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~~3.1663.169~~ We will update the online e-money section of our Register as soon as practicable after granting the authorisation or registration. It will show the contact details of the EMI, the activity of issuing e-money and the payment services it is permitted to undertake, and the names of any agents. It will also show if an authorised EMI has taken up passporting rights to issue e-money and provide payment services in another EEA state.

### *Refusal (regulation 9(6) to (9) and regulation 15)*

~~3.1673.170~~ We can refuse an application when the information and evidence provided does not satisfy the requirements of the EMRs. When this happens we are required to give the applicant a warning notice setting out the reason for refusing the application and allowing 28 days to make a representation on the decision.

~~3.1683.171~~ Applicants can make oral or written representations. If the applicant chooses to make an oral representation, we should be notified within two weeks of the warning notice, so that arrangements can be made for a meeting within the 28-day deadline.

~~3.1693.172~~ If no representations are made or, following them, we still decide to refuse the application, we will give the applicant a decision notice. If an EMI wishes to contest the decision, they may refer the matter to the Upper Tribunal (the Tribunal), an independent judicial body. If no referral has been made within 28 days we will issue a final notice. If the matter is referred to the Tribunal, we will take action in accordance with any directions given by it (including to authorise/register the EMI) and then issue the final notice.

~~3.1703.173~~ On issuing the final notice, we are required to publish such information about the matter to which a final notice relates as we consider appropriate. However, we may not publish information if we believe it would be unfair to the business or prejudicial to the interests of consumers.

# 4 Changes in circumstances of authorisation or registration

- 4.1 This chapter describes the notifications that authorised EMIs and small EMIs must make to us as part of their ongoing authorisation or registration.
- 4.2 Credit institutions, credit unions and municipal banks with Part 4A permission to issue e-money may apply to vary their permission under the FSMA process. Information on this process can be found in the Handbook.

## Introduction

- 4.3 EMIs must provide us with two types of information while they are being regulated – we categorise these as ‘reporting’ and ‘notifications’.
- 4.4 Reporting information is the information we need on a regular and periodic basis to comply with our supervisory responsibilities and EU reporting obligations. Reporting requirements are discussed in Chapter 14.
- 4.5 The subject of this chapter is ‘notifications’. Notifications are what EMIs must send us when there is a change in any information they have already provided.
- 4.6 There are specific notification requirements in relation to an EMI’s agents, in respect of payment services provided (for both authorised EMIs and small EMIs), and passporting (authorised EMIs only). These are covered in Chapters 5 and 6.

## Types of notifications and timing

- 4.7 The EMRs contain requirements in relation to notifications of specific changes in circumstances, as well as a general requirement in regulation 37.
- 4.8 The general requirement is that an EMI must provide us with details without undue delay where it becomes apparent that there is, or is likely to be, a significant change in circumstances that is relevant to the matters listed below. We would generally consider ‘without undue delay’ to mean within 28 days of the change occurring at the latest.
- 4.9 The matters to which a significant change in circumstances is relevant are listed below.

### *Authorised EMI*

- Its fulfilment of the conditions for authorisation (including any significant change that is relevant to the items of information set out in Schedule 1 to the EMRs) or the requirement to maintain own funds.
- The issuance, distribution or redemption of e-money or the payment services it provides in exercise of passport rights.

### *Small EMI*

- Its fulfilment of the conditions for registration (including the information a small EMI must provide under regulation 12).

### *Use of an agent to provide payment services*

- The matters referred to in regulation 34(6)(b) and (c).

4.10 Regulation 37 also requires that, in the case of a substantial change that has not yet taken place, the EMI must provide details of the change a reasonable period before the change takes place. A ‘substantial change’ is, in our view, one that could affect either the EMI’s ability to meet the conditions for remaining authorised or registered, or the way we would supervise the EMI. We will need to assess substantial changes against the initial conditions for authorisation or registration. To give us time to do this, we consider that a period of 28 days before the change takes place would generally be ‘a reasonable period’. However, the notification period will depend on the circumstances of the change and EMIs should make efforts to notify us as soon as possible.

### **How to notify us**

4.11 Notifications must be made using the Standing Data form, which ~~will be~~ available on the e-money section of our website. ~~If, from 30 April 2011 or, where a change~~ the change is not covered by this form please write, ~~by written confirmation~~ to our Customer Contact Centre.

### **Different notifications for authorised EMIs and small EMIs**

4.12 Not all notification requirements apply to both authorised EMIs and small EMIs. Although most of the notification requirements that apply to a small EMI also apply to an authorised EMI, some do not. To help EMIs identify the notification requirements that apply to them, the remainder of this chapter is divided into three parts:

- Part I describes the notification requirements that apply to all EMIs;

- Part II describes the notification requirements that only apply to authorised EMIs; and
- Part III describes the notification requirements that only apply to small EMIs.

## **Part I: Notifications applicable to all EMIs**

4.13 Changes in the following information will require a notification to us.

### **Name, contact details and standing data (including business name and contact details)**

4.14 EMIs should give us reasonable advance notice of changes to their name and contact details, which includes:

- registered name;
- trading name (if applicable);
- head office;
- registered office;
- accounting reference date;
- primary compliance contact; and
- website and email address.

4.15 The notification should include the details of the proposed change and the date on which the EMI intends to implement the change.

### **Changes to the types of e-money issued or payment services provided**

4.16 If an EMI wishes to change the type of e-money issued or payment services provided (either by increasing or decreasing the range) it should notify us. We consider that a change of this sort is likely to be a substantial change in circumstances for the purposes of regulation 37 and details of the change should be provided to us a reasonable period before the change takes place. Please refer to paragraph 4.10 for guidance on what we consider to be a reasonable period. If we consider the proposed change to the types of e-money issued or payment services provided to have an adverse affect on the EMI's fulfilment of the conditions for authorisation or registration (for example, if we do not consider that the EMI has effective procedures to identify, manage, monitor and report the risks that the provision of a new type of payment service may present), we have the power under

regulation 11 and regulation 15 to vary the EMI's authorisation or registration by imposing such requirements as we consider appropriate, for example a requirement that the EMI must refrain from carrying on the new type of e-money issuance or the new type of payment service.

## **Application for variation of authorisation or registration**

4.17 Regulations 5 and 12 require an application for variation in authorisation or registration (respectively) to:

- contain a statement of the desired variation;
- contain a statement of the e-money issuance and payment services business that the applicant proposes to carry on if the authorisation/registration is varied; and
- contain, or be accompanied by, such other information as we may reasonably require.

4.18 Applicants should complete and submit the Variation of EMRs Authorisation/Registration form, which ~~will be~~ is available on the e-money section of our website ~~from 30 April 2011~~. This ~~will set~~ sets out the information that must be provided. However, we may ask for more information if we feel it is necessary to enable us to determine the application.

4.19 The process for determining a variation is the same as for initial authorisation/registration (see Chapter 3) and the time allowed for us to do this is three months. However, we expect to be able to process complete applications for variation quicker than an initial authorisation/registration, and our expected turnaround times will in most cases be quicker than this.

## **Cancellation of authorisation/registration**

4.20 EMIs can request to cancel their authorisation or registration (regulation 10 and 15, respectively) by using the Cancellation of Authorisation or Registration form, which ~~will be~~ is available on the e-money section of our website ~~from 30 April 2011~~. We will remove the EMI from the e-money section of our Register once we have established that there are no outstanding fees to either ourselves or the ombudsman service, that any liabilities to customers have either been paid or are covered by arrangements explained to us and that there is no other reason why the EMI should remain on the e-money section of our Register.

4.21 We can cancel an EMI's authorisation or registration when the cancellation has been requested by the EMI; the EMI has not issued e-money within 12 months of becoming authorised or registered; the EMI ceases to engage in business activity for more than six months; the EMI has obtained authorisation through false statements or any other irregular means; the EMI no longer meets- or is unlikely to meet certain

conditions of authorisation or registration or the requirement to maintain own funds; the EMI has issued electronic money or provided payment services other than in accordance with its permissions; the EMI constitutes a threat to the stability of a payment system; the EMI's issuance of e-money or provision of payment services is unlawful; or where the cancellation is desirable in order to protect the interests of consumers.

4.22 Where we propose to cancel an EMI's authorisation or registration other than at the EMI's request, the EMI will be issued with a Warning Notice for which the EMI can make representations. If the cancellation goes ahead, the EMI will be issued with a Decision Notice (see Chapter 15).

4.214.23 Our fee year runs from 1 April until 31 March so, if an EMI applies to cancel once the fee-year has commenced after 31 March, full annual fees will become payable as there are no pro-rata arrangements or refunds of fees.

## **Change in legal status**

4.224.24 A change in legal status (for example, LLP to limited company) will mean that the authorisation/registration will have to be cancelled and the business will have to apply for authorisation/registration as the new legal entity. The Change of Legal Status form ~~will be~~ available on the e-money section of our website ~~from 30 April 2011.~~

## **Directors and persons responsible for the management of the issuing of e-money and any payment services**

### *Appointment/removal*

4.234.25 Changes to the directors or persons responsible for managing the issuing of e-money or any payment services are regarded as significant changes. Appointments should be notified to us before the change takes place, and removals no later than seven working days after the event.

4.244.26 Notification of a new appointment should be on the EMD Individual form, which is available on the e-money section of our website, and should include all the information required for us to assess the individual against the requirements in regulation 6(6)(b) or 13(7)(a) (as appropriate) to be of good repute and possess appropriate knowledge (see Chapter 3).

4.254.27 An EMI must also notify us of any changes in the details of existing individuals, such as name changes and matters relating to fitness and propriety (see below). It should do this using the Amend an EMD Individual form, which ~~will be~~ available on the e-money section of our website ~~from 30 April 2011.~~



4.264.28 If we consider the proposed change to have an adverse impact on the EMI's fulfilment of the conditions for authorisation or registration, we will advise it of our concerns. In these circumstances, we have the power under regulations 11 and 15 to vary the EMI's authorisation or registration by imposing such requirements as we consider appropriate. If the change then goes ahead and we believe that any of the relevant conditions of regulation 10 relating to cancellation of authorisation/registration are met, we may take action to cancel the authorisation/registration of the EMI and remove it from the e-money section of our Register.

4.274.29 Information about the removal of 'directors/persons responsible' should include the reason for the departure and provide further information if the individual was dismissed for reasons relating to criminal or fraudulent activities.

4.284.30 Notification must be made on the Remove an EMD Individual form, which will be available on the e-money section of our website ~~from 30 April 2011~~. For more information on the fit and proper requirement for directors and persons responsible for management of the EMI see Chapter 3.

### *Changes affecting the fitness and propriety of individuals*

4.294.31 Where an EMI becomes aware of information that may impact on the fit and proper condition applying to 'directors/persons responsible', it should notify us using the Amend an EMD Individual form, as detailed above. We will examine the information, assess it against the fitness and propriety requirements explained in Chapter 3, and notify the EMI of the action that we intend to take.

### **Acquisitions of, or increases in, control**

4.304.32 In accordance with paragraph 4 of Schedule 3 to the EMRs, the change in control provisions of FSMA (Part 12) apply (with certain modifications) to a person who decides to acquire, increase or reduce control or to cease to have control over an EMI. Our approach to changes in control over EMIs will be similar to our approach to changes in control over firms authorised under FSMA.<sup>16</sup> Chapter 11 of the Supervision manual (in particular, SUP 11.3 and SUP 11 Annex 6G) provide guidance on the change in control provisions of FSMA.

4.314.33 Section 178(1) of FSMA (as modified by Schedule 3 to the EMRs) requires a person to notify us in writing if he/she decides to acquire or increase control over an EMI. This notice is referred to as a 'section 178 notice'. Section 191D(1) of FSMA (as modified) provides that a person who decides to reduce or cease to have control over an EMI must give us notice.

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<sup>16</sup> The application of the change in control regime under the EMRs is an important difference between the EMRs and the PSRs.

4.324.34 Our approval is required before any acquisition of or increase in control can take place. We have 60 working days (which can be interrupted and put on hold for up to another 30 working days) to decide whether to approve, approve with conditions or object to the proposed changes.<sup>17</sup>

4.334.35 When considering a proposed acquisition or increase in control, we must consider the suitability of the person and the financial soundness of the acquisition of the qualifying holding (or control) to ensure the continued sound and prudent management of the EMI.<sup>18</sup> We must also consider the likely influence that the person will have on the EMI but we cannot consider the economic needs of the market (see Chapter 3).

4.344.36 We may only object to an acquisition of or increase in control if there are reasonable grounds for doing so based on the criteria in section 186 of FSMA, or if the information provided by the person proposing to acquire or increase control is incomplete.

4.354.37 If we consider that there are reasonable grounds to object to the proposed change, we may issue a warning notice, which may be followed by a decision notice and final notice. There is a process for making representations and/or referring the matter to the Tribunal.

4.364.38 Persons that acquire or increase control without prior approval, or in contravention of a warning, decision or final notice, may have committed a criminal offence. We may prosecute and if found guilty the person may be liable to an unlimited fine or even given a prison sentence.

4.374.39 The form of a section 178 notice that must be given by a person who decides to acquire or increase control over an EMI, and the information that must be included in the notice and the documents that must accompany it, will be the same as apply to a section 178 notice in respect of an acquisition of or increase in control over an authorised person under FSMA. A section 178 notice given to us by a person who decides to acquire or increase control over an EMI must contain the information and be accompanied by such documents as are required by the relevant FCSA controllers form. A link to this form ~~is will be~~ available on the [e-money section](#) of the website ~~from May~~.

4.384.40 A notice given to us by a person who is reducing or ceasing to have control over an EMI should be in writing and provide details of the extent of control (if any) which the controller will have following the change in control.

## Significant changes to the programme of operations or business plan

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<sup>17</sup> See section 178 to 191 of FSMA

<sup>18</sup> Also see regulation 6(6)(a) of the EMRs.

4.394.41 We expect to be notified of any significant changes to the EMI's business.

This may include proposed restructuring, reorganisation or business expansion that could have a significant impact on its risk profile or resources (including any changes to the EMI's agents or distributors).

4.404.42 We would also expect to be advised of any proposed action that would result in an EMI being unable to meet its capital requirements, including but not limited to:

- any action that would result in a material change in the EMI's financial resources or financial resources requirement;
- a material change resulting from the payment of a special or unusual dividend or the repayment of share capital or a subordinated loan;
- significant trading or non-trading losses (whether recognised or unrecognised); and
- failures in governance arrangements and internal control mechanisms.

4.414.43 An EMI should notify the Customer Contact Centre of any significant failure in its systems or controls, including those reported to the EMI by its auditor (if applicable).

### **Changes in method of safeguarding**

4.424.44 Recital 14 of 2EMD makes it clear that, given the crucial importance of safeguarding, it is necessary that we are informed in advance of any material change, such as a change in the method of safeguarding, a change in the credit institution where safeguarded funds are deposited, or a change in the insurance undertaking or credit institution that insured or guaranteed the safeguarded funds.

### **Change to the money laundering reporting officer**

4.434.45 When an EMI becomes aware that a change to the money laundering reporting officer has occurred or will occur, it should notify us without undue delay.

## **Part II: Notifications applicable only to authorised EMIs**

4.444.46 This part gives examples of changes that are likely to impact the conditions for authorisation of an authorised EMI. As noted in the introduction, the duty to notify changes in circumstances is general and we will expect authorised EMIs to notify us of any significant change in circumstances, including one not mentioned here, which is relevant to the continued fulfilment of the conditions for authorisation.

## Outsourcing arrangements

4.454.47 An authorised EMI must inform us when it intends to enter into an outsourcing contract where it will be relying on a third party to provide an ‘operational function relating to the issuance, distribution or redemption of e-money or the provision of payment services (outsourcing)’ (regulation 26(1)).

4.464.48 In our view, ‘operational functions relating to the issuance, distribution or redemption of e-money or the provision of payment services’ does not include providing services that do not form part of these services (for example, legal advice, training or security) or the purchase of standardised services, including market information services.

4.474.49 A proposed outsourcing arrangement that is classified as ‘important’ under regulation 26(2) and (3) is more likely to be relevant to an authorised EMI’s compliance with the authorisation conditions than one that is not ‘important’. Where an authorised EMI changes its important outsourcing arrangements without entering into a new outsourcing contract, it will need to consider whether the change is relevant to the conditions for authorisation and so needs to be notified under regulation 37.

4.484.50 Notification on changes to outsourcing requirements should be made to the Customer Contact Centre. Depending on the nature of the arrangement, we may request further information.

## Auditors

4.494.51 Where an authorised EMI becomes aware that a vacancy in the office of auditor will arise or has arisen, it should:

- notify us of the date, without delay, giving the reason for the vacancy;
- appoint an auditor to fill any vacancy in the office of auditor that has arisen;
- ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as is reasonably practicable after that; and
- notify us of the appointment of an auditor, giving us the name and business address of the auditor appointed and the date from which the appointment has effect.

4.504.52 Notifications on changes to auditors should be made to the Customer Contact Centre.

## Part III: Notifications applicable only to small EMIs

## Change in status of a small EMI (regulation 16)

4.514.53 If a small EMI no longer fulfils the conditions for registration outlined in regulation 8(2)(c) or (d) (as applied by regulation 15)<sup>19</sup> it must, within 30 days of becoming aware of the change in circumstances, apply to become an authorised EMI if it intends to continue issuing e-money in the UK.

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<sup>19</sup> Regulation 15 modifies the requirements set out in regulation 8 to reflect the conditions for authorisation applicable to small EMIs set out in regulation 13.

# 5 Appointment of agents and use of distributors

- 5.1 This chapter explains the difference between agents and distributors and describes the application procedure that authorised EMIs and small EMIs must go through to register agents with us.
- 5.2 Regulation 36(2) makes EMIs responsible for anything done or omitted by an agent or distributor. EMIs are responsible to the same extent as if they had expressly permitted the act or omission. We will therefore expect EMIs to have appropriate systems and controls in place to effectively oversee their agents' and distributors' activities.

## Differentiating agents and distributors

- 5.3 Regulation 33 provides that an EMI may distribute or redeem e-money through an agent or a distributor. EMIs may not issue e-money through an agent or distributor. Agents must, under regulation 34, be included on the Register, but there is no requirement to register distributors. It is therefore important to understand the difference between the two.
- 5.4 EMIs may engage agents to provide payment services both related and unrelated to issuing e-money (see the definition of agent in regulation 2(1)). EMIs may also distribute or redeem e-money through agents.
- 5.5 EMIs may engage distributors to distribute and redeem e-money but not to provide payment services. In our view, a person who simply loads or redeems e-money on behalf of an EMI would, in principle, be considered to be a distributor.

## Authorised EMIs that passport

- 5.6 An authorised EMI wanting to use a passport to provide payment services and distribute or redeem e-money in another EEA state may use an agent, established in either the UK or the host state, to provide those services (an EEA agent), subject to additional notification requirements (see Chapter 6).
- 5.7 An authorised EMI may engage a distributor to distribute or redeem e-money in another member state and may engage a distributor in the exercise of its passporting rights, subject to regulation 28.

## Applying to register an agent

- 5.8 The application form for registering agents, Add EMD agent, ~~will be~~ available on the [e-money section](#) of our website.
- 5.9 In general, the information required for the registration of an agent is:
- the name and address of the agent;
  - a description of the anti-money laundering internal control mechanisms; and
  - if applicable, the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons.

### Name and address details

- 5.10 We require details of the agent, and if applicable, its ‘directors/persons responsible’ to enable us to identify all parties and to meet our supervisory and register requirements.

### Anti-money laundering internal control mechanisms

- 5.11 We require a description of the internal control mechanisms that will be used to comply with the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002 or, in the case of an EEA agent, the Third Money Laundering Directive. The factors that we expect EMIs to include in their internal controls with agents are the same as those we describe in relation to the money laundering controls, which are set out in Chapter 3. Where agents are based in another EEA state, authorised EMIs must ensure agents’ anti-money laundering systems and controls comply with any applicable local legislation and regulation which implements the Third Money Laundering Directive.
- 5.12 The description of internal control mechanisms only has to be supplied once if an authorised EMI applies the same controls to all their agents based in the same EEA jurisdiction and it has not changed from previous appointments. If the authorised EMI has previously supplied this information it should indicate this in the appropriate question on the agent application form.
- 5.13 The EMI should take reasonable measures to satisfy itself that the agents’ anti-money laundering internal controls mechanisms remain appropriate throughout the agency relationship.

### Directors and persons responsible for the management of the agent

- 5.14 Regulation 34(3)(a)(iii) requires that the application must also provide:

- the identity of the directors and persons responsible for the management of the agent; and
  - evidence that they are fit and proper persons.
- 5.15 We expect to be provided with details of all the individuals who are board members in applications for incorporated agents. Applications for unincorporated agents should provide details of the partners or sole trader. In each case, the application should also include details of any other person, in addition to the partners, sole trader or directors of the agent, that has day-to-day responsibility for the management of the agent.
- 5.16 To verify identity, the form asks for the name, date of birth and national insurance number, ~~or, for non-UK residents, passport details.~~
- 5.17 The EMI should carry out its own fitness and propriety checks on its agents, on the basis of a ‘due diligence’ enquiry. We ask that this is certified on the form for each person and any adverse information is disclosed. The assessment should be proportionate to the nature, complexity and scale of risk inherent in the distribution, redemption, payment services or other activities being carried out by the agent.
- 5.18 As with the assessment of EMD Individuals, we expect the EMI to consider the same factors when making a fit and proper assessment of the directors and persons responsible for the management of the agent:
- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness.
- 5.19 For more information on the types of checks we expect EMIs to make when assessing against these factors, please see the information on the fit and proper assessment in Chapter 3.

### **Additional information and changes to information supplied**

- 5.20 At any time after receiving an agent application and before determining it, we may require the EMI to provide us with such further information as we reasonably consider necessary to determine the application (regulation 34(5)).
- 5.21 Once an application has been submitted, both before the application has been determined and on an ongoing basis, the duty to notify significant changes in circumstances relevant to the fitness and propriety of an agent’s management or to matters relating to money laundering or terrorist financing applies. EMIs must notify us of such changes without undue delay (regulation 37(1)(c)).



## Decision-making

- 5.22 We are required to make a decision on registering an agent within a reasonable period from the date on which we receive the information required to make the application complete. We will aim to process the majority of UK applications within ten days provided the application is complete. However, where an agent application forms part of the EMI's application for authorisation or registration, it will be determined in accordance with the timetable for that application. In the case of an EEA agent, host state competent authorities are required to tell us of any suspicions of money laundering or terrorist financing and so our decision will take into account any such suspicions reported by the host state competent authority, as required when passporting (see Chapter 6).

## Approval

- 5.23 Where we decide to approve the agent application we will update the e-money section of our Register, usually the next business day. We will not acknowledge successful agent applications as we believe doing so would add unnecessary costs to the process given the large volume of agents and high turnover. EMIs should check the e-money section of our Register to ensure that the agent has been registered. If, after ten days (see above), the agent does not appear the EMI should contact the Customer Contact Centre. EMIs cannot provide payment services through an agent until that agent is included on the e-money section of our Register.

## Refusal

- 5.24 Regulation 34(6) of the EMRs allows us to refuse to include the agent in the e-money section of our Register only where:
- we have not received all the information required in the application (see 'Making an application' above) or such information we have reasonably required or we are not satisfied that such information is correct;
  - we are not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons; or
  - we have reasonable grounds to suspect that, in connection with the provision of services through the agent:
    - money laundering or terrorist financing within the meaning of the Money Laundering Directive is taking place, has taken place or been attempted; or
    - the provision of services through the agent could increase the risk of money laundering or terrorist financing.

- 5.25 The refusal process for agents is the same as for authorisation and registration (see Chapter 3).

### **Cancelling agents (regulation 35)**

- 5.26 To cancel the registration of an agent the EMI should complete the Remove EMD agent form, which ~~will be~~is available ~~in May~~ on the e-money section of our website. We will update the e-money section of our Register to show that the agent is no longer registered to act for the EMI once we have finished processing the notification. Our aim is to update the e-money section of our Register within ten days of notification. If after this time the agent still shows as registered, the EMI should contact the Customer Contact Centre.
- 5.27 If an agent is being used to perform payment services in another EEA state, the authorised EMI may also have to amend the details of the passport, and must then submit a Change in Passport Details form (see Chapter 6).

### **Changes to agent details**

- 5.28 The EMI must use the Amend EMD agent form, to amend the details of an agent. This form ~~will be~~is available ~~in May~~ on the e-money section of our website. The form ~~will set~~s out the information that must be provided.
- 5.29 We will assess the impact of the change against the agent registration requirements. If the change is approved, we will update the e-money section of our Register (if required) as soon as possible. If we need further information we will contact the EMI and, if the change is not approved, we will follow the refusal process set out above.

# 6 Passporting

- 6.1 This chapter describes the process that authorised EMIs must go through if they wish to issue, distribute or redeem e-money or provide payment services in another EEA state. It also tells EMIs authorised in another EEA state how we will deal with notifications to issue, distribute or redeem e-money or provide payment services in the UK that we receive from their home state regulator.

## Introduction

- 6.2 Passporting is the exercise of the right of an authorised firm to conduct activities and services regulated under EU legislation in another EEA state on the basis of authorisation in its home state. The activities can be conducted through an establishment in the host state (using its right of establishment) or on a cross-border services basis without using an establishment in the host state (a 'services' passport). A branch established in another EEA state by a UK-authorized EMI is referred to as an 'EEA branch'. Regulation 28 sets out the procedure for the exercise of passporting rights.
- 6.3 Passporting rights under 2EMD are available only to authorised EMIs (except authorised EMIs whose head office is situated outside the EEA). Passporting rights are not available to small EMIs.
- 6.4 A UK-authorized EMI can provide payment services in another EEA state through an agent established in the UK or an agent established in another EEA state, subject to the requirements in the EMRs. A UK-authorized EMI may also engage an agent or a distributor to distribute or redeem e-money in another EEA state in the exercise of its passport rights. An EMI may not, however, issue e-money through a distributor or an agent.
- 6.5 Where an authorised EMI wishes to distribute e-money in another state by engaging one or more distributors, it must follow the normal notification procedures and provide us with a list of all distributors, to include name, address and (in the case of natural persons) date of birth. We will then communicate this information to the host state competent authority.
- 6.6 Further guidance on when we consider a passport notification needs to be made is available in Chapter 3A of our Perimeter Guidance (PERG). The passporting section of our website includes answers to frequently asked questions.

## Making an notification application

### Notice of intention

- 6.7 Where an authorised EMI intends to issue, distribute or redeem e-money or provide payment services, either on a freedom across border of services basis or on an establishment basis into another EEA state, regulation 28 requires the authorised EMI to notify us of its intention to do so (a notice of intention). The notice of intention forms ~~is~~ are available on the e-money section of our website.
- 6.8 The notice of intention form requires details of the activities (issuing, distributing or redeeming e-money or types of payment services) the authorised EMI wishes to undertake in the specified EEA state(s). Where the authorised EMI is exercising its right of establishment, the notice of intention requires the identity of the directors and names of the people ~~persons~~ responsible for ~~managing the management of~~ any the proposed EEA establishment, (branch, agents or distributors located in the host state) ~~branch, together with evidence that they are fit and proper persons, and details of that branch's establishment's~~ organisational structure, including its address. The notice of intention form also requires the identification of any agents and/or distributors that the authorised EMI intends to engage to distribute or redeem e-money in exercising its passport rights in those EEA states (by giving the name and address of each distributor and, in the case of natural persons, their date of birth and fiscal identification i.e. national ID number). The authorised EMI must also include in the notice of intention a description of the anti-money laundering procedures to be adopted by the authorised EMI, agent or distributor in the host state to comply with local anti-money laundering requirements in the host state.
- 6.9 We must tell the host state competent authority within one month from the date on which we receive ~~the~~ a complete notice of intention.
- 6.10 If the business intends to use an EEA agent or distributor to provide services in another EEA state, then ~~regulation 34 we are required~~ we are required ~~us~~ to inform the host state competent authority and take account of its opinion (if it is given to us within a period we specify as reasonable<sup>20</sup>). The notification would provide the same information as if the agent or distributor were a branch.
- 6.11 If the authorised EMI's proposed passported activities include using an EEA agent that is not already registered, then the authorised EMI must also submit an agent registration application form. The registration of the agent will be subject to the requirements explained in Chapter 5, but will also be subject to the views expressed by the host state competent authority. To speed up the approval of the passport, we

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<sup>20</sup> ~~We expect further guidance to be~~ is given on this in the Passporting Guidelines that ~~are~~ will be published on the European Commission's website:  
[http://ec.europa.eu/internal\\_market/payments/docs/emoney/passporting\\_guidelines\\_en.pdf](http://ec.europa.eu/internal_market/payments/docs/emoney/passporting_guidelines_en.pdf).

will process the agent application simultaneously, ~~but the passport must be approved before the agent(s) can be registered and the notification made.~~

## Notification process

- 6.12 Once we have received a ~~complete~~ notification form with the required information, we will check that the services the applicant intends to provide in the other EEA state are within the scope of its UK-authorized activities and then forward the information to the host state competent authority as soon as possible.

### Service passports – ~~not~~ involving an EEA agent or distributor in the host state concerned

- 6.13 Where an authorised EMI has applied for a services passport that it will be using directly or through (that is, not through an EEA agent) or distributor located in the host state, we will let it know once the host state competent authority has been notified and update the e-money section of our Register to show the details of the passport.

### Branch Establishment passports and/or use of EEA agents

- 6.14 Where an authorised EMI seeks to establish a branch, or provide services through an EEA agent or distributor (~~either exercising its right of establishment or using a services passport~~) we ~~intend to~~ will assess the fitness and propriety of the ~~management individuals responsible for the management of the branch, or EEA agent or distributor~~ before making the notification to the host state competent authority.
- 6.15 Appointing an agent or distributor is subject to the directors and persons responsible for the management of the agent or distributor being fit and proper. We will ~~carry out~~ undertake an assessment of the checks described in Chapter 5 carried out by the authorised EMI on these persons. We will also extend ~~these~~ this assessment of checks carried out by the authorised EMI to the persons identified as being responsible for managing ~~the branch~~ a branch.
- 6.16 ~~When we have~~ If the assessment is satisfactory, carried out our checks, we will notify the relevant host state competent authority. We will let the authorised EMI know when this has been done if ~~If the notification application~~ is for a new passport, or a changes to the payment services provided or covered by an existing passport, ~~then we will let the authorised EMI know that this has been done.~~ We are expecting a high turnover of EEA agents, so, to keep the costs to firms down, we will not acknowledge notifications of changes ~~in~~ to EEA agents.
- 6.17 Regulation 29 of the EMRs states that, if the FCSA, having taken into account any information received from the host state competent authority, *‘has reasonable*

*grounds to suspect that, in connection with the establishment of an EEA branch by an authorised EMI (a) money laundering or terrorist financing... is taking place, has taken place or been attempted, or (b) the risk of such activities taking place would be increased, the Authority may refuse to register the EEA branch or cancel any registration already made and remove the branch from the register<sup>2</sup>.*

- 6.18 If the host state's competent authority responds with no concerns, or we receive no response within a month of receiving the authorised EMI's complete notice of intention, and our own assessment shows no reasonable grounds to suspect money laundering or terrorist financing, or an increased risk of such activities, then we will include the agent on the Register ~~approve the agent~~ and update the e-money section of our Register with the passport details in a timely manner. In the case of a new passport ~~application~~ notification, we will inform the authorised EMI and the host state competent authority when we do this. The authorised EMI may then start providing services in the host EEA state through its branch, ~~or agent~~ or distributor. If an agent is being added to an existing passport, then in accordance with our policy on the appointment of agents, authorised EMIs should, where necessary, check the e-money section of our Register to confirm that the agent has been approved. ~~If after one month (see above), the agent does not appear on the e-money section of our Register, the authorised EMI should contact the Customer Contact Centre.~~
- 6.19 If the host state competent authority responds within that month with suspicions concerning money laundering or terrorist financing, or with information suggesting that the risk of money laundering or terrorist financing would be increased, we will consider the information supplied to us and make a decision on what action we will take. Under regulation 29(1) we may refuse to register the branch or, under regulation 34(6), the EEA agent. In addition to the power to refuse registration, we can cancel existing registrations of branches under regulation 29(1) and of EEA agents under regulation 35(1). We also have powers under regulation 7 to impose requirements on the authorised EMI's authorisation. If we decide not to approve the passport application as requested by the firm, we will follow a decision-making process equivalent to that described in Chapter 3.
- 6.20 It may also be the case that the host state competent authority responds with concerns, or new information raises concerns, after we have approved any agent and recorded the passport on the e-money section of our Register. In this case, we will consider the information supplied to us and may decide to de-register the passport and/or agent.

### *Using EEA distributors*

- ~~6.21 Where an authorised EMI seeks to exercise its right of establishment or freedom to provide services by engaging a distributor(s) located in another EEA state, we will communicate the information contained in the notice of intention relating to the~~

distributor to the relevant host state competent authority and take account of any adverse information received from that authority, relating to money laundering or terrorist financing, in connection with the intended engagement of the distributor.

## Making changes

~~6.22~~6.21 As required under regulation 37, we should be notified of any significant proposed changes in circumstances relevant to issuing, distributing or redeeming e-money, or providing payment services that an authorised EMI ~~seeks to carry~~ies on under passporting rights, within a reasonable time before the change takes place. We consider a reasonable period to be at least one month before the authorised EMI wishes the change to take effect. Such changes may include:

- changes to the name or address of the authorised EMI or agent or distributor engaged in another EEA state;
- adding/removing an agent or distributor;
- adding/removing passporting rights to particular EEA states;
- changes to the activities being conducted;
- changes to the persons responsible for the management of the proposed EEA branch or agent; and
- changes to the organisational structure of the branch or agent.

~~6.23~~6.22 The review process outlined above for new passport notifications will be applied to notifications of Approval of changes to a passport subject to a similar review process as for new passport applications ~~notifications~~, so in the case of changes in agents being used or the management of a branch, registration will be subject to the fitness and propriety checks described above, in relation to branch passports and/or use of EEA agents or distributors.

## Incoming EEA-~~authorised~~ EMIs

~~6.24~~6.23 EMIs that are authorised in another EEA state and who wish to issue, distribute or redeem e-money or provide payment services in the UK should refer to their home state competent authority for instructions on making a passport notification. These authorised EMIs (~~EEA-authorised EMIs~~) will appear in the register of their home state, but not our Register.

~~6.25~~6.24 When we receive a passport notification from the home state competent authority for an authorised EMI intending to establish a branch in the UK or use a UK agent or distributor, we are entitled to review the notification for suspicions of money laundering and terrorist financing involvement as outlined above. Where we

have concerns, we will notify the home state competent authority and they will decide what action to take.

~~6.266.25~~ Changes to an EEA-authorised EMI's passport should be notified to its home state competent authority who will notify us, as appropriate.

~~6.276.26~~ In our view, an EEA-authorised EMI's passport entitles it to carry on in the UK only issuing, distributing and redeeming e-money and payment services notified to us by the home state competent authority. If an EEA-authorised EMI wishes to carry on other activities in the UK, it may need to seek other appropriate authorisation, registration or make use of another passport (for example, to provide investment services under the Markets in Financial Instruments Directive).

## Supervision of EEA-authorised EMIs

~~6.286.27~~ We are responsible for supervising compliance by an FCSA-authorised EMI with its capital requirements obligations, regardless of where it issues, distributes or redeems e-money or provides payment services within the EEA, but we are not responsible for supervising compliance with capital requirements by an EEA-authorised EMI.

~~6.296.28~~ We are responsible for supervising compliance with the conduct of business, anti-money laundering and counter-terrorist financing requirements of authorised EMIs in relation to services being provided from an establishment in the UK (for example, by an EEA-authorised EMI exercising its right of establishment), but not for those provided on a freedom of services cross-border basis from an establishment outside the UK ~~(for example, under a services passport)~~. FCA-authorised EMIs with establishments in another member state are subject to supervision by the host state for compliance with the host state's anti-money laundering and terrorist financing laws.

~~6.306.29~~ We will exchange information about authorised EMIs and EEA-authorised EMIs with other competent authorities. In particular, we are obliged to provide relevant competent authorities with all relevant or essential information relating to exercising passport rights by authorised EMIs, including information on breaches or suspected breaches of money laundering and terrorist financing legislation.

## Credit institutions

6.30 Annex 1 of the Banking Directive (BD) has been amended to include activity '15. Issuing electronic money', by virtue of article 20(2) of the second Electronic Money Directive (2EMD).



6.31 Credit institutions, ~~which that~~ have the the permission of ‘Issuing electronic money’ ~~and that~~ intend to issue e-money in other EEA states should follow the passporting procedures that apply to them ~~under~~ as set out in Chapter 13 of the Supervision manual of the Handbook.

6.32 Credit institutions authorised in other EEA states who want to passport into the UK to issue e-money should contact their home state competent authority.

~~6.31~~6.33 Activity 15 will appear under the firm’s passport section on the Financial Services Register under ‘List of credit institutions able to exercise passporting rights in relation to activity 15 (issuing electronic money) of the Banking Directive.’

# 7 Status disclosure and use of the FSA and FCA logos

7.1 This chapter explains what EMIs may say about their regulatory status and the restriction on the use of the FSA and FCA logos. ~~circumstances under which the FSA and FCA logos may be used.~~

7.2 It is likely that the status disclosure requirement in part 5 of the PSRs will apply to EMIs because they provide payment services.

7.3 ~~The FSA logo and s~~Statements about regulatory status must not be used to:

- give the impression that the authorisation, registration or regulation goes beyond the particular activities for which the authorisation or registration has been granted; or
- misrepresent the electronic money issuer's relationship with the FSA/FCA.

~~To do so may infringe the FSA's trademark and may constitute a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008.~~

## Status disclosure sample statements

7.4 The following are suggested statements for EMIs to include in their contracts and correspondence with customers. It is not mandatory to use these exact statements, but it is important that customers are made aware of the EMI's authorisation/registration status.

### *Authorised EMIs*

[Name] is authorised by the Financial ~~Services~~Conduct Authority under the Electronic Money Regulations 2011 [register reference] for the issuing of electronic money.

### *Small EMIs*

[Name] is registered with the Financial ~~Services~~Conduct Authority under the Electronic Money Regulations 2011 [register reference] for the issuing of electronic money.

## *EEA authorised EMIs*

Authorised by [name of Home State regulator] and regulated by the Financial Services ~~Conduct~~ Authority for the conduct of issuing electronic money.

## **Use of the FSA logo and the FCA logo**

- 7.5 ~~Authorised firms that had the FSA as their home state regulator were allowed to use the FSA logo in certain circumstances. However, following consultation, Consultation Paper 12/24, the rules on the use of the FSA logo were amended so that firms are not allowed to use the FSA logo. The rules allow for a transitional period of one year. We have decided to not allow any firm to use the FCA logo in any circumstances. Our reasons are set out, in Policy Statement 13/5. Guidance on the use of our logo is set out in the General Provisions sourcebook ( at GEN 5 and the general licence for its use is found in GEN 5 Annex 1 of our Handbook.~~

## *Authorised EMI*

- 7.6 ~~An authorised EMI may use our logo as part of a statement in a letter (or electronic equivalent such as an email) that it is authorised by us, in the same way that firms authorised by us under other legislation (such as FSMA) can. The FSA has no policy to allow the use of the FSA logo on a website or as part of advertising (as set out in GEN 5.1.4G).~~
- 7.7 ~~Authorised EMIs may not use our logo (and must take all reasonable steps to ensure that their agents do not use it) in any communication with an e-money holder or payment service user other than in accordance with the general licence in GEN 5 Annex 1 or any individual licence granted by us to the authorised EMI or its representatives.~~

## *Agents of authorised EMIs*

- 7.8 ~~Agents of authorised EMIs are permitted to use our logo as part of a statement in a letter (or electronic equivalent) that its principal (the authorised EMI) is authorised by us.~~

## *Small EMIs*

- 7.9 ~~Small EMIs are not permitted to use our logo, either directly or through their agents or branches.~~ EEA authorised EMIs

## *EEA authorised*

- 7.10 ~~EMIs are not permitted to use our logo, either directly or through their agents or branches.~~

























































- 10.16 The first method requires the EMI/credit union to segregate funds received in exchange for e-money (relevant funds) from any other funds it holds including its working capital and funds received for other business activities for example, foreign exchange transactions. Relevant funds must be held separately from funds received for the execution of payment transactions not related to issuing e-money. This requirement applies as soon as funds are held by the EMI/credit union and includes money received on its behalf by agents or distributors.
- 10.17 If relevant funds are still held at the end of the business day following the day the EMI/credit union received them, the EMI/credit union must:
- deposit the relevant funds in a separate account it holds with an authorised credit institution; or
  - invest the relevant funds in secure and low risk assets that are approved by us as liquid (regulation 21(6)(b)) and place those assets in a separate account with an authorised custodian.
- 10.18 Regulation 21(6)(a) of the EMRs defines the assets that are considered to be secure and low risk for these purposes.<sup>21</sup> Regulation 21(6)(b) of the EMRs provides that assets are liquid if they are approved as such by us. We do not consider that all of the assets described in regulation 21(6)(a) meet the third criterion of ‘liquid.’ We have approved the assets referred to below as liquid. On this basis, assets are secure, low risk and liquid, and an EMI/credit union can invest in them and place them in a separate account with an authorised custodian in order to comply with the safeguarding requirement, if they are:
- items that fall into one of the categories set out in Table 1 of point 14 of Annex 1 to Directive 2006/49/EC~~(a)~~ for which the specific risk capital charge is no higher than 0%; or
  - units in an undertaking for collective investment in transferable securities (UCITS), which invests solely in the assets mentioned previously.
- 10.19 An authorised credit institution includes UK banks and building societies authorised by us to accept deposits (including UK branches of third-country credit institutions) and European Economic Area (EEA) firms authorised as credit institutions by their home state competent authorities, other than a person in the same group as the EMI. Authorised custodians include firms authorised by us to safeguard and administer investments and EEA firms authorised as investment firms under the Markets in Financial Instruments Directive (MiFID) and that hold investments under the standards in Article 13 of MiFID.

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<sup>21</sup> In exceptional circumstances, we may determine that an asset that would otherwise be secure and low risk for these purposes is not such an asset, provided the determination is based on an evaluation of the risks associated with the asset, including any risk arising from the security, maturity or value of the asset and there is adequate justification for the determination (regulation 23 of the EMRs).

- 10.20 The safeguarding account in which the relevant funds or equivalent assets are held must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the EMI/credit union). It must be clear to any administrator that the funds are held for the purpose of safeguarding.
- 10.21 The safeguarding account must not be used to hold any other funds or assets including safeguarding or segregation of funds from other services or the protection of funds received for foreign exchange deals. This means that, when EMIs/credit unions are safeguarding funds received for both e-money and unrelated payment services, the money should not be held in the same account.
- 10.22 In our view, the effect of having to hold a separate account where only the EMI/credit union may have any interest or right over the relevant funds or assets (except as provided by regulation 19 of the PSRs) is that EMIs cannot share safeguarding accounts. For example, a corporate group containing several EMIs or credit unions cannot pool their respective relevant funds or assets in a single account. Each EMI/credit union must therefore have its own safeguarding account. The EMRs do not, however, prevent EMIs/credit unions from holding more than one safeguarding account. If an account with an authorised credit institution is being used, it is important that the account is named in such a way that its purpose is clear, and that the EMI has an acknowledgement from the credit institution, or is otherwise able to demonstrate to our satisfaction that the bank has no rights (for example of set-off) over funds in that account.
- 10.23 To ensure it is clear what funds have been segregated and in what way, EMIs/credit unions must keep records of any:
- relevant funds segregated;
  - relevant funds placed in an account with a credit institution; and
  - assets placed in a custody account.
- 10.24 We reserve the right, in exceptional cases, to determine that an asset that would otherwise be described as secure and low risk is not in fact such an asset, provided that:
- such a determination is based on an evaluation of the risks associated with the asset, including any risk arising from the security, maturity or value of the asset; and
  - there is adequate justification for the determination.

## **Safeguarding option 2 – the insurance or guarantee method**

- 10.25 The second safeguarding method is to arrange for the relevant funds to be covered by an insurance policy with an authorised insurer, or a guarantee from an authorised

insurer or an authorised credit institution. EMIs/credit unions also safeguarding funds received for payment transactions that are not related to issuing e-money may need a separate policy or guarantee to ensure both sets of funds are adequately covered. The policy or guarantee will have to cover all relevant funds, not just funds held overnight or longer.

- 10.26 The proceeds of the insurance policy or guarantee must be payable in an insolvency event (as defined in regulation 24 of the EMRs and regulation 19 of the PSRs) into a separate account held by the EMI/credit union. That account must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the EMI/credit union). The account must not be used for holding any other funds, and no-one other than the EMI/credit union may have an interest in or right over the funds in it (except as provided for by regulation 24 of the EMRs and regulation 19 of the PSRs).
- 10.27 Neither the authorised credit institution nor the authorised insurer can be part of the group to which the EMI/credit union belongs.
- 10.28 An ‘authorised insurer’ means a person authorised for the purposes of FSMA to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive 73/239/EEC of 24 July 1973 on the business of direct insurance other than life insurance<sup>22</sup>, other than a person in the same group as the EMI.

## **Protection from the claims of other creditors**

- 10.29 Where an EMI/credit union that has chosen to deposit customer funds in a credit institution account or invest them in secure, low risk and liquid assets, is placed in administration or ‘wound up’, these funds shall form part of the EMI’s/credit union’s asset pool. The claims of the e-money holder/payment service user will be paid from the asset pool above all other creditors. Regulation 24(1) of the EMRs and regulation 19(11) of the PSRs ensure that, provided the funds have been safeguarded in accordance with one of the methods described above, the users’ funds are protected from the claims of other creditors. The claims of the e-money holder/payment service user are not subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool. The asset pool will include all individual customer funds for payment transactions unrelated to e-money issuance where a small EMI or credit union has chosen to safeguard such individual transactions (which they are not obliged to do). The asset pool will also include all individual customer funds for unrelated payment transactions at or below £50 that an authorised EMI has chosen to safeguard

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<sup>22</sup> OJ No L 145, 30.4.2004, p.1.

voluntarily, as again the authorised EMI is not obliged to safeguard unrelated payment transactions below £50.

## Systems and controls

- 10.30 EMIs/credit unions must maintain organisational arrangements that are sufficient to minimise the risk of the loss or reduction of relevant funds or assets through fraud, misuse, negligence or poor administration (regulation 24(3) of the EMRs and regulation 19(14) of the PSRs). This requirement is in addition to the general requirements on EMIs and credit unions to have effective risk management procedures, adequate internal control mechanisms and to maintain relevant records. It also applies to small EMIs and credit unions that voluntarily safeguard funds received for unrelated payment services.
- 10.31 An EMI's or credit union's auditor is required to tell us if it has become aware in its capacity as an auditor that, in its opinion, there is or has been, may be or may have been, a breach of any requirements imposed by or under the EMRs that is of material significance to us (regulation 25(4) of the EMRs). This may be in relation to either or both the issuing of e-money and the provision of unrelated payment services, and includes a breach of the safeguarding requirement and the organisational arrangements requirement.
- 10.32 Listed below are the arrangements that, in our view, EMIs and credit unions should have in place.
- They should exercise all due skill, care and diligence in selecting, appointing and periodically reviewing credit institutions, custodians and insurers involved in the safeguarding arrangements. They should take account of the expertise and market reputation of the third party and any legal requirements or market practices related to the holding of relevant funds or assets that could adversely affect e-money holders' or payment service users' rights or the protections afforded by regulation 20 of the EMRs and regulation 19 of the PSRs (for example, where the local law of a third country credit institution holding a safeguarding account would not recognise the priority afforded by the EMRs and PSRs to e-money account holders/payment service users on insolvency). For the requirements relating to safeguarding for unrelated payment services see Chapter 10 of the [Payment Services Approach Document](#).
  - They should also consider, together with any other relevant matters:
    - o the need for diversification of risks;
    - o the capital and credit rating of the third party;



- o the amount of relevant funds or assets placed, guaranteed or insured as a proportion of a third party's capital and (in the case of a credit institution) deposits; and
- o the level of risk in the investment and loan activities undertaken by the third party and its affiliates (to the extent that information is available).

When the decision is made on whether the arrangements remain appropriate they should record the grounds for that decision.

- They should have arrangements to ensure that relevant funds received by persons acting on their behalf (such as agents or distributors) are safeguarded in accordance with regulation 20 of the EMRs and regulation 19 of the PSRs.
- Where relevant funds are segregated in a different currency from that of receipt but the e-money holder has not instructed the EMI or credit union to convert it in this way, it should ensure that the amount held is adjusted regularly to an amount at least equal to the currency in which they are liable to the e-money holder using an appropriate exchange rate, such as the previous day's closing spot rate.
- The records should enable them, at any time and without delay, to distinguish relevant funds and assets held for each e-money holder from their own money. The records should be sufficient to show and explain its transactions concerning relevant funds and assets. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for e-money holders.
- They should carry out internal reconciliations of records and accounts of the entitlement of e-money holders to relevant funds and assets with the records and accounts of amounts safeguarded. This should be done as often as necessary and as soon as reasonably practicable after the date of the reconciliation to ensure the accuracy of the records and accounts. Records should be maintained that are sufficient to show and explain the method of internal reconciliation and its adequacy.
- They should regularly carry out reconciliations between internal accounts and records and those of any third parties safeguarding relevant funds or assets. Reconciliations should be performed as regularly as necessary and as soon as reasonably practicable after the date to which the reconciliation relates to ensure the accuracy of its internal accounts and records against those of the third parties. When determining whether the frequency is adequate, they should consider the risks the business is exposed to, such as the nature, volume and complexity of the business, and where and with whom the relevant funds and assets are held. We believe an adequate method of reconciliation is for a comparison to be made and any discrepancies identified between:

- o the balance on each safeguarding account, as recorded by the EMI/credit union, with the balance on that account as set out on the statement or other form of confirmation issued by the firm that holds those accounts; and
  - o the balance, currency by currency, on each e-money holder transaction account as recorded by the EMI/credit union, with the balance on that account as set out in the statement or other form of confirmation issued by the firm that holds the account.
- 10.33 Where discrepancies arise as a result of reconciliations, they should identify the reason for the discrepancy and correct it as soon as possible by paying any shortfall or withdrawing any excess, unless the discrepancy arises only due to timing differences between internal and external accounting systems. While a discrepancy cannot be resolved, they should assume that the records that are correct are those showing a greater amount of relevant funds or assets that should be safeguarded.
- 10.34 They should notify us in writing without delay if in any material respect they have not complied with, or are unable to comply with, the requirements in regulation 20 of the EMRs or regulation 19 of the PSRs or if they cannot resolve any reconciliation discrepancies in the way described.

## **Effect of an insolvency event**

- 10.35 If an insolvency event (as listed in regulation 24 of the EMRs) occurs in relation to an EMI or credit union that is safeguarding, then (with one exception) the claims of e-money holders will be paid from the relevant funds and assets that have been segregated (the ‘asset pool’ as defined in regulation 24 of the EMRs) above all other creditors. The exception is that expenses of the insolvency proceeding take priority so far as they are in respect of the costs of distributing the asset pool.
- 10.36 No right of set-off or security right can be exercised in respect of the asset pool, except to the extent that it relates to the fees and expenses of operating a safeguarding account.

# 11 Financial crime

## Introduction

- 11.1 All electronic money issuers must comply with legal requirements to deter and detect financial crime, which includes money laundering and terrorist financing. Relevant legislation includes the financial crime provisions in the EMRs, section 21A of the Terrorism Act 2000, the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007, the EC wire transfer regulation<sup>23</sup> and Schedule 7 to the Counter-Terrorism Act 2008. Electronic money issuers are also subject to the various pieces of legislation that implement the UK's financial sanctions regime.
- 11.2 Credit institutions, credit unions and municipal banks that issue e-money must continue to comply with the relevant provisions in our Handbook, including the provisions relating to financial crime in our Senior Management Arrangements, Systems and Controls (SYSC) sourcebook in SYSC 6.1.1 R and SYSC 6.3.
- 11.3 Electronic money issuers who wish to distribute or redeem e-money or provide payment services through an establishment in another EEA state in accordance with Section 6 must comply with the relevant anti-money laundering and counter terrorist financing laws enacted in that member state. Firms should check what their obligations will be in the host state and take steps to comply with that law.

## Application to become an EMI

- ~~11.3~~11.4 To be eligible to become an EMI, applicants must ensure, among other things, the sound and prudent conduct of their affairs. In particular, they have to satisfy us that they have:
- robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
  - effective procedures to identify, manage, monitor and report any risks to which they might be exposed; and
  - adequate internal control mechanisms.
- ~~11.4~~11.5 These arrangements must be comprehensive and proportionate to the nature, scale and complexity of the e-money to be issued and include policies and

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<sup>23</sup> Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

procedures to identify, manage, monitor and report any risks of financial crime to which they may be exposed (regulation 6(5)(b)).

11.511.6 Chapter 3 lists the types of controls we expect to see as part of the authorisation process.

## Systems and controls

11.611.7 We expect EMIs to establish and maintain systems and controls to comply with their legal obligations under the EMRs, the Money Laundering Regulations 2007, the EC wire transfer regulation and Schedule 7 of the Counter-Terrorism Act 2008. These systems and controls include appropriate and risk-sensitive policies and procedures to deter and detect financial crime and an organisational structure where responsibility to prevent financial crime is clearly allocated.

## Policies and procedures

11.711.8 We expect EMIs to establish and maintain appropriate and risk-sensitive policies and procedures for countering the risk that they may be used to further financial crime. Appropriate policies and procedures are proportionate to the nature, scale and complexity of the EMI's activities and enable it to identify, assess, monitor and effectively manage financial crime risk.

11.811.9 In identifying its financial crime risk, an EMI should consider a range of factors, including:

- its customers, product and activity profile;
- its distribution channels;
- the type, complexity and volume of permitted transactions;
- its processes and systems; and
- its operating environment.

11.911.10 As part of their risk assessment and to mitigate the risk of their products being used for purposes connected with financial crime, we expect EMIs to:

- apply ongoing due diligence to merchants on a risk-sensitive basis; and
- put in place and enforce policies to determine the acceptable use of their products.

This is because merchants can be involved in activities that are associated with an increased risk of money laundering. EMIs should also be alert to the possibility that merchants may abuse their products to further illegal activity, such as the sale of child abuse images or age-restricted goods to minors.

~~11.10~~11.11 EMI should carry out regular assessments of their financial crime policies and procedures to ensure they remain relevant and appropriate. As part of this, an EMI should be alert to any change in its operating environment that will have an impact on the way it conducts its business. For example, we expect EMIs to be alert to the publication of any information on financial crime risks and threats associated with e-money products, such as typology reports from the Financial Action Task Force or other relevant domestic and international bodies, and incorporate this information in their risk assessment as appropriate.

~~11.11~~11.12 EMIs are ultimately responsible for any action or omission committed by their agents and distributors (regulation 36 of the EMRs) to the same extent as if they have expressly permitted it. This includes failure by agents, third parties to which activities have been outsourced and distributors to take adequate measures to prevent financial crime. EMIs must be aware of this risk and take measures to manage it effectively. This includes taking steps to satisfy themselves of agents', distributors' and third parties' ongoing compliance with their financial crime obligations.

~~11.12~~11.13 Chapter 5 contains further detail on the responsibility of EMIs for their agents and distributors.

~~11.13~~11.14 Electronic money issuers should also take steps to ensure they comply with the UK's financial sanctions regime, which acts to freeze the assets of certain individuals and entities designated by the government. It is an offence to provide funds to people and organisations on the consolidated list of sanctions targets maintained by the Treasury's Asset Freezing Unit without first obtaining a licence. In some cases it is prohibited to provide any financial service. Information about financial sanctions is available from the Treasury.

## **Internal organisation**

~~11.14~~11.15 We expect EMIs to establish a clear organisational structure where responsibility for the establishment and maintenance of effective policies and procedures to prevent financial crime is clearly allocated.

~~11.15~~11.16 Regulation 20(5A) of the Money Laundering Regulations 2007 requires EMIs to appoint an individual to monitor and manage compliance with the anti-money laundering policies and procedures they are required to put in place. This may be the same person who is also the officer nominated under the Proceeds of Crime Act 2000. We expect the individual appointed under regulation 20(5A) of the Money Laundering Regulations to have the knowledge, experience and training as well as a level of authority and independence within the EMI and sufficient access to resources and information to enable him to carry out that responsibility.

~~11.16~~11.17 EMIs should also consider allocating to a director or senior manager overall responsibility for the establishment and maintenance of effective systems and

controls to prevent financial crime. This director or senior manager may also be the individual appointed under regulation 20(5A) of the Money Laundering Regulations.

## Industry guidance

~~11.17~~11.18 When considering whether a breach of applicable legislation in relation to anti-money laundering and counter-terrorist financing policies and procedures has occurred, we will consider whether an EMI has followed relevant provisions in the guidance for the UK financial sector issued by the Joint Money Laundering Steering Group (JMLSG). EMIs are reminded that the JMLSG does not intend its guidance to be applied unthinkingly, as a checklist of steps to take.

## Enforcement

~~11.18~~11.19 Under the EMRs, we have the power to cancel, suspend or vary the authorisation, registration or permissions of EMIs that fail to meet their obligation to put in place effective procedures in relation to financial crime. We may also censure or impose a penalty on electronic money issuers that contravene requirements imposed by or under the EMRs. We may also enforce EMIs' financial crime obligations under other legislation, including FSMA, the Money Laundering Regulations 2007 and Schedule 7 to the Counter-Terrorism Act 2008.

~~11.19~~11.20 See Chapter 15 for more details about our enforcement approach.

# 12 Complaint handling

12.1 This chapter summarises the complaint handling requirements that apply to all electronic money issuers in the scope of 2EMD.

## Introduction

12.2 Complaint handling covers three distinct areas:

- how electronic money issuers handle the complaints they receive from customers;
- the role of the ombudsman service in dealing with complaints where customers are not satisfied with the company's response; and
- our role in handling complaints from customers and other interested parties about electronic money issuers' alleged breaches of the EMRs and about the FCSA.

12.3 2EMD requires there to be an adequate and effective out-of-court complaint and redress procedure to settle disputes between electronic money issuers and e-money holders or payment service users. FSMA is amended to allow the ombudsman service to operate an out-of-court complaint and redress process for electronic money issuers. This means that the rules relating to complaints handling are not in the EMRs but in the Dispute Resolution: Complaints sourcebook (DISP) in our Handbook.

12.4 All electronic money issuers are subject to the complaints handling rules even if they are not required to be authorised or registered by us. For a full list of the persons that are defined as electronic money issuers if they issue e-money see Chapter 2.

## Handling complaints from customers

12.5 It is important that businesses have their own complaint-handling arrangements that should resolve most complaints. The ombudsman service will not consider a complaint until the business concerned has had an opportunity to consider it.

12.6 The rules about how electronic money issuers should handle complaints are set out in Chapter 1 of DISP.

12.7 The rules cover a range of issues, including aiding consumer awareness, establishing internal complaint-handling procedures, timeliness, the requirement for a final

response letter, rules on referral of complaints to others and a requirement to cooperate with the ombudsman service.

- 12.8 There are some ‘frequently asked questions’ about complaints handling on our [website](#).
- 12.9 All electronic money issuers except those with Part 4A permission under FSMA to issue e-money are exempt from the requirements in these rules to record complaints, report complaint statistics to us, or publish their complaints data. However, it is in their interests to retain records of complaints so these can be used to help the ombudsman service if necessary. This does not affect any requirements to record or report complaints if they are authorised by us to undertake any other regulated activity.
- 12.10 Firms authorised under FSMA to issue e-money (credit institutions, municipal banks and credit unions) are not exempt from the complaints record rule, the complaints reporting rules or the complaints data publication rules.

### **Providing information about complaints procedures**

- 12.11 Electronic money issuers are subject to the PSRs for the payment services element of their e-money business and if they provide any unrelated payment services. The PSRs require payment service providers to provide information about the out-of-court complaint and redress procedures for the payment service user and the methods for having access to them (paragraph 7(b) of Schedule 4 to the PSRs). This means informing payment service users about the complaints mechanism and the availability of the ombudsman service. This information can be provided using the summary details required under [DISP 1.2](#).
- For single payment transactions, this information must be made available ‘before the payment service user is bound by the single payment service contract’.
  - For framework contracts, this information must be provided ‘in good time before the payment service user is bound by the framework contract’.
- 12.12 In both cases, where the contract is concluded using distance means, the information can be provided immediately after the contract is concluded if the method used to conclude the contract does not enable earlier provision.
- 12.13 However, these requirements are different in terms of content and timing from the requirement in DISP 1.2 for other types of business, which is that the payment service provider should ‘refer eligible complaints to the availability of these summary details ... at or immediately after the point of sale’. Where the activity does not involve a sale, this obligation applies at or immediately after the point when contact is first made with an eligible complainant.



12.14 So, payment service providers who also undertake other types of business regulated by the FCSA will have to operate different arrangements for payment service users from those they operate for other customers. If they want to, payment service providers can apply the requirements relating to payment service users to all their customers, since they satisfy the requirements set out in DISP 1.2 for other customers.

## **The role of the Financial Ombudsman Service (the ombudsman service) in dealing with complaints**

12.15 The ombudsman service is a statutory, informal dispute-resolution service, established under FSMA and operationally independent of the FCSA. It operates as an alternative to the civil courts. Its role is to resolve disputes between individuals, micro-enterprises, small charities and trusts, and financial services firms quickly, without taking sides and with minimum formality, on the basis of what is fair and reasonable in the circumstances of each case. In considering what is fair and reasonable, the ombudsman service takes into account the relevant law, regulations, regulators' rules, guidance and standards, relevant codes of practice (such as the Remittances Customer Charter) and, where appropriate, what it considers to have been good industry practice at the relevant time.

### **Jurisdiction of the ombudsman service**

12.16 There are three separate jurisdictions under the ombudsman service.

- The compulsory jurisdiction covers all firms, payment service providers and electronic money issuers with UK establishments.
- The consumer credit jurisdiction covers businesses (other than those covered by the compulsory jurisdiction) licensed by the OFT under the Consumer Credit Act 2006.
- The voluntary jurisdiction extends to financial services businesses that are not covered by the compulsory jurisdiction or the consumer credit jurisdiction, but choose to join the voluntary jurisdiction – for example, firms providing services in the UK from overseas.

12.17 All electronic money issuers are covered by the compulsory jurisdiction of the ombudsman service for disputes concerning issuing and redeeming e-money and the related payment services. Electronic money issuers that provide unrelated payment services will also be in the compulsory jurisdiction for disputes concerning the provision of payment services.

12.18 Further information about the ombudsman service's processes for handling complaints is available on the ombudsman service's website. There is also information specifically for smaller businesses.

### **Eligibility to bring complaints to the ombudsman service**

12.19 Access to the ombudsman service is available to:

- consumers;
- micro-enterprises (see below);
- small charities – annual income under £1m at the time of the complaint; and
- small trusts – net asset value under £1m at the time of the complaint.

12.20 Electronic money issuers are not eligible to make a complaint that relates in any way to an activity that it is allowed to undertake itself. This extends to complaints from electronic money issuers about payment service provision, as all electronic money issuers are also entitled to provide payment services.

12.21 The full details of who is eligible to bring a complaint are set out in DISP 2.7. If an electronic money issuer is in any doubt about the eligibility of a complainant, it should treat the complainant as if it were eligible. If the complaint is referred to the ombudsman service, it will determine eligibility by reference to appropriate evidence, such as accounts or VAT returns in the case of micro-enterprises.

12.22 A 'micro-enterprise' is an enterprise that:

- employs fewer than ten people; and
- has a turnover or annual balance sheet that does not exceed €2m.

12.23 When calculating turnover or balance sheet levels, current and historical rates can be found on the European Commission's InforEuro website.

12.24 For a complaint about payment services (whether relating to e-money or any unrelated payment services provided by the electronic money issuer), the complainant is eligible if it is a micro-enterprise either at the point of concluding the contract or at the time of the complaint. The point of this 'dual test' is to make it easier for payment service providers to determine whether the complainant is eligible. Payment service providers should have arrangements in place to check whether their customers are micro-enterprises when the contract is entered into. But if this information is not easily available, the dual test would allow a complainant to rely instead on its status at the time of making the complaint.

12.25 For other activities covered by the ombudsman service's jurisdiction, the test for eligibility is whether the complainant is a micro-enterprise 'at the time the

complainant refers the complaint to the respondent'. This is in line with the eligibility tests for small charities and trusts.

- 12.26 The dual test means that, where the complaint is about a number of issues, including payment services, the electronic money issuer may only have to consider eligibility at the time the complaint was made. However, if the complainant was not eligible at the time the complaint was made and the case appears borderline, it will also be necessary to investigate the complainant's status when concluding the contract.
- 12.27 Complaints can be made about electronic money issuers that have stopped issuing e-money. Former electronic money issuers remain in the compulsory jurisdiction for complaints about an act or omission that occurred when they issued e-money, as long as the compulsory jurisdiction rules were in force at the time the activity took place.

### **Territorial scope of the compulsory jurisdiction**

- 12.28 The compulsory jurisdiction covers complaints about e-money issued and payment services and ancillary activities provided from an establishment in the UK. This includes EEA authorised EMIs' UK branches or agents.
- 12.29 As above, electronic money issuers are subject to the PSRs for the payment service element of their e-money business and if they provide any payment services that are not related to the issuing of e-money. While there are some limitations on the application of the PSRs' conduct of business requirements to payment transactions that are not made wholly within the EEA and using an EEA currency, eligible complainants are still able to take complaints about these payment transactions to the ombudsman service. (For more information on this limitation see Chapter 11 in the [Payment Services Approach Document](#).)
- 12.30 When dealing with complaints about transactions within or outside the scope of the PSRs' conduct of business requirements, the ombudsman service takes into account the different regulatory position alongside its usual test of what is fair and reasonable in all the circumstances of the case.

### **Cross-border disputes**

- 12.31 The ombudsman service actively cooperates with other dispute resolution services in other EEA states when resolving cross-border disputes. The ombudsman service's membership of FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in the EEA, helps to facilitate this.

## The voluntary jurisdiction of the ombudsman service

- 12.32 The voluntary jurisdiction covers complaints that are beyond the scope of either the compulsory jurisdiction or the consumer credit jurisdiction. It is available to electronic money issuers that carry on business in the EEA and direct services at UK consumers and wish to provide them with the protection of the ombudsman service.
- 12.33 Small e-money issuers can join the voluntary jurisdiction to allow consumers to take complaints to the ombudsman service about acts or omissions before they joined the compulsory jurisdiction.
- 12.34 Electronic money issuers that wish to join the voluntary jurisdiction should contact the ombudsman service (see Annex 2).

## Complaints to the FCSA

- 12.35 We are required to operate procedures to allow e-money holders and other interested parties to submit complaints about electronic money issuers' alleged breaches of the EMRs or PSRs. This may be done by contacting us by telephone or email (see Annex 2 for contact details). These complaints will be acknowledged and used to inform our regulatory activities (see Chapter 13). However, we do not operate a redress mechanism and so, when replying to complainants, we will tell them – where appropriate – that they may be able to refer their complaint to the ombudsman service.

## Complaints about the FCSA

- 12.36 Anyone directly affected by the way in which the ~~FSA~~FCA has exercised its functions (other than its legislative functions) may complain about the ~~FSA~~FCA. If you wish to lodge a complaint about the FCSA, please contact the Complaints Team by email ([complaints@fsa.gov.uk](mailto:complaints@fsa.gov.uk)[fca.org.uk](mailto:complaints@fca.org.uk)) or by telephone (020 7066 9870).

# 13 Supervision

- 13.1 This chapter describes our approach to our responsibilities for supervising electronic money issuers.

## Introduction

- 13.2 Our supervisory strategy ~~will be~~is 'complaints-led' for the conduct of business rules applicable to all electronic money issuers (including those electronic money issuers that are not authorised or registered by us, see Chapter 2 for the list of electronic money issuers). We explain what we mean by 'complaints-led' below.
- 13.3 We ~~will use~~ reporting as our tool to monitor compliance with the capital requirements (see Chapter 9) for both authorised EMIs and small EMIs.
- 13.4 All EMIs ~~will be~~are required to submit reports providing information to help us understand the risks posed by their business activities. In addition to requiring certain financial information, we ~~will require~~ require confirmation of an EMI's safeguarding arrangements and the number of open accounts and agents (to provide confirmation that the necessary notification of any changes to these areas has been made to us).
- 13.5 All reports ~~will be~~are required within 30 business days of the EMI's year end or half year end, with the first report due within one month of the first year end or half year end that occurs on or after 30 April 2011. More detail on reporting requirements can be found in Chapter 14.
- 13.6 In addition to the complaints-led and report-based prudential supervision described above, we may ask EMIs to attend educational roadshows and make them subject to a periodic regulatory review every four years.
- 13.7 We encourage EMIs to speak to us at the earliest opportunity if they anticipate any issues they may have in complying with the EMRs so that we can discuss with them an appropriate way forward.

## Supervising compliance with the conduct of business rules

- 13.8 All electronic money issuers (including those that are not authorised or registered by us) are subject to the conduct of business rules. We ~~will supervise~~ supervise compliance with the conduct of business rules by using any information we receive from customers

of electronic money issuers and other interested parties, such as complaints made directly to us (see Chapter 12).

- 13.9 When we receive a complaint alleging a breach of the conduct of business rules we will consider whether we need to take any supervisory action. In most cases, we expect simply to make the complainant aware of their right to take a complaint to the ombudsman service if they are not satisfied with the electronic money issuer's response. We will not mediate between the electronic money issuer and the complainant; this is the role of the ombudsman service (see Chapter 12).
- 13.10 However, where a complaint to us about an alleged breach is significant or suggests a systemic problem, we are likely to follow up the complaint with supervisory action. This might involve, for example, a visit to the electronic money issuer concerned or a request for a written explanation of the circumstances of the alleged breach.
- 13.11 It may be that, although individual complaints are not significant, over time a particular electronic money issuer seems to be consistently non-compliant. This is likely to lead us to take supervisory action.
- 13.12 Where themes arise from the complaints, indicating an industry-wide problem on certain issues, we may undertake supervisory activity relating to that theme, such as visits to a number of electronic money issuers to understand how they are managing the particular risk identified. Findings from such visits may lead to both specific action being required from certain electronic money issuers and wider guidance being given to all electronic money issuers.
- 13.13 In any case, where we are not satisfied that an electronic money issuer has dealt appropriately with the causes of the non-compliance, we will discuss the matter with our Enforcement division. Chapter 15 contains further details on enforcement.
- 13.14 If the ombudsman service refers an electronic money issuer to us for non-compliance in settling an award made against it we will consider taking supervisory action against that institution. Continued non-compliance in settling an award will result in a referral to our Enforcement division.

## **Information from auditors of EMIs**

- 13.15 The EMRs impose an obligation on the auditors of all EMIs to report certain matters to us that they have become aware of in their capacity as auditor. For example, if the auditor reasonably believes that there is or has been a contravention of any of the requirements of the EMRs, they must report it to us (regulation 25(4)(a)(i)).
- 13.16 On receipt of such information, we will review and follow up with the EMI and/or the auditors as appropriate.

## Credit institutions issuing e-money

- 13.17 Credit institutions issuing e-money will remain firms regulated under FSMA and relationship-managed because of their other regulated activities. For these institutions we will adopt the same complaints-led approach described above but, where issuing e-money is a significant element of their activities, we will consider those activities within the ongoing risk assessment ~~and ARROW arrangements~~ for those firms.

## Group supervision

- 13.18 EMIs that are part of a large FSMA-authorised group are likely to be supervised as part of their group's relationship management.

## Supervising compliance with the authorisation and registration requirements and the capital requirements of EMIs

- 13.19 We will monitor compliance with the requirements for authorisation/registration, initial and ongoing capital and safeguarding by analysing the reports that we require EMIs to provide. These reports are described in Chapter 14.
- 13.20 The reports we receive ~~will be~~ analysed and supervisory action considered where, for example, a shortfall in capital is identified. It is likely in such circumstances that we will ask the EMI for an explanation of why it breached the requirement and agree remedial action. If we are not satisfied with the response, we will consider cancelling its authorisation or registration.
- 13.21 In addition to analysing reports made to us by EMIs, we will also consider their compliance with authorisation and registration requirements in our complaints-led supervisory activity. We consider that the complaints-led approach will help us to identify key risks in relation to ongoing compliance with the authorisation and registration requirements. Complaints about breaches of the conduct of business rules will be an indicator of whether an EMI is maintaining appropriate arrangements in relation to governance, systems and controls, and internal controls.
- 13.22 We are likely to instigate a closer supervisory relationship with any EMI that becomes sufficiently active in the e-money market to suggest that it poses a greater risk than most EMIs and if the impact of any shortcomings on the market could be significant. ~~This would involve A relationship manager will carry out a cycle of risk assessments (every one to four years) and the developing development of a risk mitigation programme will be developed~~ that is proportionate to the risks identified.

## Changes in circumstances

- 13.23 We must be notified of changes of certain details after authorisation or registration. These are described in Chapter 4.
- 13.24 Where it becomes apparent to an EMI that there is, or is likely to be, a significant change in circumstances which may affect whether it continues to satisfy the own funds requirements, it must tell us without undue delay (or in the case of a prospective change, a reasonable period before it happens). Small EMIs that are not subject to initial capital requirements should monitor their level of business in case this moves above the relevant threshold (average outstanding e-money of €500,000)
- 13.25 Notifications must be made using the Standing Data form which ~~will be~~<sup>is</sup> available on the e-money section of our website ~~from 30 April 2011~~, or, where a change is not covered by this form, by written confirmation to our Customer Contact Centre.

## Powers to require information, appoint persons to carry out investigations and carry out skilled persons reports

- 13.26 We prefer to carry out our functions under the EMRs by working in an open and cooperative relationship with each EMI. We will look to obtain information in the context of that relationship unless it appears that obtaining information in that way will not achieve the necessary results, in which case we will use our statutory powers. Our statutory powers include:
- the power to require specified information in connection with our responsibilities under the EMRs; and
  - the power to require a report from a skilled person, nominated or approved by us, on any matter that we require in connection with our responsibilities under the EMRs. Further information on our policy on the use of skilled persons and the appointment and reporting process is contained in the Supervision manual of our Handbook (SUP), specifically at SUP 5.3 and 5.4.
- 13.27 If it appears that there is a good reason for doing so, we can appoint competent persons to conduct an investigation on our behalf.

## Anti-money laundering and counter-terrorism policies and procedures

- 13.28 We are responsible for monitoring EMIs' compliance with their legal obligations under the EMRs, the Money Laundering Regulations 2007 and the Counter-Terrorism Act 2008. EMIs should be prepared to provide us with information about



the operation and effectiveness of their anti-money laundering and counter-terrorist financing policies and procedures. This is likely to be based on the information EMIs have to provide to senior management under regulation 20(5A)(d) of the Money Laundering Regulations 2007.

- 13.29 Supervision of EMIs' compliance with these requirements will follow the approach set out in this chapter. Where an EMI poses a greater money-laundering or terrorist financing risk, it may have a closer supervisory relationship with us. We may also include EMIs in thematic financial crime reviews.

# 14 Reporting

14.1 We ~~will~~ require EMIs to provide us with information to help us comply with our supervisory responsibilities under the EMRs.

## Authorised EMIs

14.2 A summary of the reporting requirements for authorised EMIs is shown in the table below.

| Reporting return | Required information /purpose   | Frequency  |
|------------------|---|--|
| FSA059           | <b>Balance sheet</b>  | Twice yearly within 30 business days of the authorised EMI's year end and half-year end. |
| FSA060           | <b>Income statement</b>   |  |
| FSA061           | <p><b>Capital requirements</b></p> <p>Confirmation that the capital requirement is appropriately calculated and the requirement is being met.</p> <p>Authorised EMIs providing unrelated payment services in addition to issuing e-money <del>will bear</del> subject to two cumulative 'electronic money' and payment service' own funds requirements. The payment service element to the requirement <del>will be</del> calculated by the authorised EMI using one of three methods, A, B or C (see Chapter 9).</p> <p>The authorised EMI must provide a breakdown of its capital resources that shows where it is in surplus or deficit.</p> |  |
| FSA062           | <p><b>Safeguarding</b></p> <p>Information is required on how the authorised EMI safeguards its clients' funds with respect to e-money and unrelated payment services by selecting from the following options:</p> <ul style="list-style-type: none"> <li>placed in a separate account with an authorised credit institution;</li> <li>invested in approved secure, low-risk and liquid</li> </ul>   |  |

|        |  |  |
|--------|--|--|
|        | <p>assets held in a separate account with an authorised custodian;</p> <ul style="list-style-type: none"> <li>• covered by an insurance policy with an authorised insurer;</li> <li>• covered by a guarantee from an authorised insurer; or</li> <li>• covered by a guarantee from an authorised credit institution.</li> </ul> <p>For each option selected, the authorised EMI will also be asked to provide the name of the institution, custodian or insurer.</p>   |  |
| FSA063 | <p><b>Supplementary information</b></p> <p>The authorised EMI is asked whether, for the reporting period, it has:</p> <ul style="list-style-type: none"> <li>• met its own funds requirement; and</li> <li>• immediately segregated and then safeguarded all funds received from customers throughout the reporting period.</li> </ul> <p>If either or both of the above requirements are not met, the authorised EMI will be required to provide an explanation.</p> <p>The authorised EMI <del>will</del><u>is</u> also be required to confirm, as at the reporting end date:</p> <ul style="list-style-type: none"> <li>• its number of agents – to enable us to verify the information provided for the e-money section of our Register; and</li> <li>• the number of accounts it has open.</li> </ul> <p>If the number of agents does not match the number of agents appearing on our Register, we may ask the authorised EMI for an explanation.</p> <p>To enable us to check that the firm is meeting the requirements to provide us with accounting and audit information under regulation 25, the return also asks whether the authorised EMI:</p> <ul style="list-style-type: none"> <li>• is required to have its accounts audited, and if it is, when this was last done; and</li> </ul> |  |

|  |   |                                     |
|--|---|-------------------------------------|
|  | <ul style="list-style-type: none"> <li>is a hybrid business, conducting other non-regulated business with an obligation to submit separate accounts for its e-money and payment services business (see below).</li> </ul> |                                     |
|  | <b>Annual report and accounts</b>   | Within 80 business days of year end |

## Small EMIs

14.3 A summary of the reporting requirements for small EMIs is shown in the table below.

| Reporting return | Information required/purpose   | Frequency   |
|------------------|--|---|
| FSA064           | <p><b>Capital requirements</b></p> <p>The small EMI is required to provide figures that demonstrate how it meets its capital requirements. It must then provide a breakdown of its capital resources that shows where it is in surplus or deficit.</p> <p><b>Safeguarding</b></p> <p>Information is required on how the small EMI safeguards its clients' funds with respect to e-money and unrelated payment services (if it has opted to safeguard the funds received for unrelated payment services) by selecting from the following options:</p> <ul style="list-style-type: none"> <li>placed in a separate account with an authorised credit institution;</li> <li>invested in approved secure, low-risk and liquid assets held in a separate account with an authorised custodian;</li> <li>covered by an insurance policy with an authorised insurer;</li> <li>covered by a guarantee from an authorised insurer; or</li> <li>covered by a guarantee from an authorised credit institution.</li> </ul> | Twice yearly within 30 business days of the small EMI's year end and half-year end. |

|  |  |  |
|--|--|--|
|  | <p>For each option selected the small EMI will also be asked to provide the name of the institution, custodian or insurer.</p> <p><b>Supplementary information</b></p> <p>Confirmation of whether, for the reporting period, it has:</p> <ul style="list-style-type: none"> <li>• not exceeded the limit of €5m of average outstanding e-money;</li> <li>• not exceeded a rolling monthly average of €5m for the total amount of any unrelated payment transactions (over any period of 12 months);</li> <li>• met its own funds requirement (if applicable); and</li> <li>• immediately segregated and then safeguarded all funds received for e-money and unrelated payment services (if it has opted to safeguard funds received for unrelated payment services) from customers throughout the reporting period.</li> </ul> <p>If any of the above requirements are not met, the small EMI will be required to provide an explanation.</p> <p>The small EMI will also be required to confirm, as at the reporting end date:</p> <ul style="list-style-type: none"> <li>• its number of agents – to enable us to verify the information provided for the e-money section of our Register; and</li> <li>• the number of accounts it is has open.</li> </ul> <p>If the number of agents does not match the number of agents appearing on our Register, we may ask the small EMI for an explanation.</p> <p>To enable us to check that the small EMI is meeting the requirements to provide us with accounting and audit information under regulation 25, the return also asks whether it:</p> <ul style="list-style-type: none"> <li>• is required to have its accounts audited, and if it is, when this was last done; and</li> <li>• is a hybrid business, conducting other non-regulated business with an obligation to submit</li> </ul> |  |
|--|--|--|

|        |  |  |
|--------|--|--|
|        | separate accounts for its e-money and payment services business (see below).   |  |
| FSA065 | Total amount of outstanding e-money issued at 31 December.<br><br>This information is required for the FCA to meet its obligations in providing information to the Treasury – see ‘annual report to the Treasury’ section below. | Annual report covering 1 January to 31 December. To be submitted by the end of the following January |
|        | <b>Annual report and accounts</b>  | Within 80 business days of year end  |

### Annual report to the Treasury

- 14.4 Every year the Treasury must inform the European Commission of the number of natural and legal persons that are registered with us as small EMIs and provide an aggregated e-money outstanding figure for the entire small EMI population. We must report the position as at 31 December in each calendar year.

### Separate accounting information for hybrid businesses

- 14.5 All EMIs that undertake non-regulated business ~~will~~ have to provide a separate set of accounts for the e-money and payment services business. If the accounts are audited and lodged at Companies House, we would expect them to be submitted to us at the same time.
- 14.6 If the EMI is already required to have a statutory audit of its annual accounts, this information must be subject to an auditor’s report, prepared by the institution’s statutory auditors or by an audit firm.

### Reporting process for EMIs

- ~~14.7 From 1 May 2011, all EMIs will be required to complete and submit their returns by email. The returns can be downloaded from the ‘Reporting requirements’ section of the website. They must be completed electronically in Microsoft Excel and emailed to E-MoneyReturns@fca.org.uk. We cannot accept scanned copies of returns. We are investigating how we can enable them to send their returns by more secure email and will provide further information as soon as possible. Returns will be available to~~

~~download from our website and there will be text provided to help EMIs complete them.~~

14.7 EMIs preferring to email their returns in encrypted form by secure email can request this option by email to the above address.

14.8 There will be no automated ‘return due’ reminder sent to EMIs. They will be responsible for ensuring that they meet reporting deadlines.

14.9 The receipt of each return will be acknowledged by email or letter.

14.10 All EMIs must comply with the deadlines for sending regulatory data to us. Our normal data collection processes will apply so EMIs failing to meet the reporting deadlines will be reminded to do so and be subject to an administrative charge of £250. This is in common with reporting by all FCA~~FSA~~-authorised or registered firms.

## **Controllers and close links reports for authorised EMIs**

14.11 A condition for authorisation is that, to ensure the sound and prudent conduct of its affairs, anyone with a qualifying holding in an authorised EMI (a controller) must be a ‘fit and proper’ person. A further condition for authorisation is that, if it has close links with another person it must satisfy us that those links are not likely to prevent our effective supervision. We require annual reports detailing controllers and close links within four months of the authorised EMI’s year end.

14.12 In addition to the annual reports, we expect to be notified of any changes to an authorised EMI’s close links as soon as is reasonably practical and no later than one month after it becomes aware of the change.

14.13 The separate change in control provisions in Part 12 of FSMA apply in respect of all EMIs. Our approval is required before any acquisition of or increase in control can take place (see Chapter 4).

## **Credit institutions that issue e-money**

14.14 Credit institutions that issue e-money currently report the amount of e-money issued in the reporting return FSA001 – on a quarterly basis for an unconsolidated UK bank or building society, or half yearly if they are a UK consolidation group. The return requires the amount of e-money liabilities to be reported. This will continue and credit institutions will not be required to complete any additional returns.

## Other electronic money issuers

- 14.15 If any of the other electronic money issuers<sup>24</sup> begin to issue e-money in the UK, they will have to report their average outstanding e-money on a half-yearly basis so we can have more complete information on the size of the regulated e-money market.
- 14.16 This information should be provided by email on a half-yearly basis, 30 business days from the end of the reporting period.

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<sup>24</sup> The Post Office Limited; the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority; government departments and local authorities when acting in their capacity as public authorities; credit unions; municipal banks; and the National Savings Bank.



# 15 Enforcement

- 15.1 This chapter describes our enforcement approach. It ~~will be~~is relevant to electronic money issuers who are subject to our enforcement action.
- 15.2 ~~Some of our enforcement powers and our ability to prosecute certain offences under the EMRs began on 9 February 2011 when we were given the power to determine applications for authorisation and registration.~~

## Our enforcement approach

- 15.3 Our approach to enforcing the EMRs mirrors our general approach to enforcement under FSMA. This approach is set out in Chapter 2 of the Enforcement Guide (EG).
- 15.4 Our approach for selecting cases for formal enforcement action in respect of those not authorised to issue e-money will follow our approach set out in EG 2.12 -2.14. Where we do not take formal action against those issuing e-money without authorisation or registration, we may still seek to obtain positive outcomes by engaging with them and seeking their cooperation in applying for authorisation or registration, undertaking to cease unauthorised activities and/or offering redress to consumers.
- 15.5 We seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We also seek to ensure fair treatment when exercising our enforcement powers. Finally, we aim to:
- change the behaviour of the person who is the subject of the action;
  - deter future non-compliance by others;
  - eliminate any financial gain or benefit from non-compliance; and
  - where appropriate, remedy the harm caused by the non-compliance.

## How are cases referred to the Enforcement division?

- 15.6 When we consider whether to refer a case to the Enforcement division for investigation, we take a number of criteria into account. We have framed the criteria as a set of questions. They take into account our statutory objectives, business priorities and other issues, such as the response of the business or individual to the issues we are considering for referral.

15.7 Not all the criteria will be relevant to every case and there may be other considerations, not listed below, that are relevant to a particular case. Staff from the referring department, the Enforcement division and, in some cases, from other areas of the ~~FSA-FCA~~ work together to decide whether to refer a case for investigation. The referral criteria include the following.

- Is there actual or potential consumer loss/detriment?
- Is there evidence of financial crime or risk of financial crime?
- Are there issues that indicate a widespread problem or weakness at the business?
- Is there evidence that the business/individual has profited from the action or potential breaches?
- Has the business failed to bring the actions or potential breaches to ~~the~~our attention ~~of the FSA~~?
- What was the reaction of the business/individual to the breach?

15.8 The criteria may change from time to time. More information can be found on our website.

## **What tools will we use when investigating electronic money issuers?**

15.9 Those electronic money issuers familiar with FSMA will note that the EMRs allow us to use many of the powers of investigation we have under FSMA. The regulatory powers which the EMRs give us include the following.

- Information requirements: we may require information by serving written notice on an electronic money issuer or any person connected to an electronic money issuer.
- Interviews: we may require individuals working at or connected to an electronic money issuer to attend an interview and answer questions.
- Search warrants: we may apply to the court for a search warrant to allow for the entry and searching of premises and the obtaining of documents.

## **What sanctions can we use when an electronic money issuer breaches the EMRs?**

15.10 The EMRs allow us to impose penalties and censures for breaches of the EMRs and to start criminal prosecutions against those who provide or claim to issue e-money

but are not authorised or registered to do so. We can also order electronic money issuers to provide restitution to their customers. We can also cancel, suspend, or impose limitations or restrictions on EMIs or place requirements on their authorisation or registration where certain criteria outlined in the EMRs are met. Examples of the circumstances where we may cancel an authorisation/registration include, but are not limited to, persistent non payment of fees and levies owed to ~~us~~the FSA, non submission of an annual return and failing to provide us with current contact information ~~to the FSA~~.

- 15.11 Our policy on how we impose penalties and the amount of such penalties on electronic money issuers or individuals who breach our rules can be found in Chapter 6 of our Decision Procedure and Penalties Manual (DEPP). ~~We recently adopted a new penalties policy. For more information on this, please see our website.~~
- 15.12 Our policy in relation to how we exercise our powers of suspension can be found in DEPP 6A.

## **What process will we follow when imposing penalties or censures?**

- 15.13 Before imposing a penalty, we will inform the person or business that we intend to do so. We will also tell them the reasons for imposing a sanction and, where relevant, the amount of the penalty or the period to which a suspension or restriction of activity may apply. They will have at least 28 days to make representations to us, should they wish to do so. After this, we will make our decision on whether or not to take the proposed action. If we decide to proceed, and if the decision is contested, there is a right to refer the matter to the Tribunal. As with cases under FSMA, we may settle or mediate appropriate cases involving civil breaches of the EMRs. Both DEPP 6.7 and EG 5 contain further information on our settlement process and settlement discount scheme.
- 15.14 We may publish enforcement information about a firm on the ~~FSA~~Financial Services Register if we consider it appropriate to do so.

## **Removal of agents from the ~~FSA~~Financial Services Register**

- 15.15 Regulation 35 of the EMRs allows us to remove an agent of an EMI from the ~~FSA~~ Register in specified circumstances, which include the following:

- where we are not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;
  - the removal is desirable to protect the interests of consumers; or
  - if the agent’s provision of payment services is otherwise unlawful.
- 15.16 If we propose to remove an agent from the Register other than at the request of the EMI, which includes the circumstances mentioned above, we will inform the EMI that we intend to do so and the reasons for the proposed removal. In such cases the EMI may make representations, which we will consider. After this, we will make our decision on whether or not to take the proposed action. If we decide to proceed, and the decision is contested, the EMI can refer the matter to the Tribunal. If the matter is not referred to the Tribunal within 28 days we will remove the agent from the Register.

## **Where can I find more information?**

- 15.17 EG 19 sets out more detail on the use of enforcement powers in relation to the EMRs and Annex 1 of Chapter 2 of DEPP sets out who will make the decisions to use our disciplinary powers. [Our website](#) also includes further details.

# 16 Fees

- 16.1 This chapter summarises our structure for levying fees from electronic money issuers to recover our set-up and ongoing costs in meeting our regulatory responsibilities under the EMRs. It covers ~~FSA our~~ fees and the levies for the ombudsman service and the Money Advice Service. Electronic money issuers ~~will~~ are not be charged the Financial Services Compensation Scheme (FSCS) levy as it does not cover e-money.
- ~~16.2~~ We consult on regulatory fees and levies every year. We review our policies and publish proposals in October or November; in February or March we consult on the rates to be charged for the following year; and we publish the final fees in a combined Policy Statement in June. Firms are invoiced from July. EMIs should look out for these consultations on our website so that they can send us comments on the proposals. The FSA's e-money fees rules have been incorporated into the FCA Handbook (see CP12/28).
- ~~16.3~~ The original proposals for e-money fees were set out in ~~Following the our~~ October 2010 Consultation Paper (CP) on regulatory fees and levies (CP10/24) and we provided feedback was provided and (with the rules to be made on application fees) the rules on application fees in our the February 2011 policy statement (PS11/02). We included fFeedback on the other fees and set out our the proposed approach and fee rates for 2011/12 was set out in the February 2011 CP on regulatory fees and levies (CP11/02). We will provided fFeedback was provided on the comments received and set the final rates set out in our the Consolidated Policy Statement (PS) on fees in May 2011 consolidated Policy Statement (PS11/7). It was explained in the Consultation Paper in October 2011 (CP11/21) that average outstanding electronic money as the tariff base for electronic money issuers in fee-block G.10 would be retained, but it proposed that an average of 12 months was taken to even out the seasonal impact. Feedback was provided in February 2012 (CP12/3) that fees would be based on an average of 12 months as proposed, effective from 1 April 2012, and the March 2012 Handbook Notice (HN) confirmed that the rules had been made.

## Application fees

- ~~16.2~~16.4 Applicants for authorisation or registration are ~~Authorised EMIs and small EMIs will be~~ charged fees to cover our expenses in dealing with their applications.
- ~~16.3~~16.5 The application fees came into force from February 2011. The rates are as follows.

|                             |        |
|-----------------------------|--------|
| Registration as a small EMI | £1,000 |
|-----------------------------|--------|

~~16.6~~ 16.6 There is an additional charge of £3 per agent levied on authorised EMIs.

~~16.4~~16.7 Other bodies just have to notify us that they plan to issue e-money. These bodies do not have to pay application fees. They are:

- the Post Office Limited;
- inward-passporting EEA authorised EMIs;
- the Bank of England;
- government departments and local authorities; and
- the National Savings Bank.

~~16.5~~16.8 Credit institutions, credit unions and municipal banks ~~will do~~ not have to apply to become authorised or registered under the EMRs to issue e-money so there ~~will be~~ is no EMRs application fee. If they already have Part 4A permission that covers the regulated activity of issuing e-money, they ~~will do~~ not ~~have to~~ pay any additional fee. If they propose to start issuing e-money, however, they will have to apply to vary their Part 4A permission under FSMA and to pay the relevant fee for this.

## Periodic fees

~~16.6~~16.9 All electronic money issuers, including those exempt from application fees, ~~will bear~~ charged annual periodic fees to recover our costs of supervision and the set-up costs of establishing the processes and systems to support the ~~new~~ regime. We structure our fees by allocating our costs to fee blocks, which are defined on the basis of the permitted regulatory activities undertaken by firms. This relates our costs to the legal relationship between the fee-payer and ourselves. There are two ~~new~~ fee blocks for electronic money issuers.

Fee block G.10: all electronic money issuers except small EMIs

Fee block G.11: small EMIs

## All electronic money issuers except small EMIs

~~16.7~~16.10 Authorised EMIs, credit institutions that issue e-money and electronic money issuers that do not have to be authorised or registered to issue e-money ~~will bear~~ in fee block G.10. These electronic money issuers ~~will pay~~ variable fees calculated from a common metric known as a tariff base. We base the fees on the average outstanding e-money over a 12-month period as ~~For~~ this represents the size of the business undertaken and avoids distortions caused by seasonal fluctuations.

~~2011/12, we are using t~~The definition of average outstanding e-money is prescribed in regulation 2(1) of the EMRs but for the purpose of calculating the tariff base we use 12 months instead of six:

‘the average total amount of financial liabilities related to *electronic money* in issue at the end of each calendar day over the preceding six calendar months (which is the period ending on the date set out under Part 4), calculated on the first calendar day of each calendar month and applied for that calendar month (£m).’

~~16.8~~ We are taking this definition because:

- ~~• businesses that apply to us for authorisation will have to give this information to us—we will calculate the fees from the figures in their applications;~~
- ~~• businesses that are already authorised will have the data to hand in preparation for implementation of 2EMD—we have told them that we will use the figures for December 2010; and~~
- ~~• electronic money issuers that do not have to be authorised or registered will provide us with their average outstanding e-money on a half yearly basis if they begin to issue e-money. We can use this information to allocate them to a fee block to calculate their fees.~~

~~16.9~~ There are different opinions on the suitability of average outstanding e-money as a long term measure of impact risk so we will review this decision for the financial year 2012/13.

~~16.10~~16.11 There are two fee-bands for fee block G.10:

- a minimum fee of £1,500 per year for the first £5m of e-money liabilities. This is because the fee block ~~will include~~ firms that fall below the threshold for small EMIs because they wish to passport out of the UK, but our regulatory engagement with them ~~will be~~ greater than with similar-sized electronic money issuers in fee block G.11; and
- for liabilities beyond £5m, we are ~~proposing in our consultation paper on fee rates, published in February 2011 (CP11/02), use~~ a variable rate of £150 per £m or part-£m in addition to the minimum fee of £1,500. We consult on the~~The rates upon at the beginning of each year and notify EMIs of the~~ ~~will be finalised~~ rates in our consolidated Policy Statement in June.

## Small EMIs

~~16.11~~16.12 Small EMIs will pay a flat rate of £1,000 in fee block G.11.

## **Inward-passporting EEA authorised EMIs and credit institutions that issue e-money**

~~16.12~~16.13 Inward-passporting EEA businesses that are authorised EMIs or credit institutions that issue e-money ~~will~~ get a discount of 40% on their fees. This is in line with the discount offered to inward-passporting payment institutions.

### **Payment services**

~~16.13~~16.14 EMIs ~~will~~ automatically receive permission to provide the payment services ~~linked-related~~ to issuing e-money but ~~will~~ only pay fees in fee block G.10 or G.11 as electronic money issuers.

~~16.14~~16.15 EMIs that provide unrelated payment services ~~will~~ have to notify us. We ~~will~~ do not charge them an application fee, but they ~~will be~~ are subject to the periodic fees applicable to authorised payment institutions or small payment institutions. More information on the fees applicable to payment institutions can be found in the *Payment Services Approach Document*.

### **Notification of agents**

16.16 We charge £3 per notification of any changes relating to agents after the authorised EMI has been authorised. We charge the notification fee annually in arrears, but only if the total number of notifications in any one year is more than 100.

### **Applications part-way through a financial year**

~~16.15~~16.17 When a firm or business becomes newly authorised or registered during a fee-period, we apply a discount to reflect how much of the financial year remains. We ~~will~~ apply the same model to electronic money issuers, as set out below. ~~As indicated in the table, there will be no discount on the fees for 2011/12 for electronic money issuers brought into the new regime when it comes into force in May 2011.~~

### **Proportion of full-year periodic fee payable for firms registered or authorised during the financial year**

| <b>Quarter in which firm is registered or authorised</b> | <b>Proportion of full-year fee payable</b> |
|--|--|
| 1 April to 30 June inclusive                             | 100%                                       |
| 1 July to 30 September inclusive                         | 75%  |
| 1 October to 31 December inclusive                       | 50%  |
| 1 January to 31 March inclusive                          | 25%  |



## Financial penalties

~~16.16~~16.18 We are empowered under the EMRs to impose financial penalties in certain circumstances. The money we recover through fines may be applied towards our expenses in carrying out our functions under the EMRs or for any incidental purpose.

## The Money Advice Service

~~16.17~~16.19 The Money Advice Service was set up under the Financial Services Act 2010 to enhance:

- the understanding and knowledge of members of the public of financial matters (including the UK financial system); and
- the ability of members of the public to manage their own financial affairs.

~~16.18~~16.20 Electronic money issuers that do not have to be authorised or registered to issue e-money are exempt from paying the levy.

~~16.19~~16.21 Credit institutions already pay the Money Advice Service levy in their fee block A and ~~will~~are not be charged again.

~~16.20~~16.22 EMIs ~~will~~ pay a levy in their fee block G. The Money Advice Service levy mirrors our fees structure and is applied to the current tariff bands. EMIs with average outstanding e-money of up to £5m will pay the minimum Money Advice Service levy, which is currently £10, and a variable rate beyond that. ~~In CP11/02 we have proposed a variable rate of £12 per £m or part £m. Small EMIs in G.11 will~~ pay the minimum Money Advice Service levy of £10.

## The ombudsman service fees

~~16.21~~16.23 As outlined in Chapter 12, the ombudsman service has three separate jurisdictions:

- the compulsory jurisdiction, covering all firms, payment service providers and electronic money issuers with UK establishments;
- the consumer credit jurisdiction; and
- the voluntary jurisdiction.

## Compulsory jurisdiction fees

~~16.22~~16.24 All electronic money issuers are subject to the compulsory jurisdiction of the ~~ombudsman service~~. The ombudsman service charges an annual levy to firms/businesses in its compulsory jurisdiction, which we collect on its behalf, as well as a case fee for the fourth and any further cases that are referred to it. The case fee is currently £500.

~~16.23~~16.25 Electronic money issuers ~~will be~~ are in a ~~new industry block~~, Block 18. The tariff base for Block 18 is also based on average outstanding e-money (as described in paragraph 16.8) but small EMIs ~~will~~ are be charged a flat fee.

~~16.24~~16.26 Credit institutions (banks and building societies) that issue e-money ~~will~~ fall in both Block 1 as well as ~~the new~~ Block 18. However, e-money accounts ~~will be~~ are excluded from the tariff base for Block 1 so that credit institutions do not pay two sets of levies for the same business.

~~16.25~~16.27 EMIs that provide unrelated payment services ~~will be~~ are in both Block 11 (for their unrelated payment services) and Block 18 (for issuing e-money). This does not apply to credit institutions as they are not charged separately for payment services.

## Voluntary jurisdiction fees

~~16.26~~16.28 As described in Chapter 12, the ombudsman service operates a voluntary jurisdiction to allow businesses to sign up with it for certain types of complaint that would not otherwise be covered by the compulsory jurisdiction or the consumer credit jurisdiction.

~~16.27~~16.29 EMIs (and credit institutions issuing e-money) participating in the voluntary jurisdiction of the ombudsman service will be covered by a ~~new industry block~~, 13 V. EMIs providing unrelated payment services ~~will be~~ are also ~~be in the new industry block~~ 12 V.

~~16.28~~16.30 Authorised EMIs ~~will~~ pay a fee that is based on average outstanding e-money. Small EMIs ~~will be~~ are levied a flat fee.

# ~~17 Transitional provisions for businesses issuing e-money before 30 April 2011~~

~~17.1— Here, we outline the situation for electronic money issuers that have Part 4 permission under FSMA in respect of the activity of e-money issuance (credit institutions and ELMIs), or have a small electronic money issuer certificate, and have issued e-money before 30 April 2011.~~

## ~~Credit institutions that issue e-money~~

~~17.2— Credit institutions that have Part 4 permission under FSMA in respect of the activity of e-money issuance before 30 April 2011 will not have to change their regulatory status. They must comply with the conduct of business requirements in Part 5 of the EMRs from 30 April 2011 with one exception. For e-money that has been issued on a fixed-term contract before 30 April 2011, where the contract provides for a termination date up to two years after the date the contract was entered into and where the e-money instrument cannot be re-loaded (regulation 77), the existing contractual terms regarding redemption may continue to be applied.~~

## ~~ELMIs~~

~~17.3— Under regulation 74, ELMIs (electronic money institutions that have Part 4 permission to issue e-money) that have issued e-money before 30 April 2011 are deemed to have been granted authorisation under regulation 9 of the EMRs.~~

~~17.4— Each ELMI must notify us before 1 July 2011 whether it wishes to become an authorised EMI or a small EMI under the new regime and provide us with such information as we reasonably require to assess whether to include it on the e-money section of our Register.~~

~~17.5— We are contacting all ELMIs to outline the information they will have to provide to satisfy us that they meet the new regime's conditions for authorisation/registration.~~

~~17.6— If we decide the firm has satisfied the requirements to become an EMI we will notify it and update the e-money section of our Register as soon as practicable. At this point we will also cancel its ELMI authorisation and add a notice to the financial~~

~~firm section of our Register to advise that the firm now appears on the e-money section of our Register. All aspects of the EMRs will then apply.~~

~~17.7 We may decide that the firm should not be included on the e-money section of our Register if:~~

- ~~• the ELMI does not provide the information we need by 1 July 2011;~~
- ~~• the ELMI does not meet the required conditions for authorisation or registration;~~  
~~or~~
- ~~• it appears to us that the ELMI is unlikely to issue e-money within the 12 months following 1 July 2011.~~

~~17.8 If we are minded not to include the ELMI on the e-money section of our Register we will give it a warning notice. The firm may then make representations which we will consider. Following this, we will decide whether to include it on the e-money section of our Register. If we decide not to do so, we will give the person notice of our decision. If the decision is contested, the ELMI can refer the matter to the Tribunal.~~

~~17.9 If an ELMI does not tell us it intends to be an EMI by 1 July 2011, its deemed authorisation to issue e-money under regulation 74(1) will cease on 30 October 2011 (or, if earlier, when the ELMI's Part 4 permission under FSMA is cancelled).~~

~~17.10 An ELMI that considers it does not have to be authorised or registered under the new regulatory regime can cancel its authorisation from 30 April 2011. For more information on how to do this, see [our website](#).~~

~~17.11 An ELMI that considers itself exempt from regulation due to the limited network exemption should seek independent legal advice.~~

### *~~The FSA Register~~*

~~17.12 The relevant particulars relating to the ELMI will remain on the financial firm search section of our Register until it has fully moved into the new regime or its authorisation has been cancelled. The financial firm search section will then be updated accordingly.~~

### *~~Status disclosure and use of the FSA logo~~*

~~17.13 ELMIs must take care that any statements they make about their regulatory status are correct and reflect the current position (see Chapter 7).~~

### *~~Conduct of business requirements~~*

~~17.14 The conduct of business requirements in Part 5 of the EMRs, as described in Chapter 8, will apply to ELMIs with effect from 30 April 2011, except in the circumstances described in the paragraph below. This means that, where the~~

provisions of the Electronic Money sourcebook (ELM) cover the same conduct of business ground as Part 5 of the EMRs, the ELM provisions will not apply during the transitional period.

~~17.15 There is an exception for e-money that has been issued on a fixed term contract before 30 April 2011 where the contract provides for a termination date up to two years after the date on which the contract was entered into and where the e-money instrument cannot be re-loaded (regulation 77), allowing the existing contractual terms to continue.~~

### *Reporting requirements*

~~17.16 ELMs must continue to report as required under FSMA until they have moved into the new regime or are no longer authorised.~~

### *Fees*

~~17.17 ELMs that wish to become authorised EMIs or small EMIs will not have to pay application fees. They will pay the new periodic fees as set out in Chapter 16 for the 2011/12 financial year.~~

~~17.18 The new fees for the ombudsman service and Money Advice Service set out in Chapter 16 will apply to ELMs in the 2011/12 financial year.~~

## **Passporting: credit institutions and ELMs**

~~17.19 Article 20 of 2EMD adds 'issuing electronic money' as activity 15 in Annex I of the recast Banking Consolidation Directive (BCD) 2006/48/EC. Issuing e-money used to be included in activity 5.~~

~~17.20 We will amend the passporting provisions so that credit institutions with a passport comprising activity 5 with respect to issuing e-money will have activity 15.~~

~~17.21 Those ELMs exercising passporting rights under the BCD before 30 April 2011 for issuing e-money will continue to be able to use that passport between 30 April 2011 and the point at which they are transferred to the e-money section of our Register, or until 30 October 2011, whichever comes first. We will then make a fresh notification to the relevant host state competent authority confirming the passporting of the authorised EMI under 2EMD.~~

~~17.22 Where such authorised EMIs wish to amend their passported activities, they should follow the steps outlined in paragraphs 6.22 and 6.23 in Chapter 6.~~

~~17.23 Where such authorised EMIs wish to start distributing or redeeming e-money or providing payment services through an agent, they will have to apply to register the agent. Should they wish to distribute or redeem e-money through a distributor, they~~

will have to identify the distributor and describe the anti-money laundering controls that will be used to comply with local anti-money laundering law.

## **Small e-money issuers**

~~17.24 Under regulation 76, small e-money issuers (which have a valid certificate under article 9C of the Financial Services and Markets 2000 (Regulated Activities) Order 2001 and have issued e-money before 30 April 2011) may continue to issue e-money in accordance with their certificate until 30 April 2012.~~

~~17.25 A small e-money issuer that proposes to issue e-money after 30 April 2012 should have submitted a complete application by 30 January 2012 to become either an authorised EMI or small EMI in order to meet the deadline of 30 April 2012.~~

### *Ceasing registration*

~~17.26 A small e-money issuer that considers it does not have to be authorised or registered under the new regulatory regime can apply for its small e-money issuer certificate to be revoked from 30 April 2011. Requests should be made by emailing the Permissions department [authorisation@fsa.gov.uk](mailto:authorisation@fsa.gov.uk)~~

~~17.27 A small e-money issuer that considers itself exempt from regulation due to the limited network exemption should seek independent legal advice.~~

### *The FSA Register*

~~17.28 Small e-money issuers will remain on a separate list on the e-money section of our Register until they have fully moved into the new regime, their certificate is revoked or until 30 April 2012. EMIs that are authorised or registered by us will be included on the e-money section of our Register.~~

### *Status disclosure and use of the FSA logo*

~~17.29 Small e-money issuers must take care that any statements they make about their regulatory status are correct and reflect the current position (see Chapter 7).~~

### *Conduct of business requirements*

~~17.30 The conduct of business requirements in Part 5 of the EMRs, as described in Chapter 8, will apply to small e-money issuers with effect from 30 April 2011, except in the circumstances described in the paragraph below.~~

~~17.31 There is an exception for e-money that has been issued on a fixed-term contract prior to 30 April 2011 where the contract provides for a termination date up to two years after the date on which the contract was entered into and where the e-money~~

~~instrument cannot be re-loaded (regulation 77), allowing the existing contractual terms to continue.~~

### *Complaint handling*

~~17.32 Small e-money issuers who meet the conditions set out in regulation 76(1) of the EMRs will become subject to our complaint handling rules and the compulsory jurisdiction of the ombudsman service from 30 April 2011 in relation to acts or omissions in carrying on e-money issuance or ancillary activities after this date.~~

### *Reporting requirements*

~~17.33 Small e-money issuers must continue to report as required under FSMA until they are authorised or registered under the new regime or are no longer registered.~~

### *Fees*

~~17.34 Small e-money issuers have to apply to be authorised or registered under the new regime and so will be charged the full application fee.~~

~~17.35 For 2011/12 we will continue to charge small e-money issuers the flat periodic fee of £400 that they will be paying under the PSRs, not the e-money fee. This is because they have a full year to apply for registration or authorisation and we do not want to discourage them from applying early. They will continue to pay the Money Advice Service levy.~~

~~17.36 They will, however, be charged the new fees for the ombudsman service in the 2011/12 financial year.~~

# Annex 1:

## Links to key documents

### Key documents

1. The requirements for e-money regulation can be found in the documents listed below. EMIs that are authorised or registered under the EMRs will not need to refer to any other parts of the Handbook for the purpose of e-money regulation. Hyperlinks are provided where possible.

- **The Electronic Money Regulations 2011**. These set out the vast majority of rules for the new regime.
- **The Payment Services Regulations 2009** as amended by the **Payment Services (Amendment) Regulations 2009** and the **Payment Services Regulations 2012**. Electronic money issuers must comply with the requirements of the PSRs for the payment service aspects of their business. **The Payment Services Approach Document** describes our approach to implementing the PSRs. Electronic money issuers should refer to Chapter 8 for guidance on the conduct of business requirements of the PSRs as they may be applicable to the payment services part of their business.
- **The relevant parts of the FSAFCA -Handbook**

The Handbook is an extensive document that sets out the rules and guidance for financial services regulation. A Reader's Guide to the Handbook is available on the Handbook website, together with a User Guide for the online version. Most of the Handbook does not apply to electronic money issuers. However, there are a few areas that contain relevant provisions.

- Glossary. This provides definitions of terms used elsewhere in the Handbook. Clicking on an italicised term in the Handbook will open up the glossary definition.
- General Provisions (GEN) – GEN 2 and GEN 5. ~~GEN 2~~ contains provisions on interpreting the Handbook. ~~GEN 5~~ includes the licence that allows authorised EMIs to use the FSA logo in certain circumstances.
- Fees manual (FEES). This contains fees provisions for funding the FSAFCA, the ombudsman service and Money Advice Service relevant to electronic money issuers.



- Supervision manual (SUP). SUP 9 describes how individual guidance can be sought on regulatory requirements and the reliance that can be placed on guidance received. SUP 5.3 and SUP 5.4 describe our policy on the use of skilled persons to carry out reports (see Chapter 13 for further information). SUP 16.15 sets out the forms, content, reporting period and due dates for the reporting returns for EMIs. SUP 11.3 and SUP 11 Annex 6G provide guidance on Part 12 of FSMA, relating to control over electronic money institutions, which applies to electronic money institutions (with certain modifications) by virtue of Schedule 3 to the EMRs.
  - Decision Procedure and Penalties Manual (DEPP). This contains the procedures we must follow for taking decisions about enforcement action and setting penalties.
  - Dispute resolution: complaints sourcebook (DISP). This contains the obligations on electronic money issuers for their own complaint handling procedures. It also sets out the rules concerning customers' rights to complain to the ombudsman service.
2. The Handbook website also contains the following regulatory guides that are relevant to electronic money issuers:
- Enforcement guide (EG). This describes our approach to exercising the main enforcement powers given to us under FSMA, the EMRs and PSRs.
  - Perimeter guidance manual (PERG) – PERG 3A. This contains guidance aimed at helping businesses consider whether they need to be authorised or registered for the purposes of issuing e-money in the UK.
  - Unfair contract terms regulatory guide (UNFCOG). This guide explains our powers under the Unfair Terms in Consumer Contracts Regulations 1999 and our approach to exercising them.
  - Financial Crime: a guide for firms (FC). This guide sets out our expectations of firms' financial crime systems and controls.

## Guidance and information

3. There is also guidance and information issued by us and the ombudsman service likely to be relevant to readers of this document.
- Frequently asked questions on the complaints sourcebook and complaints procedures.
  - Information about the ombudsman service's processes for handling complaints.
  - Information from the ombudsman service specifically for smaller businesses.

## Other relevant legislation

4. Electronic money issuers have responsibilities with regard to preventing financial crime. Links to the relevant legislation are listed below.
  - [Terrorism Act 2000 \(section 21A\)](#)
  - [Proceeds of Crime Act 2002](#)
  - [Money Laundering Regulations 2007](#)
  - [EC wire transfer regulation 2006](#)
  - [Counter-Terrorism Act 2008 \(schedule 7\)](#)

# Annex 2:

## Useful contact details

### **Financial Services ~~Conduct~~ Authority (~~FSA~~FCA)**

25 The North Colonnade  
Canary Wharf  
London, E14 5HS

Customer Contact Centre  
0845 606 9966

Consumer Helpline  
0845 606 1234

[electronicmoney@fsa.gov.uk](mailto:electronicmoney@fsa.gov.uk)

[www.fcsa.orggov.uk/electronicmoney](http://www.fcsa.orggov.uk/electronicmoney)

### **Financial Ombudsman Service (~~FOS~~Ombudsman service)**

South Quay Plaza  
183 Marsh Wall  
London, E14 9SR

0845 080 1800 or 020 7964 0500

[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

# Annex 3:

## Membership of the E-money Stakeholder Liaison Group

British Bankers' Association

Building Societies Association

Electronic Money Association

Financial Services Authority

HM Revenue & Customs

HM Treasury

International Association of Money Transfer Networks

Mobile Broadband Group

Payments Council

Prepaid International Forum

Post Office Ltd

UK Cards Association

UK Gift Card and Voucher Association

UK Money Transmitters Association

# Glossary of terms, abbreviations and acronyms

|                    |  |
|--------------------|--|
| 1EMD               | The first Electronic Money Directive 2000/46/EC  |
| 2EMD               | Second Electronic Money Directive 2009/110/EC  |
| Authorised EMI     | Authorised electronic money institution as defined in the Electronic Money Regulations 2011  |
| BCD                | Banking Consolidation Directive  |
| Contact Centre     | The FCSA's Customer Contact Centre (see Annex 2)   |
| Credit institution | Banks and building societies with Part 4A permission to issue electronic money under FSMA  |
| DEPP               | Decision Procedure and Penalties manual  |
| DISP               | Dispute Resolution: Complaints sourcebook  |
| DMD                | Distance Marketing Directive   |
| Dormant e-money    | E-money held more than one year after the termination of the contract.   |
| EEA                | European Economic Area, comprising the member states of the European Union, plus Iceland, Liechtenstein and Norway                                   |
| EG                 | Enforcement Guide  |
| ELMI               | Electronic money institution with Part 4 permission under FSMA to issue e-money before 30 April 2011   |
| EMI                | Electronic money institution   |
| e-money            | Electronic money   |
| EMRs               | Electronic Money Regulations 2011  |
| <u>FCA</u>         | <u>Financial Conduct Authority (the UK's competent authority for the regulation of e-money and most aspects of payment services from April 2013)</u> |

|                      |   |
|----------------------|---|
| FSA                  | Financial Services Authority ( <u>the UK's competent authority for most aspects of regulation of payment services from November 2009 until April 2013</u> )   |
| FIN-NET              | Financial Dispute Resolution Network  |
| FSMA                 | Financial Services and Markets Act 2000. This is the legislation that gives the <del>FSA</del> <u>FCA and PRA</u> its statutory powers.   |
| HMRC                 | HM Revenue & Customs  |
| Hybrid businesses    | The EMRs allow EMIs to undertake activities that are not related to issuing e-money and payment services, these businesses are called hybrid businesses.  |
| LLP                  | Limited liability partnership   |
| Micro enterprise     | <p>an enterprise which:</p> <p>(a) employs fewer than 10 <u>persons</u>; and</p> <p>(b) has a turnover or annual balance sheet that does not exceed €2m.</p> <p>In this definition, "enterprise" means any <u>person</u> engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed <u>persons</u> and family businesses engaged in craft or other activities, and <u>partnerships</u> or associations regularly engaged in an economic activity.<br/> [Note: article 4(26) of the <u>Payment Services Directive</u> and the Annex to the <u>Micro-enterprise Recommendation</u>]</p> |
| OFT                  | Office of Fair Trading  |
| Ombudsman service    | Financial Ombudsman Service   |
| PERG                 | Perimeter Guidance manual   |
| PRIN                 | Principles for Businesses   |
| PSD                  | Payment Services Directive  |
| PSRs                 | Payment Services Regulations 2009 <u>as amended by the Payment Services (Amendment) Regulations 2009 and the Payment Services Regulations 2012.</u>   |
| Small e-money issuer | Has a certificate (which has not been revoked) given by us under article 9C of the Financial Services and Markets 2000 (Regulated Activities) Order 2001(d).  |
| Small EMI            | Small electronic money institution as defined in the EMRs   |

|              |   |
|--------------|---|
| SUP          | Supervision manual  |
| SYSC         | Senior Management Arrangements, Systems and Controls sourcebook |
| The Tribunal | The Upper Tribunal  |
| UTCCRs       | Unfair Terms in Consumer Contracts Regulations 1999             |