €1 million threshold applies to the total value of transactions across all products, i.e. specific payment instruments, that are considered by the service provider to fall

within the limited network exclusion, rather than the value of transactions executed through each product taken individually.

- exclude services that are regulated as either electronic money or payment services (under the Electronic Money Regulations 2011 or PSRs 2017 respectively).

For service providers that carry out transactions in currencies other than the euro, the FCA's view is that it would be reasonable to use the [Commission's monthly accounting rate of the euro](#) (Commission calculator) when calculating whether the transactions exceed the €1 million limit. The Commission calculator provides historical market rates on a month-by-month basis as quoted by the European Central Bank. We expect service providers to apply the euro exchange rate on a month-by-month basis (although more frequent application would be acceptable).

### **What information is required?**

A person who provides services falling within the limited network exclusion at paragraphs 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017, where the total payment transaction value of the services exceeds €1 million over any 12 month period must submit a notification to the FCA including, for each product (i.e. specific payment instrument):

- a description of the services provided in the UK that are considered to fall within the limited network exclusion
- the exclusion by virtue of which the services are not payment services.

### **When is the notification required?**

*The first notification:*

If the conditions for notification are met on 13 January 2019 (i.e. if the total value of payment transactions executed through relevant services exceeds €1 million in the preceding 12 month period starting on 13 January 2018), the service provider must submit the notification by 10 February 2019, which is 28 days after the 13 January 2019.

If a service provider wishes to submit a services notification before the 10 February 2019 deadline then the service provider may do so at any time from 13 October 2017.

From 13 January 2019, service providers must submit their first notification no later than 28 days from the date on which the conditions for notification in regulation 38(1) of the PSRs 2017 were met.

*Subsequent notifications*

- (a) Unless (c) applies, service providers must submit an annual notification to cover the period of 12 months beginning on the day after the end of the 12 month period to which the previous notification related. Such notifications must be submitted no later than 28 days from the end date of the 12 month period to which it relates.

- (b) If, at the end of the 12 month period following the last notification, the service provider determines that the conditions for notification are no longer met (i.e. the total value of the payment transactions over the preceding 12 months falls below €1 million) the service provider must notify the FCA using the same regulation 38 form.
- (c) If, at any time after the service provider has submitted a notification in accordance with (b) above, the service provider determines that the notification conditions in regulation 38(1) are met again, the service provider must submit a new regulation 38 notification no later than 28 days from the date on which the conditions for notification were met.

Notwithstanding the notification requirement in relation to the services they provide that do not fall within the limited network exclusion and constitute payment services, service providers are reminded that it is a criminal offence under regulation 138 of the PSRs 2017 to provide a payment service in the UK unless you are authorised, or otherwise entitled, to do so under the PSRs 2017.

### **How to submit the notification**

A service provider must use [Connect](#) to submit the notification.

### **The FCA's powers and responsibilities**

In accordance with its obligations under 38(4) of the PSRs 2017, the FCA will assess each notification to determine whether the notified services fall within paragraph 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017.

If the FCA considers that any part of the notified services does not fall within the limited network exclusion, it will notify the service provider. If the service provider disagrees with the FCA's determination it may refer the matter to the [Upper Tribunal](#) (Tax and Chancery Chamber).

The FCA may take appropriate action in the circumstances if it determines (by way of the notification or otherwise):

- that any of the services provided by the service provider do not fall within the limited network exclusion; or
- that the service provider has breached any of the conduct of business rules set out in the Electronic Money Regulations 2011, the Payment Services Regulations 2009 or the PSRs 2017 (as applicable).

In accordance with regulation 4(1) of the PSRs 2017, the FCA will maintain a register of persons that provide services that fall within the limited network exclusion and have submitted a notification pursuant to regulation 38 of the PSRs 2017. The register will be publicly available and will display the following information about each service provider: name, registered address, a description of the services that fall within the limited network exclusion and the specific exclusion by virtue of which the services are not payment or e-money services.

## Notification of the use of the limited network exclusion under the Payment Services Regulations 2017 (a regulation 38 notification)

Legal name of service provider

### **Important information you should read before completing this form**

For the purposes of complying with the Data Protection Act 1998, any personal information provided to us will be used to discharge our functions under the Payment Services Regulations 2017 (as amended) and other relevant legislation; it may be disclosed to third parties for those purposes and/or where there is an applicable gateway permitting disclosure (ie specific circumstances in which the FCA is permitted to disclose confidential information to a third party).

**It is important that you provide accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence.**

### **Terms in this form**

In this form the FCA uses the following terms:

- 'FCA', 'we', 'our', or 'us' refers to the Financial Conduct Authority
- 'limited network exclusion' refers to the provisions of paragraph 2(k)(i)-(iii) of Schedule 1 to the PSRs 2017 when read alongside the definition of "payment service" in regulation 2(1) of the PSRs 2017
- 'PSRs 2017' refers to the Payment Services Regulations 2017
- 'regulation' refers to the relevant provision of the PSRs 2017 unless otherwise specified
- 'service provider' refers to the business or entity notifying the FCA that it is providing services of a type falling within the limited network exclusion

### **Purpose of this form**

This notification form sets out the information that must be submitted by a service provider that is:

- providing services of the type falling within paragraph 2(k)(i) to (iii) of Schedule 1 of the PSRs 2017; and
- required under regulation 38 to submit a notification of such services.

Further instructions on completing and submitting this form are available on our website (<https://www.fca.org.uk/firms/limited-network-exclusion>) in the Direction relating to this notification. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5) for further information about the scope of the limited network exclusion.

**If the FCA determines that the notified services fall within the limited network exclusion, the information provided in this notification will form the basis of the entry on the Financial Services Register under regulation 4(1)d of the PSRs 2017. This information will also be notified to the EBA under regulation 4(6)d.**

# 1 About the service provider

**1.1 Does the service provider use any trading names in addition to the name given on the front of this form?**

- No  
 Yes ▶ Please give details below.

Name	
------	--

**1.2 Registered office (if applicable) or head office address**

Head office address	
Postcode	

**1.3 Place of incorporation or formation**

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**1.4 Does the service provider have a registered number eg Companies House number? (If registered outside of the UK give the equivalent reference number.)**

- No  
 Yes ▶ Please give details below.

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**1.5 Is the service provider authorised and regulated by the FCA or another regulator to provide e-money / payment services or other financial services?**

- No  
 Yes ▶ Please give details below.

Regulator	
FRN number or equivalent	

**1.6 Is this a notification that the conditions in regulation 38 are no longer met ie that the total value of payment transactions falling within the limited network exclusion and executed in the previous 12 months is less than €1 million, or the service provider no longer provides services falling within the limited network exclusion (and should be removed from the register)?**

- No ▶ Please continue to Question 1.7.  
 Yes ▶ Please complete Section 2 only.

**1.7 Has the service provider previously submitted a notification of the use of the limited network exclusion to a competent authority in another member state?**

- No ▶ Please continue to Question 1.8.  
 Yes ▶ Please give details below.

Date submitted

		/			/				
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Member State

Competent authority

**1.8 Has the service provider previously submitted a regulation 38 notification to the FCA?**

- Yes ▶ Please continue to Question 1.9.  
 No ▶ Please complete Sections 2 and 3.

**1.9 Have the services changed since the last notification to the FCA?**

- No ▶ Please complete Section 2 only.  
 Yes ▶ Please explain how the services have changed since the last notification and complete Sections 2 and 3.

# 2

## Transaction value

**2.1 Please provide the total value of payment transactions executed through the services that fall within the limited network exclusion in the previous 12 month period.**

Please refer to the Direction (<https://www.fca.org.uk/firms/limited-network-exclusion>) relating to this notification for further detail on how the total value should be calculated.

**Period (mm/yyyy)**

From

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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To

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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**Transaction value**

€	<input type="text"/>
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# 3

## Description of services offered and the exclusion under which the services are carried out

Providers should describe the services that are provided in the UK

### 3.1 How many products, ie specific payment instruments, offered by the service provider are considered to fall within the limited network exclusion?

### 3.2 You must provide the following details for each of the products that are considered to fall within the limited network exclusion.

#### Service 1

Name of the payment product, as it is known / appears to the customer

Which of the following options best describes the payment instrument issued?

- Payment card or other physical payment device
- Virtual payment card
- Mobile application
- Other 'personalised set of procedures' ▶ Please give details below.

Please briefly describe the service based on the specific payment instrument, eg prepaid gift card used to purchase cinema tickets.

This will be entered in the FCA public register as per regulation 4(1)d and 4(5)c of the PSRs 2017.

Choose the exclusion below that best applies to the service provider's service (2(k)(i), 2(k)(ii) or 2(k)(iii)).

Services based on specific payment instruments that can be used only in a limited way and:

- 2(k)(i) – allow the holder to acquire goods or services only on the issuer's premises
- 2(k)(ii) – are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer
- 2(k)(iii) – may be used only to acquire a very limited range of goods or services

Please explain how the service falls within the limited network exclusion specified, including details of the following where relevant:

- the payment instrument;
- where and how the payment instrument can be used;
- where the customers or users are based;
- the service provider's role in the flow of funds (if any), eg at what point the service provider come into possession of the funds, where funds are received from and where funds are transferred to;
- how transactions are acquired;
- the merchants that accept payment for goods and services via the payment instrument and the contractual relationship between the service provider and the merchant(s);
- the type of goods and/or services that can be purchased using the payment instrument;
- any limitations on the use of the instrument (and how this limitation is imposed, eg through the technical functionality of the instrument or through the terms and conditions attaching to the instrument); and
- any other features of the payment instrument that are relevant to the limited network exclusion.

## Service 2

Name of the payment product, as it is known / appears to the customer

Which of the following options best describes the payment instrument issued?

- Payment card or other physical payment device
- Virtual payment card
- Mobile application
- Other 'personalised set of procedures' ▶ Please give details below.

Please briefly describe the service based on the specific payment instrument, eg prepaid gift card used to purchase cinema tickets.

This will be entered in the FCA public register as per regulation 4(1)d and 4(5)c of the PSRs 2017.

Choose the exclusion below that best applies to the service provider's service (2(k)(i), 2(k)(ii) or 2(k)(iii)).

Services based on specific payment instruments that can be used only in a limited way and:

- 2(k)(i) – allow the holder to acquire goods or services only on the issuer's premises
- 2(k)(ii) – are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer
- 2(k)(iii) – may be used only to acquire a very limited range of goods or services

Please explain how the service falls within the limited network exclusion specified, including details of the following where relevant:

- the payment instrument;
- where and how the payment instrument can be used;
- where the customers or users are based;
- the service provider's role in the flow of funds (if any), eg at what point the service provider come into possession of the funds, where funds are received from and where funds are transferred to;
- how transactions are acquired;
- the merchants that accept payment for goods and services via the payment instrument and the contractual relationship between the service provider and the merchant(s);
- the type of goods and/or services that can be purchased using the payment instrument;
- any limitations on the use of the instrument (and how this limitation is imposed, eg through the technical functionality of the instrument or through the terms and conditions attaching to the instrument); and
- any other features of the payment instrument that are relevant to the limited network exclusion.

**Please use Annex 1 if necessary to provide details of any additional services. Please attach these to your notification on Connect as additional supporting documents.**

- Attached

