3.56 In the case of a payment institution that only provides payment services, this will mean the applicant is likely to be required to complete the relevant PSD Individual forms for each and every manager of the PI to the extent their role is directly relevant to payment services. For example, we would not expect a procurement manager whose responsibility is limited to sourcing and purchasing goods and services for the applicant to seek approval. In the case of PIs that carry on activities other than just payment services, the applicant is likely to be required to complete the relevant PSD Individual forms only for those managers with responsibility for running the firm's payment services activities.

Assessing reputation – fitness and propriety

3.57 The first stage in the assessment process is the completion of the PSD Individual form. We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required. **We attach considerable importance to the completeness and accuracy of the PSD Individual form. If the applicant is in any doubt as to whether or not any information is relevant, it should be included.**

3.58 We consider t~~T~~he term 'of good repute' ~~is considered by the FSA~~ to include the essential factors relating to fitness and propriety set out above in relation to controllers. This means that ~~the FSA~~we will consider the same essential factors, set out in paragraph 3.65 below in respect of all directors and all persons who are or who will be responsible for the management of the PI or its payment services activities.

3.59 We assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required. We require the disclosure of convictions and cautions. Additionally, ~~where there is power to do so~~ we also require the disclosure of all spent and unspent criminal convictions and cautions (other than those criminal convictions and cautions that are protected).~~convictions and cautions that are spent~~[5]

3.60 In accordance with our overall approach to implementing the PSRs, we will take a risk-based and proportionate approach when making our assessment. We will take into consideration the nature and size of the business and the payment services the firm is seeking to perform.

3.61 If a matter comes to our attention which suggests that the person might not be fit and proper, we will take into account the above factors when determining how relevant that information is.

3.62 During the application process, we may discuss the assessment of the candidate's fitness and propriety informally with the firm and may retain any notes of those discussions.

3.63 The factors that we will have regard to when making the fit and proper assessment are:

- honesty, integrity and reputation;

[5] The relevant legislation: the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)(Scotland) Order 2013.~~Where disclosure is subject to the law of England and Wales we exercise the power conferred under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, to require the disclosure of all convictions and cautions that are spent. Where disclosure is subject to the law of Northern Ireland we exercise the power conferred under the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979, to require the disclosure of all convictions that are spent. If an equivalent power is provided to us where the law of Scotland applies, our approach to the disclosure of spent convictions and spent alternatives to prosecution will be on equivalent terms.~~

- competence and capability; and
- financial soundness.

3.64 Examples of the matters we will consider for each factor are set out below. However, it is not possible to list all the matters that would be relevant to a particular application or individual.

Honesty, integrity and reputation

3.65 In determining the honesty, integrity and reputation of an individual, the matters that we will have regard to include, but are not limited to:

- relevant convictions or involvement in relevant criminal proceedings or investigations;
- relevant civil or administrative cases;
- relevant disciplinary action (including disqualification as company director or bankruptcy);
- whether the individual has been a director or senior manager in an entity that has been put into liquidation, wound up or is or has been the subject of an investigation by an inspector under company or any other legislation; and
- information (including relevant shareholdings) relevant for assessing potential conflicts of interest with another entity.

3.66 We will consider matters that may have arisen in the UK or elsewhere.

3.67 The 'relevant' matters we refer to above will include offences under legislation relating to companies, banking or other financial services, serious tax offences or other dishonesty, insolvency, insurance, money laundering, market abuse, misconduct or fraud.

3.68 The applicant firm should tell us of all relevant matters, but we will consider the circumstances in relation to the requirements and standards of the PSRs. For example, a conviction for a criminal offence will not automatically mean an application is rejected. We treat each individual's application on a case-by-case basis, taking into account the seriousness of, and the circumstances surrounding, the offence, the explanation offered by the convicted individual, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

3.69 If a firm is not sure whether something may have an impact on an individual's fitness and propriety, the information should be disclosed. The non-disclosure of material facts is taken very seriously by us as it is seen as evidence of current dishonesty. If in doubt, disclose.

Competence, capability and experience

3.70 In determining an individual's competence, capability and experience, we will have regard to whether the individual has the:

- knowledge;
- experience; and
- training,

to be able to perform the activity of providing payment services.

3.71 The level of experience, knowledge and training should be proportionate to the nature, complexity and scale of risk inherent in the business activity of the firm.

Financial soundness

3.72 In determining good repute, we will take into account an individual's financial soundness and we will consider any factors including, but not limited to:

- whether the individual has been the subject of any judgement debt or award in the UK or elsewhere, that remains outstanding or was not satisfied within a reasonable period; or
- whether the individual has made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been an adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restriction order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.

3.73 We will not normally require the individual to supply a statement of assets and liabilities. The fact that an individual may be of limited financial means will not, in itself, affect their suitability to perform payment services activities.

Auditors and audit arrangements (Paragraph 13 of Schedule 2)

3.74 Where an authorised PI is required under any UK legislation (in particular company legislation) to appoint an auditor, the name and contact details must be included in the application form.

3.75 The applicant must provide a description of the audit and organisational arrangements that have been set up in relation to the safeguarding measures, governance arrangements, risk management procedures, internal control mechanisms and organisational structure described in the application. These should show that the applicant is taking all reasonable steps to protect the interests of its customers and to ensure the continuity and reliability of performance of payment services.

3.76 Depending on the nature, scale and complexity of its business, to comply with the requirement of the PSRs for sound accounting procedures and adequate internal control mechanisms, it may be appropriate for a firm to maintain an internal audit function which is separate and independent from the other functions and activities of the firm. We would expect the internal audit function to have the following responsibilities:

- Establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the firm's systems, internal control mechanisms and arrangements.
- Issue recommendations based on the result of work carried out.
- Verify compliance with those recommendations.
- Report in relation to internal audit matters to senior personnel and/or separate supervisory function (for example, a supervisory board in a two-tier board structure or non-executive committee in a one-tier structure).

Location of offices (regulation 6(4), paragraph 12 of Schedule 2)

3.77 The applicant must be a body corporate (for example, a limited company or limited liability partnership) constituted under the law of the UK and must have its head office and, where

appropriate, its registered office in the UK. The PSD does not define what is meant by a firm's 'head office'. This is not necessarily the firm's place of incorporation or the place where its business is wholly or mainly carried on. Although ~~the FSA~~we will judge each application on a case-by-case basis, the key issue in identifying the head office of a firm is the location of its central management and control, that is, the location of:

(1) the directors and other senior management, who make decisions relating to the firm's central direction, and the material management decisions of the firm on a day-to-day basis; and

(2) the central administrative functions of the firm (for example, central compliance, internal audit).

For the purpose of regulation 6(4) a 'virtual office' in the UK does not satisfy this condition.

Close links (regulation 6(8) and (9))

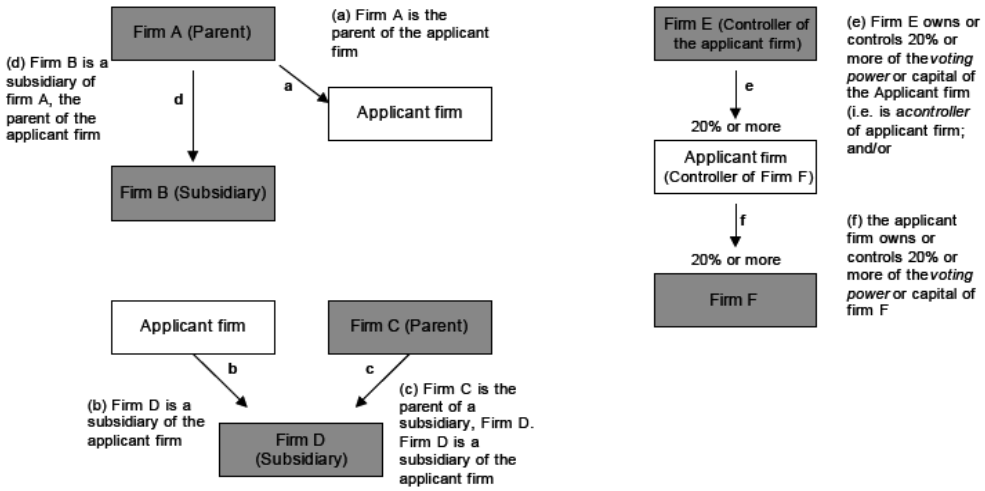
3.78 Applicants must satisfy us that any 'close links' it has are not likely to prevent the effective supervision of the firm or, where a close link is located outside of the EEA, the laws of the foreign territory would not prevent effective supervision.

3.79 A close link is defined as:

- a parent undertaking of the applicant;
- a subsidiary undertaking of the applicant;
- a parent undertaking of a subsidiary undertaking of the applicant;
- a subsidiary undertaking of a parent undertaking of the applicant;
- an owner or controller of 20% or more of the capital or voting rights in the applicant; or
- an entity of which the applicant owns or controls 20% or more of the capital or voting rights.

3.80 The application should include details of any persons meeting the above criteria, as set out in the form. We will then assess the nature of the relationship against the conditions for authorisation. If an Individual form is to be submitted for a person that has a qualifying holding, a Controller form will not be required in relation to that person.

3.81 The following diagram sets out the types of relationships between firms and individuals that we consider to be close links. Shaded boxes are all close links of the relevant applicant firm.



Money laundering registration (regulation 6(7))

3.82 Some PIs, such as money remitters, are already required to register with HM Revenue and Customs (HMRC) under the Money Laundering Regulations 2007 (MLR). The PSRs require some additional payment service providers within its scope to register with HMRC under the MLR.

3.83 Payment service providers falling within the following categories will need to be registered with HMRC under the MLR before we can authorise them:

- money service businesses (MSBs);
- bill payment service providers; and
- telecommunications, digital and IT payment service providers.

3.84 Firms that are already MLR-registered with HMRC should supply their registration number when applying to us. If an application to HMRC is being made at the same time as an application for authorisation, then we will still process the application, but cannot grant authorisation until the MLR registration number has been received.

3.85 We will verify with HMRC that the registration number provided to us matches a valid MLR registration for that firm.

3.86 We are responsible for money laundering supervision of PIs that are credit card issuers or merchant acquirers (other than firms licensed to carry on a consumer credit business for which the OFT will remain the supervisory authority for this purpose). These firms only need complete the 'Authorised Payment Institution' form, as it combines both MLR registration and PSD authorisation, although a firm may still wish to refer to the MLR registration form when providing the information on money laundering controls.

Decision making

3.87 Having assessed all the information provided, we will make a decision to either approve or reject the application. This decision will be notified to the applicant, along with instructions for the appeal process, if relevant.

Part II: Becoming a small payment institution

3.88 Firms that do not intend to provide payment services on a cross-border basis and which have an average monthly payment value of not more than €3 million can apply for registration as a small PI and be exempt from the authorisation and prudential requirements. This section explains the information that you must supply with the application and the conditions that must be satisfied. The information requirements include, but are not restricted to, those set out in Schedule 2 to the PSRs to the extent relevant to the small PI.

3.89 Paragraphs 3.95 – 3.97 describe the information that small PIs registered before 1 October 2012 and that those with applications pending on that date have to provide as a result of the amendments made to the PSRs by the Payment Services Regulations 2012.

Making an application

3.90 Application forms are available on the payment services section of our website ~~http://www.fsa.gov.uk/Pages/Doing/Regulated/banking/psd/applying/index.shtml~~www.fca.org.uk/paymentservices.

3.91 The application fee for registration of a small PI is £500. No work will be done on processing the application, until the full fee is received. The fee is non-refundable and must be paid by cheque.

3.92 Once an application has been submitted, but before the application has been determined, the applicant must notify us without undue delay of any material change in the information provided or if the applicant establishes the information provided is incomplete or inaccurate. It must notify us of likely material changes as soon as it is aware of them.

3.93 The application must be signed by the person(s) responsible for making the application on behalf of the applicant firm. The appropriate persons(s) depends on the applicant firm's type, as follows:

Type of applicant	**Appropriate signatory**
Sole trader	The sole trader
Partnership	Two partners
Unincorporated association (not a limited partnership)	All members of the unincorporated association or one person authorised to sign on behalf of them all (supported by a resolution of the committee of management or equivalent)
Company with one director	The director
Company with more than one director	Two directors
Limited liability partnership	Two members
Limited partnership	The general partner or partners

Conditions for registration as a small PI

3.94 We may refuse to register an applicant as a small payment institution where any of the following conditions is not met.

- The projected average monthly payment transactions to be carried out by the applicant (including by agents on its behalf) must not exceed €3 million.
- None of the individuals responsible for the management or operation of the business has been convicted of offences relating to money laundering or terrorist financing or other financial crimes.
- Where the applicant is a partnership, an unincorporated association or a body corporate, the applicant must satisfy us that any persons having a qualifying holding in it are fit and proper persons, having regard to the need to ensure the sound and prudent conduct of the affairs of a small PI.
- The applicant must satisfy us that its directors and/or any persons responsible for the management of the small PI, and where relevant the persons responsible for the management of its payment services, are of good repute and possess appropriate knowledge and experience to provide payment services.
- Where the applicant is a body corporate that has close links with another person ('CL') the applicant must satisfy us that those links are not likely to prevent our effective supervision of the applicant. If it appears to us that the CL is subject to the laws, regulations or administrative provisions of a territory outside of the EEA, the applicant must satisfy us that neither those foreign laws/provisions, would prevent our effective supervision of the applicant.
- The applicant's head office, registered office or place of residence, as the case may be, must be in the UK. This means that the applicant's head office and, if it has one, registered office must be in the UK. If the applicant is a natural person their place of residence must be in the UK.
- The applicant must comply with the registration requirements of the MLR, where those requirements apply to it.

Transitional provisions: small PIs registered before 1 October 2012 and applications pending on that date (regulation 125A)

3.95 Firms that have been registered as small PIs before 1 October 2012 have until 30 September 2013 to provide the additional information set out below.

3.96 Applicants that applied for registration before 1 October 2012 that have not had their application determined by that date must also provide the additional information set out below. Applications will not be considered complete until this information is provided.

- A programme of operations detailing the main activity/activities of the small PI/applicant (which may or may not be payment services). We require the programme of operations to detail the particular payment services that either the

small PI is carrying out or the applicant envisages carrying out (paragraph 1 of Schedule 2).

- A description of the small PI/applicant's structural organisation, which is the plan for how its business activities will be organised. We require this to be in the form of an organisation chart. Where applicable, the description must include the small PI's use (or the applicant's intended use, as the case may be), of agents and branches, a description of outsourcing arrangements, and its participation in a national or international payment system (paragraph 7 of Schedule 2). This should include any close links a small PI may have. For further information on close links please refer to paragraphs 3.134 – 3.137.
- Information on each person with any direct or indirect qualifying holding in the small PI or applicant, including the size and nature of the qualifying holding, and evidence of the suitability of each person, i.e. that they are fit and proper (paragraph 8 of Schedule 2).
- The identity of the directors and persons who are or will be responsible for the management of the small PI or applicant, including those who are or will be responsible for the management of the payment services. We require evidence of the suitability of each person, i.e. that they are fit and proper (paragraph 9 of Schedule 2).

3.97 These information requirements are set out in Schedule 2 to the PSRs, to the extent relevant to the small PI**.**

Monthly value of payment transactions (regulation 13(3))

3.98 Applicants will be required to self-certify that the business will meet the monthly value of payment transactions condition. However, if we suspect that this might not be the case, we may ask for projected financial statements.

3.99 Firms will need to take account of changes in exchange rates where they carry out transactions in different currencies. In our view it would be reasonable for firms to use the Commission's monthly accounting rate of the euro when calculating turnover in euro for a particular calendar month. Current and historical rates can be found on the InforEuro website at http://ec.europa.eu/budget/inforeuro/index.cfm?Language=en.

Convictions by management (regulation 13(4))

3.100 We will ask the applicant to confirm on the application form that none of the persons responsible for the management of the small PI has been convicted of offences relating to money laundering, terrorist financing or other financial crimes. This includes fraud or dishonesty, offences under FSMA or under the PSRs, and includes acts or omissions that would be an offence if they took place in the UK. Deliberately or recklessly giving misleading information in the application is a criminal offence under regulation 114. We require the disclosure of spent and unspent criminal convictions and cautions unless the relevant conviction or caution is protected~~. Additionally, where there is power to do so we also require the disclosure of all convictions and cautions that are spent~~.[6]

3.101 We will ask the firm to supply the name(s) of persons responsible for the management of the PI. This is so we can confirm their identity later for regulatory purposes. However, we will also need a contact name and the application will need to be signed by the relevant persons described in the 'Making an application' section above.

Head office (regulation 13(5))

3.102 The location of the head office, registered office or principal place of business is to be supplied as part of the contact details. The PSD does not define what is meant by a firm's 'head office'. This is not necessarily the firm's place of incorporation or the place where its business is wholly or mainly carried on. Although ~~the FSA~~we will judge each application on a case-by-case basis, the key issue in identifying the head office of a firm is the location of its central management and control, that is, the location of:

(1) the directors and other senior management, who make decisions relating to the firm's central direction, and the material management decisions of the firm on a day-to-day basis; and

(2) the central administrative functions of the firm (for example, central compliance, internal audit).

For the purpose of regulation 13(5) a 'virtual office' in the UK does not satisfy this condition.

Money laundering registration (regulation 13(6))

3.103 The MLR registration requirements for application as a small PI are the same as those for an authorised PI (see Part I).

Qualifying holdings (regulation 13(4A))

[6] The relevant legislation: the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)(Scotland) Order 2013.~~Where disclosure is subject to the law of England and Wales we exercise the power conferred under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to require the disclosure of all convictions and cautions that are spent. Where disclosure is subject to the law of Northern Ireland we exercise the power conferred under the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 to require the disclosure of all convictions that are spent. If an equivalent power is provided to us where the law of Scotland applies, our approach to the disclosure of spent convictions and spent alternatives to prosecution will be on equivalent terms.~~

3.104 A condition for registration under regulation 13(4A) is that an applicant which is a partnership, an unincorporated association or a body corporate, must satisfy us that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of the small PI. This comprises two elements: first, the applicant will need to assess whether any persons (or entities) have a qualifying holding in it and notify ~~the FSA~~us of the identity of such persons; secondly, we will undertake an assessment of the fitness and propriety of any such persons (or entities).

3.105 A 'qualifying holding' is defined in the PSRs by reference to Article 4(11) of the Banking Consolidation Directive (BCD).[7] The definition in the BCD is a '*direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking*'. We refer to people with a qualifying holding as 'controllers'.

3.106 In relation to a small PI, a controller is, broadly, an individual or firm that does one of the following:

- holds 10% or more of the shares in the applicant firm (including through a parent);
- is able to exercise significant influence over the management of the applicant firm through a controlling interest in the applicant firm or a parent;
- is entitled to control or exercise control of 10% or more of the voting power in the applicant firm (including through a parent); or
- is able to exercise significant influence over the management of the applicant firm through their voting power in it or a parent.

3.107 Limited liability partnership (LLP) applicants should note that some (or sometimes all) individual members may be controllers of the LLP. Usually this will depend on the number of members and the terms of the membership agreement, especially regarding voting power or significant influence. For example, in an 11-person LLP where all have equal voting power, it might appear that none of the members will be a controller (as no individual member will have 10% or more of the voting power). However, one of the members may still exercise significant influence. If the membership agreement required significant decisions to be taken unanimously by the members, a dissenting member could exercise significant influence over the firm's management despite having less than 10% of the voting power. Applicant firms should have this in mind when considering whether a member with less than 10% voting power could exercise significant influence over the firm's management.

3.108 For each qualifying holding in the applicant, a registration application must contain:

- the size and nature of the qualifying holding; and
- evidence of the suitability of each controller taking into account the need to ensure the sound and prudent management of a small PI.

3.109 The term 'fit and proper' is ~~one that the FSA uses~~ used frequently in the context of individuals approved under the Financial Services and Markets Act 2000 (FSMA). We have interpreted this term, which is used in regulation 13(4A) in relation to controllers, to mean substantially the same for small PIs as it does for individuals approved in FSMA firms. We have set out extensive guidance on what might fall within our consideration of fitness and

[7] Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions.

propriety in the 'The Fit and Proper test for Approved Persons' section of our handbook. Applicants who require more information may therefore find this guidance helpful.

3.110 The term 'fit and proper', which is used in regulation 13(4A), incorporates the following essential factors:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness

of the person with a qualifying holding taking into account the need to ensure the sound and prudent management of a small PI.

3.111 While it is impossible to list every fact or matter that would be relevant to the fitness and propriety of a controller, the following are examples of factors that we will consider.

- Whether the person has been convicted of any criminal offence particularly of dishonesty, fraud, or financial crime.
- Whether the person has been investigated for any criminal offence. This would include where an individual has been arrested or charged *whether or not* the investigation / arrest / charge led to a conviction.
- Whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a firm, particularly a PI.

  This would include any findings by ~~the FSA~~us, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office etc.) that the individual has breached or contravened any financial services legislation. The regulatory history of the firm or individual is therefore likely to be relevant.
- Whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by ~~the FSA~~us, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office, etc).
- Whether the person has been refused membership, registration or authorisation of a professional organisation or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body.
- Whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.
- Whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

3.112 Importantly, we will also consider the fitness and propriety of any person linked to the controller (i.e. any person who has, or who appears to have, a relevant family or business relationship with the controller), and whether this adversely affects the suitability of the controller.

3.113 The details of any qualifying holdings should be submitted on the appropriate 'Qualifying Holding' form. The form is available on the payment services section of our website. **We attach considerable importance to the completeness and accuracy of the 'Qualifying Holding' form. If the applicant is in any doubt about whether or not any information is relevant, it should be included.**

Directors, managers and persons responsible for payment services (regulation 13(4B))

3.114 Under regulation 13(4B) the applicant must satisfy us that its directors and/or the persons who are or will be responsible for the management of it and, where relevant, the management of its payment services, are of good repute and possess appropriate knowledge and experience to perform payment services.

3.115 This incorporates two elements: first, the applicant identifies those with responsibility for the management of the small PI and/or its payment service activities. All such individuals need to be included in the application (such an individual is referred to as a 'PSD Individual'). Secondly, the applicant, together with the PSD Individual, must provide full and complete information to us about all PSD Individuals to satisfy us about the reputation, knowledge and experience of these individuals.

3.116 We expect to be provided with the following information in relation to directors and persons responsible for the management of the applicant and its payment services:

a) the identity of all the directors where the applicant is a corporate body;

b) the identity of all those persons responsible for the management of the applicant and its payment service activities where it is not a corporate body or where other individuals perform these activities in addition to the directors of a corporate body; and

c) evidence that these individuals are of good repute (in order to satisfy the fitness and propriety test).

3.117 In the case of a small PI that only provides payment services, this will mean the applicant is likely to be required to complete the relevant PSD Individual forms for each and every director and manager (to the extent where the role of the manager is directly relevant to payment services). In the case of small PIs that carry on activities other than just payment services, the applicant is likely to be required to complete the relevant PSD Individual forms for those persons with responsibility for running the applicant's payment services activities. For example, we would not expect a procurement manager whose responsibility is limited to sourcing and purchasing goods and services for the applicant to seek approval as a PSD Individual.

Assessing reputation – fitness and propriety

3.118 The first stage in the assessment process is the completion of the PSD Individual form. We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources.

We may ask for more information if required. **We attach considerable importance to the completeness and accuracy of the PSD Individual form. If the applicant is in any doubt about whether or not any information is relevant, it should be included.**

3.119 We consider the term 'of good repute' to include the essential factors relating to fitness and propriety set out above in relation to controllers. This means that we will consider the same essential factors, set out in paragraph 3.126, for all directors and all persons who are or who will be responsible for the management of the small PI or its payment services activities.

3.120 We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required. We require the disclosure of spent and unspent criminal convictions and cautions unless the relevant conviction or caution is protected. ~~Additionally, where there is power to do so we will also require the disclosure of all convictions and cautions that are spent.~~[8]

3.121 In accordance with our overall approach to implementing the PSRs, we will take a risk-based and proportionate approach when making our assessment. We will consider the nature and size of the business and the payment services the firm is seeking to perform.

3.122 If a matter comes to our attention which suggests that the person might not be fit and proper, we will take into account the above factors when determining how relevant that information is.

3.123 During the application process, we may discuss the assessment of the candidate's fitness and propriety informally with the firm and may retain any notes of those discussions.

3.124 The factors that we will have regard to when making the fit and proper assessment are:

- honesty, integrity and reputation;
- competence and capability; and
- financial soundness.

3.125 Examples of the matters we will consider for each factor are set out below. However, it is not possible to list all the matters that would be relevant to a particular application or individual.

Honesty, integrity and reputation

3.126 While it is impossible to list every fact or matter that would be relevant to the fitness and propriety of a PSD individual, the following are examples of factors that we will consider in determining the honesty, integrity and reputation of an individual. The matters that we will have regard to include, but are not limited to the following.

- Whether the person has been convicted of any criminal offence particularly of dishonesty, fraud, or financial crime.

[8] The relevant legislation: the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)(Scotland) Order 2013.~~Where disclosure is subject to the law of England and Wales we exercise the power conferred under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to require the disclosure of all convictions and cautions that are spent. Where disclosure is subject to the law of Northern Ireland we exercise the power conferred under the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 to require the disclosure of all convictions that are spent. If an equivalent power is provided to us where the law of Scotland applies, our approach to the disclosure of spent convictions and spent alternatives to prosecution will be on equivalent terms.~~

- Whether the person has been investigated for any criminal offence. This would include where an individual has been arrested or charged *whether or not* the investigation / arrest / charge led to a conviction.
- Whether the person has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a firm, particularly a PI. This would include any findings by ~~the FSA~~us, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office etc.) that the individual has breached or contravened any financial services legislation. The regulatory history of the firm or individual is therefore likely to be relevant.
- Whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by ~~the FSA~~us, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies (such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office etc).
- Whether the person has been refused membership, registration or authorisation of a professional organisation or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body.
- Whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.
- Information (including relevant shareholdings) relevant for assessing potential conflicts of interest with another entity.
- Whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards. We will consider matters that may have arisen in the UK or elsewhere.

3.127 The 'relevant' matters we refer to above will include offences under legislation relating to companies, banking or other financial services, serious tax offences or other dishonesty, insolvency, insurance, money laundering, market abuse, misconduct or fraud.

3.128 The applicant firm should tell us of all potentially relevant matters, but we will consider the circumstances in relation to the requirements and standards of the PSRs. For example, a conviction for a criminal offence will not automatically mean an application is rejected. We treat each individual's application on a case-by-case basis, taking into account the seriousness of, and the circumstances surrounding, the offence, the explanation offered by the convicted individual, the relevance of the offence to the proposed role, the passage of time since the offence was committed and evidence of the individual's rehabilitation.

3.129 If a firm is not sure whether something may have an impact on an individual's fitness and propriety, the information should be disclosed. The non-disclosure of material facts is taken very seriously by us as it is seen as evidence of current dishonesty. If in doubt, disclose.

Competence, capability and experience

3.130 In determining an individual's competence, capability and experience, we will have regard to whether the individual has the knowledge, experience and training to be able to provide payment services.

3.131 The level of experience, knowledge and training should be proportionate to the nature, complexity and scale of risk inherent in the business activity of the firm.

Financial soundness

3.132 In determining good repute, we will take into account an individual's financial soundness and we will consider any factors including, but not limited to:

- whether the individual has been the subject of any judgement debt or award in the UK or elsewhere, that remains outstanding or was not satisfied within a reasonable period; or
- whether the individual has made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been an adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restriction order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.

3.133 We will not normally require the individual to supply a statement of assets and liabilities. The fact that an individual may be of limited financial means will not, in itself, affect their suitability to perform payment services activities.

Close links (regulation 13(4C))

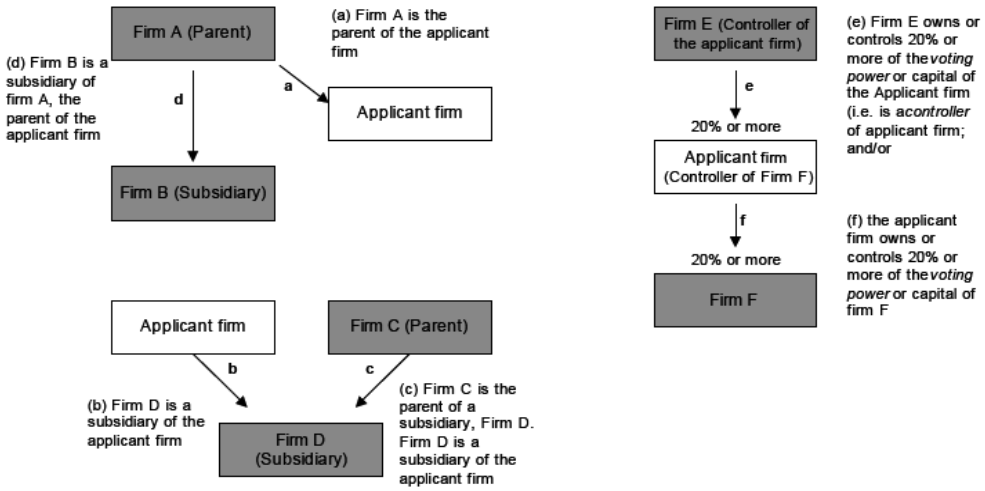
3.134 Applicants that are body corporates must satisfy us that (broadly speaking) any 'close links' it has are not likely to prevent the effective supervision by us of the applicant/firm or, where a close link is subject to the laws (or other provisions) of a territory outside of the EEA, the laws of the foreign territory (and/or deficiencies in their enforcement) would not prevent effective supervision by us of the applicant/firm.

3.135 A close link is defined as:

- a parent undertaking of the applicant;
- a subsidiary undertaking of the applicant;
- a parent undertaking of a subsidiary undertaking of the applicant;
- a subsidiary undertaking of a parent undertaking of the applicant;
- an owner or controller of 20% or more of the capital or voting rights in the applicant; or
- an entity of which the applicant owns or controls 20% or more of the capital or voting rights.

3.136 The application should include details of any persons meeting the above criteria, as set out in the form. We will then assess the nature of the relationship against the conditions for authorisation. If an individual form is submitted for a person that has a qualifying holding, a controller form will not be required for that person.

3.137 The following diagram sets out the types of relationships between firms and individuals that we consider to be close links. Shaded boxes are all close links of the relevant applicant firm.



Other information requirements

Safeguarding arrangements

3.138 Small PIs can choose to comply with safeguarding requirements in order to offer the same protections over customer funds as authorised PIs must provide. Where they choose to comply, the requirements are the same as those for an authorised PI (please refer to the information on safeguarding for authorised PIs in Part I above and *Chapter 10 – Safeguarding*).

3.139 The application pack for registration as a small PI will ask the applicant if they will be complying with the safeguarding arrangements. If so, applicants will be required to explain their procedures and methodology. This information will also be required in the annual reporting return *(see Chapter 13 - Reporting).*

3.140 If the applicant is already registered with us (or there is an outstanding application to register the applicant) as an agent of another Payment Institution, we will expect an explanation why direct registration in the applicant's own right is also being sought. In particular we will wish to understand how business being carried out in the applicant's own name will be segregated from that being carried out under its agency registration. This explanation should be supplied along with the application form.

Decision making

3.141 We will make a decision to either accept or reject the application once we have received all the required information (see paragraphs 3.15/3.88). The decision-making process is described in Part III of this chapter.

Part III: Decision-making process

3.142 Having assessed all the information provided, we will make a decision to either approve or reject the application. This decision will be notified to the applicant, along with instructions for the appeal process, if relevant.

Timing (regulation 9(1) and (2))

3.143 We have to make a decision on a complete application within three months of receiving it. An application is complete only when we have received all the information and evidence needed for us to make a decision. We will let the applicant know if we need more information.

3.144 In the case of an incomplete application, we must make a decision within 12 months of receipt. However, if that date is reached and discussions with the firm have not resulted in us receiving all the information we need to make our decision, it is likely that an incomplete application will result in a refusal. This is because it is unlikely we will have been able to satisfy ourselves that the applicant has met the authorisation/registration requirements.

~~3.145 We maintain service standards for processing times for other activities that we regulate, which are generally shorter than those required under the PSRs. However, as our processes have not been fully developed or tested under normal operating conditions, we are unable to make such commitments at this stage. We will publish our PSR service standards and update this document when these become available.~~

Withdrawal by the applicant (regulation 9(3))

~~3.146~~3.145 An application may be withdrawn by giving us written notice at any time before we make a decision. The application fee is non-refundable.

Approval (regulation 9(5) and (6))

~~3.147~~3.146 If we decide to grant an application we will give the applicant notice of that decision. This notice will specify the payment services for which approval has been granted, requirements (if applicable) and the date from which it takes effect.

~~3.148~~3.147 The PSRs allow us to vary the types of payment services that a PI is ultimately approved to carry out from those requested in the application and to apply requirements to the PI as a condition of authorisation or registration that we consider appropriate (regulation 7). This may include requiring the firm to take a specified action, refrain from taking specified action (for example, not to deal with a particular category of customer) or relate to its relationship with its group or other members of its group. We may also specify the time that a requirement expires.

~~3.149~~3.148 In accordance with regulation 7(4), where an applicant carries out non-payment services business and we feel that the carrying on of this business will, or is likely to, impair our ability to supervise the firm or its financial soundness, we can require the applicant firm to form a separate legal entity to perform payment services.

~~3.150~~3.149 We will update the online register as soon as practicable after granting the authorisation or registration. The register will show the contact details of the firm, the payment services it is permitted to undertake, and the names of any agents. If the firm is authorised and has taken up passporting rights to perform payment services in another EEA State, then these will also be shown.

Refusal (regulation 9(7) to (9))

~~3.151~~3.150 We can refuse an application when the information and evidence provided does not satisfy the requirements of the PSRs. 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.

~~3.152~~3.151 Applicants can make oral or written representations. If oral representations are required, we should be notified within 2 weeks of the warning notice, so that arrangements can be made for a meeting within the 28 day deadline.

~~3.153~~3.152 If no representations are made, or following them we still decide to refuse the application, we will give the applicant a decision notice. If a firm wishes to contest the decision, they may refer the matter to the Upper Tribunal (Financial Services)~~Financial Services and Markets 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 firm) and then issue the final notice.

~~3.154~~3.153 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 firm or prejudicial to the interests of consumers.

4. Changes in circumstances of authorisation or registration

4.1 This chapter describes the notifications that authorised and small PIs need to make to us as part of their ongoing authorisation or registration. It is divided into three parts.

- Part I – Notifications applicable to authorised and small PIs.
- Part II – Notifications applying only to authorised PIs.
- Part III – Notifications applying only to small PIs.

Introduction

4.2 PIs need to provide us with two types of information while they are being regulated – we categorise these as 'reporting' and 'notifications'.

4.3 Reporting information is the information we need on a regular and periodic basis to comply with our supervisory and EU reporting obligations. Reporting requirements are discussed in *Chapter 13 – Reporting*.

4.4 The subject of this chapter is 'notifications'. Notifications are what PIs need to send us when there is a change in the information they have already provided.

4.5 There are specific notification requirements in relation to agents (for both authorised and small PIs) and passporting (authorised PIs only). These are covered in *Chapter 5 – Appointment of agents* and *Chapter 6 – Passporting.*

Types of notifications and timing

4.6 The PSRs contain requirements in relation to notifications of changes in specific circumstances, as well as a general requirement in regulation 32.

4.7 The general requirement is that where it becomes apparent to a PI that there is, or is likely to be, a significant change in circumstances, which is relevant to its fulfilment of the conditions for authorisation or registration, it must provide us with details of the change without undue delay. We would generally consider 'without undue delay' to mean within 28 days of the change occurring at the latest.

4.8 Regulation 32 also requires that in the case of a substantial change which has not yet taken place, the PI must provide details of the change in good time before the change takes place. A 'substantial change' is, in our view, one that could impact on either the firm's ability to meet the conditions for remaining authorised or registered, or the way we would supervise the firm. 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 'in good time'. However, the notification period will depend on the circumstances of the change and firms should make efforts to notify us as soon as possible.

How to notify us

4.9 Notifications must be made using the form available on the payment services section of our website, or, where a form is not provided, by written confirmation to our Customer Contact Centre .

Different notifications for authorised and small PI

4.10 Not all notification requirements apply to both authorised and small PI. This is mostly due to authorised PIs having to meet more initial conditions that could change over the life of the business. Although most of the notification requirements that apply to a small PI also apply to an authorised PI, some do not. To help PIs 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 both authorised and small PIs, Part II describes the notification requirements that only apply to authorised PIs, and Part III describes the notification requirements that only apply to small PIs.

Part I: Notifications applicable to authorised and small PIs

4.11 Changes in the information set out below will require a notification to us.

Name, contact details and standing data (including firm name and contact details)

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

- legal name (registered name, in the case of an authorised PI);
- trading name (if applicable);
- principal place of business;
- overseas registered offices (if applicable);
- primary compliance contact;
- accounting reference date; and
- website and email address.

4.13 The notification should be made using the form available at: ~~http://www.fsa.gov.uk/pages/Doing/Regulated/banking/psd/being/data/index.shtml~~www.fca.org.uk/paymentservices and should include the details of the proposed change and the date on which the firm intends to implement the change.

Significant changes to the programme of operations

4.14 We would expect to be notified by the PI of any significant changes to the business. This may include proposed restructuring, reorganisation or business expansion that could have a significant impact on the firm's risk profile or resources.

Qualifying holdings

4.15 We consider changes in qualifying holdings 'significant' in relation to changes in the circumstances of authorisation or registration. Therefore we expect to be notified of any changes to qualifying holdings in good time before the change takes place, which we would expect in most cases no more than 28 days. There may be particular circumstances where we would expect to be notified more promptly and you should contact ~~your usual supervisory contact~~ the Customer Contact Centre ~~at the FSA~~ for further guidance.

4.16 If we consider that the proposed change has an adverse impact on the PI's fulfilment of the conditions for authorisation or registration, or that the persons or entities who propose to acquire a qualifying holding (also referred to as 'controllers') are not suitable, we will advise the firm of our concerns. If the change then goes ahead and we believe any of the relevant conditions of regulations 10 or 11 are met, we may take action to cancel the authorisation or registration of the PI and remove it from the register using our powers to cancel authorisation or registration under regulation 10, or to impose requirements on a PI's authorisation or registration under regulation 11.

4.17 Notification should be on the appropriate 'Application for a Change in Qualifying Holding' form, which is available on the payment services section of our website. For more information on qualifying holdings see Part I, *Chapter 3 – Authorisation and registration* (this chapter contains specific important information about our approach to the assessment of controllers / qualifying holdings).

Directors/persons responsible for management

Appointment/removal

4.18 Changes to the directors or persons responsible for management of either the PI or the payment service activities of the PI are regarded as a significant change. Appointments should be notified to us before the change takes place, and removals no later than seven working days after the event.

4.19 Notification of a new appointment should be on the 'PSD individual form', available on the payment services section of our website, and should include all the information required for us to assess the individual against the requirement in regulations 6 and 13 to be of good repute and possess appropriate knowledge (see Part I, *Chapter 3 – Authorisation and registration*). An individual who is a member of the management staff that moves from being a non-board member to a board member will need to resubmit the PSD individual form and answer the fitness and propriety questions in section 5.

4.20 A PI must also notify us of any changes in the details of existing PSD individuals, such as name changes and matters relating to fitness and propriety. It should do this using the 'Notification of changes to PSD individual' form, which is available on the payment services section of our website.

4.21 If we consider that the proposed change has an adverse impact on the PI we will advise the firm of our concerns. If the change then goes ahead and we believe that any of the relevant conditions of regulation 10 relating to cancellation of authorisation or registration are met, we may take action to cancel the authorisation or registration of the PI and remove it from the register, or seek to impose requirements on a PI's authorisation or registration under regulation 11.

4.22 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 potentially relating to criminal or fraudulent activities.

4.23 Notification should be on the 'Notice to remove PSD individual(s)' form which is available on the payment services section of our website. For more information on the fit and proper requirement for directors and persons responsible for management of the PI see *Chapter 3 – Authorisation and registration.*

Changes affecting the fitness and propriety of individuals

4.24 Where a PI becomes aware of information that may have an impact on the fit and proper condition applying to directors and persons responsible for management of the payment institution and/or its payment services activities (as applicable) it should notify us using the 'Notification of changes to PSD individual' form. We will examine the information, assess it against the fitness and propriety requirements explained in *Chapter 3 – Authorisation and registration*, and notify the PI of the action that we intend to take.

Variation of payment services

4.25 When a PI intends to change the payment services it is providing (either by increasing or decreasing the range) or, in the case of an authorised PI, wants to have a new requirement imposed or an existing requirement varied or removed, it needs to apply to us for approval.

4.26 Regulations 5 and 12 require that an application for variation in authorisation or registration (respectively) must:

- contain a statement of the desired variation;
- contain a statement of the payment services 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.

4.27 Applicants should complete and submit the 'Variation of PSD Authorisation/Registration' form, which is available on the payment services section of our website. This will set 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.

4.28 The application fee to vary an authorisation/registration is between £250 and £2,500, depending on the PI's existing payment services and the payment services it is applying to add. There is no fee for a PI that is only reducing its payment services.

No work will be done on processing the application until the full fee is received. The fee is non-refundable and must be paid by cheque.

4.29 We will approve the variation of payment services (or requirements, if applicable) only if the initial conditions for authorisation/registration continue to be met (regulation 6 and 13).

4.30 The process for determining a variation of payment services is the same as for initial authorisation/registration (see Parts I and II, *Chapter 3 – Authorisation and registration*) 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. Where firms want to increase the range of services they provide they will need to factor in the time needed for approval.

MLR registration

4.31 PIs should notify the Customer Contact Centre immediately ~~by email to fcc@fsa.gov.uk~~ if there is a change in the status of their MLR registration with HMRC. A PI must be MLR registered, where applicable, to remain an authorised/small PI.

Cancellation of authorisation/registration

4.32 PIs can request to cancel their authorisation or registration (regulation 10 and 14, respectively) by using the 'Cancellation of Authorisation or Registration' form, which is available on the payment services section of our website. We will remove the PI from the PSD register once we have established that there are no outstanding fees to either ourselves or the FOS, that any liabilities to customers have either been paid or are covered by arrangements explained to us, and there is no other reason why the PI should remain on the ~~FSA~~ Financial Services R~~r~~egister.

4.33 Our fee year runs from 1 April until 31 March, so if a PI applies to cancel after 31 March, full annual fees will become payable as there are no pro-rata arrangements or refunds of fees.

Change in legal status

4.34 A change in legal status (for example, limited liability partnership (LLP) to limited company) is a significant change to the authorisation/registration of the PI. Such a change is effected by cancelling the existing legal entity authorisation/registration and arranging for the authorisation/registration of the new legal entity. PIs should apply using the appropriate 'Change of Legal Status' form, which are available on the payment services section of our website.

Part II: Notifications applicable only to authorised PIs

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

Significant changes to the business plan

4.36 For authorised PIs, we expect to be advised of any proposed action that would result in an authorised PI being unable to meet its capital requirements, including but not limited to:

- any action that would result in a material change in the firm'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); or
- failures in governance arrangements and internal control mechanisms.

4.37 Authorised PIs should notify the Customer Contact Centre of any significant failure in the firm's systems or controls, including those reported to the firm by the firm's auditor.

Outsourcing arrangements

4.38 An authorised PI 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 its provision of payment services' (regulation 21(1)).

4.39 In our view, 'operational functions relating to provision of payment services' does not include the provision of any services that do not form part of the payment services (for example, legal advice, training or security) or the purchase of standardised services, including market information services.

4.40 A proposed outsourcing arrangement that is classified as 'important' under regulation 21(2) and (3) is more likely to be relevant to a PI's compliance with the authorisation conditions than one that is not 'important'. Where an authorised PI 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 32.

4.41 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

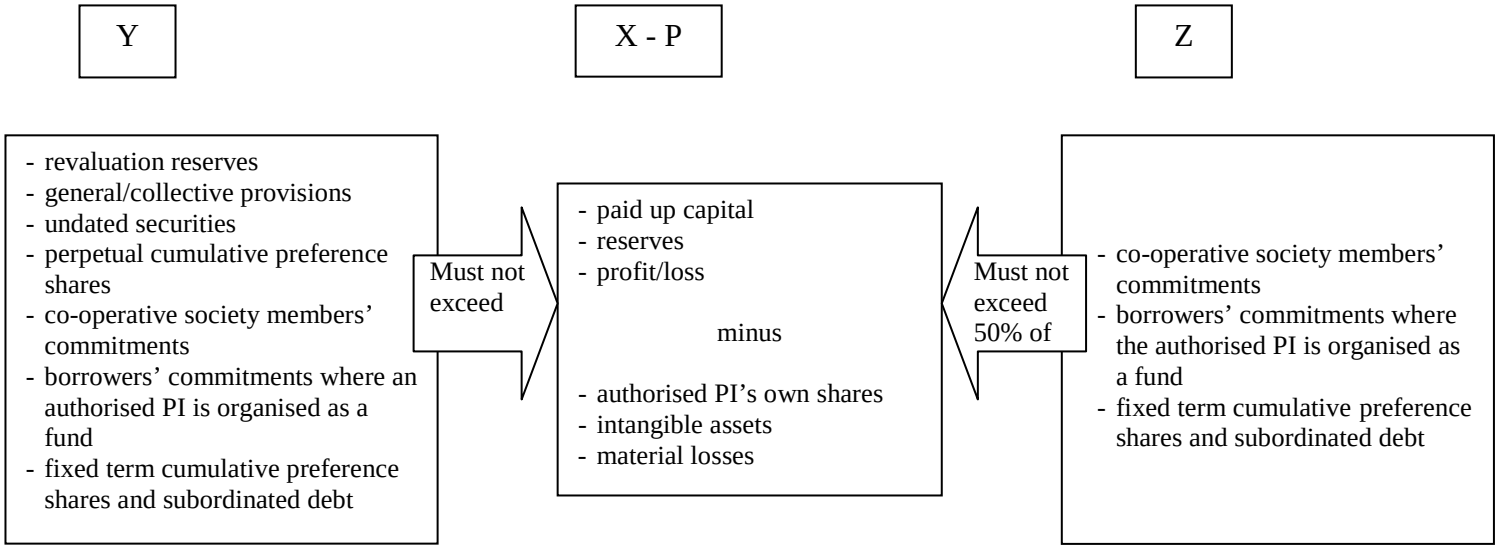
4.42 Where an authorised PI has an auditor and is aware that a vacancy in the office of auditor will arise or has arisen, it should:

- 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 reasonably practicable after that; and

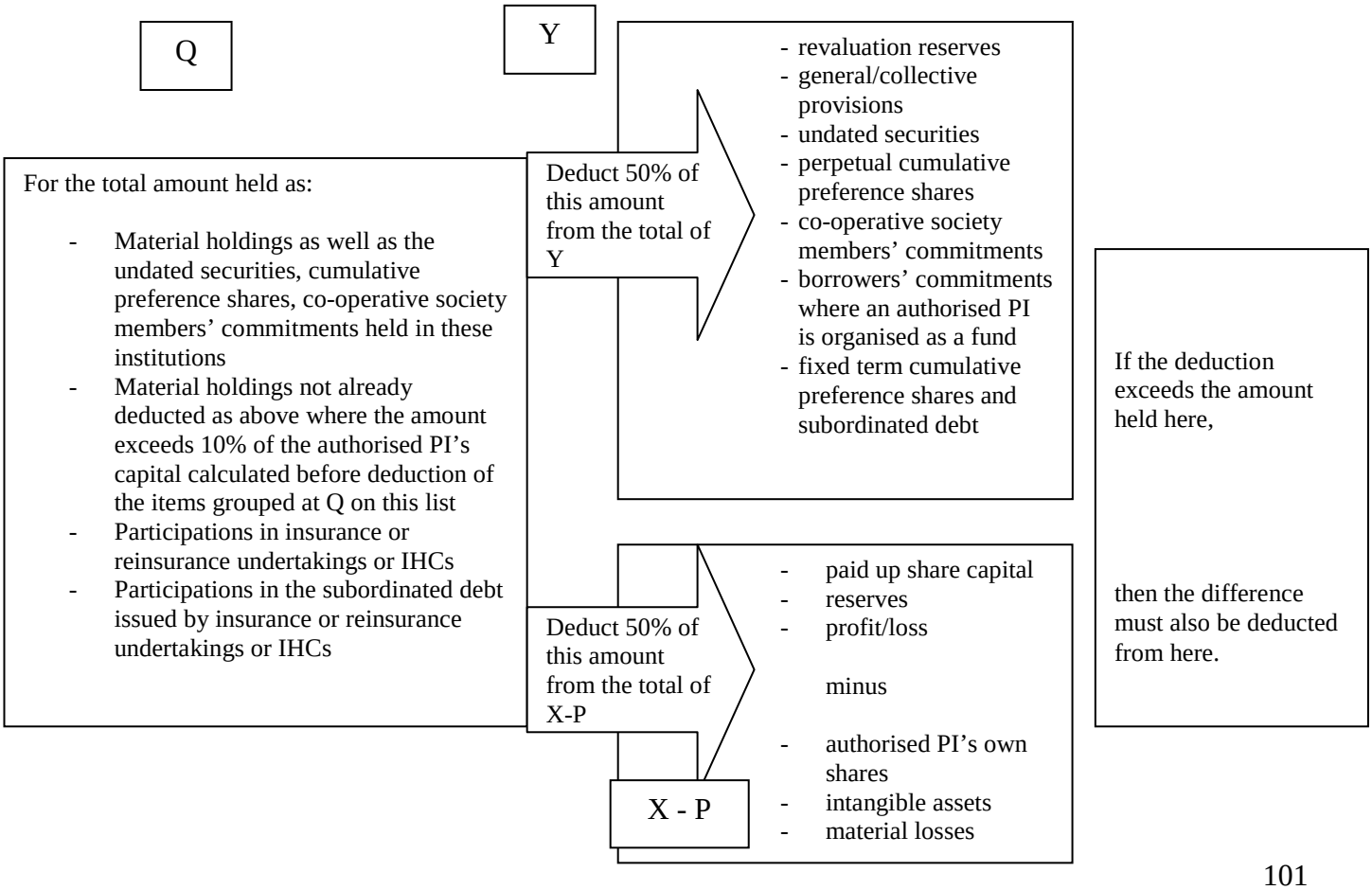
Limits

9.18 There are also limits on qualifying items which are set out in detail within the PSRs. Limits are to be applied as follows.

Firstly,



Then



Calculation of ongoing capital requirements (or 'own funds')

9.19 There are three methods of calculation of ongoing capital requirements. This section explains the three methods and the following section gives a worked example.

9.20 The authorised PI will be asked, in the application pack, to indicate which calculation method it wishes to use. However, we must ultimately direct (based on our evaluation of the authorised PI) which method is to be used, taking into account the firm's preference. The ongoing capital requirement does not apply where a business is incorporated into the consolidated supervision of another business meeting the conditions of the Banking Consolidation Directive.

Method A

9.21 Calculation method A is based on the firm's fixed overheads. The calculation is 10% of the preceding year's fixed overheads. Although if there is a material change in the firm's business since the preceding financial year, we may decide that the requirement is higher or lower. Examples of material changes include the sale of parts of the business, a business acquisition and rapid growth (typically of a new business).

9.22 Fixed overheads are defined as including expenses that do not vary as a result of output volume or sales revenue., ~~f~~For example; rent, insurance and office expenses. General accounting standards should be followed in valuing the specific expenses to be taken into account. Only expenses that are related to payment services should be taken into account when calculating the fixed overheads of firms which also provide services other than payment services (hybrid firms).

Method B

9.23 Method B is based on a scaled amount representing the firm's average monthly payment volume and then applies a scaling factor relevant to the type of payment services carried out (see the table below at 9.27 for the relevant scaling factor). Under this calculation method, the firm's ongoing capital requirement is the product of this scaling factor and the scaled average monthly payment volume. The scaled average monthly payment volume is one twelfth of the total amount of the PI's payment transactions executed in the previous year scaled in the following manner:

(a) 4% of the slice of the average monthly payment volume up to €5 million,

plus

(b) 2.5% of the slice of the average monthly payment volume above €5 million up to €10 million,

plus

(c) 1% of the slice of the average monthly payment volume above €10 million up to €100 million,

plus

(d) 0.5% of the slice of the average monthly payment volume above €100 million up to €250 million,

plus

(e) 0.25% of the average monthly payment volume above €250 million.

Method C

9.24 Method C is based on the firm's income over the preceding year with a scaling factor applied. The firm's income is derived by applying a multiplication factor to income described as the 'relevant indicator' in the PSRs. Here, the income is the sum of the firm's interest income, interest expenses, commission and fees received as well as other operating income.

9.25 These are defined as:

- 'interest income' – interest received by the authorised PI from the investments it has made whether or not made from the users' funds.
- 'interest expenses – interest payable by the authorised PI to its creditors or users where the funds stay on its payment accounts.
- 'commission and fees received' – these should be expressed in gross
- 'other operating income' – is any other kind of income which in the case of a non-hybrid firm may be linked to payment services or ancillary services as set out at regulation 27.

9.26 The multiplication factor applied to the relevant indicator is:

- 10% of income up to €2.5 million;
- 8% of income between €2.5 million and €5 million;
- 6% of income between €5 million and €25 million;
- 3% of income between €25 million and €50 million;
- 1.5% of income above €50 million.

9.27 The scaling factor applied to methods B and C is based on the type of service provided, and is the higher of the following:

Payment services (from paragraph 1 of Schedule 1)	**Scaling Factor**
Money remittance	0.5
Execution of payment transactions where payer's consent for execution is given via a telecommunication, digital or IT device and payment is made to the telecommunications, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services.	0.8
For a PI authorised to provide any other payment service.	1.0

9.28 When calculating the ongoing capital requirement, for PIs that have not completed a financial year of business, the figure for the preceding financial year should be taken as the projected figure the firm has submitted in its business plan when the PI made its application for authorisation (subject to any adjustments that we have required).

9.29 We may direct a PI to hold capital up to 20% higher or 20% lower than the outcome of its ongoing requirement calculation, based on our evaluation of the authorised PI. The evaluation may take

into account risk management processes, risk loss database or internal control mechanisms, if available and as we consider appropriate. We may make a reasonable charge for this evaluation. The details are set out in paragraphs 12 to 13 of Schedule 3.

Application of accounting standards

9.30 Where there is a reference to an asset, liability, equity or income statement, the authorised PI must recognise that item and measure its value in accordance with the following (as applicable to the authorised PI for its external financial reporting):

- Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by the Accounting Standards Board;
- Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Accounting Standards Board;
- International accounting standards issued by the IASB;
- International Standards on Auditing (UK and Ireland);
- The Companies Act 2006.

The exception is where the PSRs provide for a different method of recognition, measurement or valuation.

Part III

9.31 This is a worked example showing Firm X's capital resources and capital requirements

Payment services firm: Firm X

- Firm X carries out one or more of the activities specified in paragraph 1(a) to 1(e) of Schedule 1
- Its payment volume in the prior 12 months was £96m. This is for all payment transactions in all currencies and not just those within the EEA.
- The current EUR to GBP exchange rate is €1 = £0.80
- Its current balance sheet and income statement for the prior 12 months are set out below

Current balance sheet (£,000)

Assets	
Cash	1000
Property and equipment	8000
Intangible assets	600
Investment in financial subsidiary	400
Other investments	1000
Other assets	1000
Total assets	*12000*
Liabilities	
Unsubordinated creditors	7600
Specific provisions	2000
10 year subordinated debt	400
Total liabilities	*10000*
Equity	
Called up ordinary share capital	80
Share premium account	40
Perpetual cumulative preference shares	200
Revaluation reserve	40
Profit and loss reserves (verified)	1640
Total equity	*2000*

Income statement for prior 12 months (£,000)

Commissions and fees received	1700
Other operating income	300
Net income	*2000*
Discretionary staff bonuses	140
Other variable expenditure	600
Fixed overheads	1000
Profit before taxation	*260*
Taxation	60
Profit for the financial year	*200*

Calculation of the initial capital and meeting the initial capital requirement for Firm X

Calculating the initial capital requirement

Paragraph 2 of Schedule 3 to the PSRs sets out the calculation of the initial capital requirement. For firms that conduct the services in paragraph 1 (a) to 1(e) of Schedule 1, the initial capital requirement is fixed at €125,000.

Initial capital requirement of firm X in sterling = €125,000 * 0.8
= £100,000

Meeting the initial capital requirement

Paragraph 1 of Schedule 3 sets out the items of capital that can be included in 'initial capital' for the purposes of meeting the requirement. It only permits items grouped as X in the 'Qualifying Items' diagram above. In summary, the items which are permitted are:

- paid up capital
- profit/loss and reserves

Using the above and the balance sheet of firm X, its initial capital can be calculated as follows.

Initial capital of firm X= called up share capital + share premium account + profit/loss
= 80,000 + 40,000 + 1,640,000
= £1,760,000

Paragraph 2 of Schedule 3 requires that applicants for authorisation have initial capital that exceeds the initial capital requirement. Firm X's initial capital of £1,760,000 exceeds its initial capital requirement of £100,000 and so it meets this requirement.

Calculation of the ongoing capital requirement and meeting the ongoing capital requirement for Firm X

Calculating the capital requirement

Paragraph 11 of Schedule 3 requires that PIs must hold capital to meet the capital requirement which must be calculated in accordance with Method A, Method B or Method C set out above.

Method A (Paragraph 16 of Schedule 3)
Under this method the firm's requirement is based on its prior year's fixed overheads. Using Firm X's prior year income statement:

Method A capital requirement:

10% of prior year's fixed overheads	10% * £1,000,000	£100,000

Method B (Paragraph 17 of Schedule 3)
Under method B the firm's requirement is based on its prior year's payment volume. This is the total volume of payment transactions in all currencies not just those within the EEA. Firm X had a payment volume of £96m in the prior 12 months and so its requirement under this method is calculated according to paragraph 17 of Schedule 3 as follows.

Method B capital requirement:

Annual payment volume converted from £ to €	£96m ÷ 0.8	€120m
Scaling factor for the type of payment services carried out by Firm X	1	
Average monthly payment volume	€120m ÷ 12	€10m
Application of the elements set out in the PSRs to the average monthly payment volume and the scaling factor	(4% x €5m) + (2.5% x €5m) x 1	€325,000
Capital requirement converted from € to £	€325,000 x 0.8	£260,000

Method C (paragraph 18 of Schedule 3)
Under method C the firm's requirement is based on its income in the prior year.

Method C capital requirement:

Income in prior 12 months	£2m	
Scaling factor	1	
Application of multiplication factor of 10% and scaling factor to income	(10% x £2m) x 1	£200,000

Meeting the capital requirement

Paragraphs 3 to 10 of Schedule 3 sets out the elements of capital that qualify for inclusion in capital, the limits applied to the inclusion of some of these items and the deductions that must be made. It is this definition of capital that must be used in meeting the capital requirement.

Using those paragraphs, the own funds for Firm X will be calculated as follows:

Qualifying items

Paid up share capital & share premium but excluding cumulative preference shares	80 + 40	120
Reserves and profit/loss		1,640
Revaluation reserves		40
Cumulative preference shares		200
Subordinated loan capital		400
Total Qualifying items	£120,000 + £1,640,000 + £40,000 + £200,000 + £400,000	£2.4m

Deductions

Intangible assets		600

Holdings in the shares of financial institutions		400
Total deductions	£600,000 + £400,000	£1.0m

Limits on qualifying elements

Paragraph 8 of Schedule 3 sets limits based on three separate amounts A, B and C. These amounts are calculated as follows:

A (total of items grouped as Y above)	40 + 200 + 400	640
B (total of items grouped as X above less total of items grouped as P above)	120 + 1640 – 600	1160
C (total of items grouped as Z above)		400

The limits in paragraph 8 are that A must not exceed B and C must not exceed 50% of B. If the limits are exceeded, then qualifying elements of capital need to be excluded in the capital calculation. For Firm X, neither of these limits are exceeded.

Capital for Firm X:

Capital (qualifying items minus deductions minus amounts excluded due to limits)	(£2.4m - £1.0m) - £0m	£1.4m

Firm X therefore has capital in excess of the capital requirement calculated under method A (£100,000), B (£260,000) or C (£200,000).

10. Safeguarding

Introduction

10.1 This chapter explains the safeguarding requirements that authorised PIs must comply with and that small PIs can choose to comply with.

10.2 All authorised PIs are required to comply with the safeguarding requirements in regulation 19. Small PIs can choose to comply with safeguarding requirements in order to offer the same protections over customer funds as authorised PIs must provide. If a small PI does choose to safeguard it will need to apply the same level of protections as are expected of an authorised PI, as described in this chapter. We will expect a small PI to tell us, if it is choosing to safeguard funds, in its application for registration and in annual reporting returns.

10.3 If a small PI decides to begin safeguarding funds after it has been registered, or alternatively, if a small PI which has advised us that it has chosen to safeguard at the time of registration decides that it will cease doing so, ~~the FSA~~it should ~~be~~ advise~~d~~ us of this as soon as possible through the Customer Contact Centre. ~~(fcc@fsa.gov.uk)~~

Purpose of safeguarding

10.4 The PSRs impose safeguarding requirements to protect customer funds received for the provision of a payment service where they are held by a PI overnight or longer. They do this by ensuring that those funds are either segregated from the PI's working capital and other funds, or are covered by an appropriate insurance policy or third party guarantee. On the insolvency of a PI, claims of payment service users are paid from the asset pool formed from these funds in priority to all other creditors (other than in respect of the costs of distributing the asset pool).

What funds need to be safeguarded?

10.5 The requirement to safeguard applies to 'relevant funds'. These are sums received:

- from, or for the benefit of, a payment service user for the execution of a payment transaction; and
- from a payment service provider for the execution of a payment transaction on behalf of a payment service user.

10.6 This means that safeguarding extends to funds that are not received directly from a payment service user, but includes, for example, funds received by a PI from another payment service provider for the PI's payment service user.

10.7 Funds relating to a particular payment transaction only need to be safeguarded if they exceed £50 (in which case the full amount must be safeguarded, not just the amount by which the funds exceed the £50 threshold). PIs may, however, choose to safeguard amounts beneath this threshold, in which case the insolvency protections will apply.

10.8 Some PIs also receive funds from the public in respect of other services. Examples include, a foreign exchange business that also provides money transmission services, or a telecommunications network operator which receives funds from the public both for the provision of its own services (for example airtime), and for onwards transmission to third parties. Such 'hybrid' businesses are only required to safeguard the funds received for the execution of a payment transaction. However, sometimes such hybrid businesses will not know the precise portion of customer funds attributable to the payment transaction and to the non-payment service

provided, or the amount may be variable. In these circumstances, a PI may make a reasonable estimate on the basis of relevant historical data of the portion that is attributable to the execution of the payment transaction and so must be safeguarded. The firm would, if asked, need to supply us with evidence that the proportion actually safeguarded was representative. Relevant data might include the portion generally attributable to payment transactions by the customer in question or by similar customers generally.

10.9 In our view, a PI that is carrying out a foreign exchange transaction independently from its payment services (see further Q12 in PERG 15.2) does not need to safeguard funds received for the purpose of the foreign exchange transaction. Indeed, where a PI is using the segregation method of safeguarding (see below), the foreign exchange transaction funds will need to be segregated from the payment service transaction funds. Once the foreign exchange transaction has taken place, if the PI pays those funds on to a third party on behalf of its client, and this amounts to a payment service, the PI will need to safeguard the currency purchased in the foreign exchange transaction as soon as it receives it. To be clear, in our view in making a payment of currency to its customer in settlement of a foreign exchange transaction the FX firm will be acting as principal in purchasing the other currency from its customer. This does not constitute a payment service. Firms combining payment and non-payment services in this way will need to be clear in their prior information to customers when they are providing regulated payment services (and therefore funds will be safeguarded) and when they are not.

10.10 Firms which operate outside the EEA should note that transactions where both the payer and the payee are outside the EEA (for example a transfer between Japan and Hong Kong) are outside the scope of the safeguarding provisions of the PSRs, and as such funds received for these transactions should not be included in segregated funds.

10.11 It is important that the availability of an asset pool from which to pay the claims of payment service users in priority to other creditors in the event of the insolvency of a firm is not undermined by the firm improperly mixing funds, assets or proceeds received or held for different purposes. For example, if an account that a firm holds with a credit institution is used not only for holding funds received for the execution of payment transactions but also for holding funds received for other activities (such as foreign exchange), this is likely to corrupt the segregation. ~~and~~ This may result in the protection for payment service users in regulation 19 not applying. As a further illustration, a firm may safeguard funds received for the execution of payment transactions by covering them with an insurance policy or guarantee. However, ~~but~~ if the account into which the proceeds of the insurance policy or guarantee are payable is also used for holding funds for other activities, or for holding the proceeds of another insurance policy taken out to safeguard funds received for another purpose, then this may mean that the proceeds are not considered to be an 'asset pool' subject to the special rules about the priority of creditors in the event of an insolvency.

How must funds be safeguarded?

10.12 There are two ways in which a PI may safeguard relevant funds.

The segregation method

10.13 The first method requires the PI to segregate the relevant funds from all other funds it holds. This requirement applies as soon as funds are held by a PI.

10.14 If relevant funds continue to be held at the end of the business day after the day the PI received them, the PI must:

- deposit the relevant funds in a separate account it holds with an authorised credit institution; or

- invest the relevant funds in secure, liquid assets approved by us and place those assets in a separate account with an authorised custodian.

10.15 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 EEA firms authorised as credit institutions by their home state competent authorities. 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 which hold investments under the standards in Article 13 of MiFID.

10.16 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 PI).

10.17 The safeguarding account must not be used to hold any other funds or assets.

10.18 In our view, the effect of having to hold a separate account that only the PI may have any interest or right over the relevant funds or assets in that account (except as provided by regulation 19) is that PIs cannot share safeguarding accounts. For example, a corporate group containing several PIs cannot pool its respective relevant funds or assets in a single account. Each PI must therefore have its own safeguarding account. The PSRs do not, however, prevent PIs 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 PI has an acknowledgement from the account-holding credit institution or is otherwise able to demonstrate that the bank has no rights (for example, of set off) over funds in that account.

10.19 In order to ensure it is clear what funds have been segregated and in what way, PIs must keep records of any:

- relevant funds segregated;
- relevant funds placed in a deposit account; and
- assets placed in a custody account

10.20 Regulation 19(5)(b) requires that any such assets are approved by ~~the FSA~~us as being secure and liquid. As the safeguarding provisions in the PSRs and EMRs are very similar, for consistency we intend to use a common approach for the PSRs and the EMRs in identifying suitable assets. We have approved the assets referred to below as liquid. On this basis, these assets are both secure and liquid, and payment institutions 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.

10.21 A PI may request that we approve other assets. We will make our decision on a case by case basis, with the firm being required to demonstrate how the consumer protection objectives of safeguarding will be met by investing in the assets in question.

10.22 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.

The insurance or guarantee method

10.23 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. The policy or guarantee will need to cover all relevant funds, not just funds held overnight or longer. It is important that the insurance policy or guarantee specifically covers the areas set out here.

10.24 The proceeds of the insurance policy or guarantee must be payable in an insolvency event (as defined in regulation 19) into a separate account held by the payment institution. 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 PI). The account must not be used for holding any other funds, and no-one other than the PI may have an interest in or right over the funds in it (except as provided by regulation 19).

10.25 Neither the authorised credit institution nor the authorised insurer can be part of the corporate group to which the PI belongs.

Protection from the claims of other creditors

10.26 Where a PI that has chosen to deposit customer funds in a bank account or invest them in secure, liquid assets, is placed in administration or 'wound up' these funds shall form part of the firm's asset pool and the claims of the payment service user will be paid from the asset pool in priority to all other creditors. Regulation 19(11) ensures 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. In this case the asset pool includes all individual customer funds below £50 that the PI has chosen to safeguard voluntarily.

Systems and controls

10.27 PIs must maintain organisational arrangements that are sufficient to minimise the risk of the loss or diminution of relevant funds or assets through fraud, misuse, negligence or poor administration. This requirement is in addition to the general requirements on authorised PIs to have effective risk management procedures, adequate internal control mechanisms and to maintain relevant records, and applies to both authorised PIs and small PIs that voluntarily safeguard.

10.28 A PI's auditor is required to tell us if it believes that there is or has been, may be or may have been, a breach of regulation 19 of material significance to us, including a breach of the organisational arrangements requirement.

10.29 In our view, arrangements that PIs should have in place include the following:

- PIs should exercise all due skill, care and diligence in selecting, appointing and periodically reviewing credit institutions, custodians and insurers involved in the firm's safeguarding arrangements. PIs 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 payment service users' rights or the protections afforded by regulation 19 (for example where the local law of a third country credit institution holding a safeguarding account would not recognise the priority afforded by regulation 19 to payment service users on insolvency). PIs should also consider, together with any other relevant matters:
    - the need for diversification of risks;
    - the capital and credit rating of the third party;

- 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

- 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 it makes its decision on appropriateness, a PI should record the grounds for that decision.

- PIs should have arrangements to ensure that relevant funds received by agents are safeguarded in accordance with regulation 19.

- Where relevant funds are segregated in a different currency from that of receipt but the payment service user has not instructed the PI to convert it in this way, the PI should ensure that the amount held is adjusted regularly to an amount at least equal to the currency in which they have their liability to the payment service user using an appropriate exchange rate such as the previous day's closing spot exchange rate.

- A PI's records should enable it, at any time and without delay, to distinguish relevant funds and assets held for one payment service user from those held for any other payment service user and from its own money. They 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 accuracy and corresponds to the amounts held for payment service users.

- A PI should carry out internal reconciliations of records and accounts of the entitlement of payment service users 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 to which the reconciliation relates, to ensure the accuracy of the PI's records and accounts. Records should be maintained that are sufficient to show and explain the method of internal reconciliation and its adequacy.

- A PI should regularly carry out reconciliations between its internal accounts and records and those of any third parties safeguarding relevant funds or assets. These should be performed as regularly as is 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. In determining whether the frequency is adequate, the PI should consider the risks to which the business is exposed, such as the nature, volume and complexity of the business, and where and with whom the relevant funds and assets are held. Where a PI operates a 'net' safeguarding process – under which an equivalent amount is held in the safeguarding account, rather than each individual transaction passing through the account – it should carry out daily reconciliation. A method of reconciliation that we believe is adequate is when a PI compares and identifies any discrepancies between:

    (1) the balance on each safeguarding account as recorded by the PI 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

    (2) the balance, currency by currency, on each payment service user transaction account as recorded by the PI, 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.

- Where discrepancies arise as a result of reconciliations, PIs should identify the reason for the discrepancy and correct it as soon as possible by paying in 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, PIs should assume that the records that show that a greater amount of relevant funds or assets should be safeguarded are correct.

- Firms 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 19 or if it cannot resolve any reconciliation discrepancies in the way described.

Effect of an insolvency event

10.30 If an insolvency event (listed in regulation 19(15)) occurs in relation to an authorised PI or a small PI that is voluntarily safeguarding then, with one exception, the claims of payment services users will be paid from the relevant funds and assets that have been segregated (the 'asset pool') in priority to 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.

10.31 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 fees and expenses in relation to operating a safeguarding account.

11. Complaint handling

11.1 This chapter summarises the complaint handling requirements that apply to all payment service providers.

Introduction

11.2 Complaint handling covers three distinct areas:

- how payment service providers handle the complaints they receive from customers;
- the role of the Financial Ombudsman Service dealing with complaints where customers are not satisfied with the company's response;
- our role in handling complaints from customers and other interested parties about alleged breaches of the PSRs.

Handling complaints from customers

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

11.4 Payment service providers are subject to our rules about how they handle complaints. These rules are set out in Chapter 1 of the Dispute Resolution: Complaints sourcebook (DISP) in our Handbook.

11.5 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 FOS.

11.6 There are some 'frequently asked questions' about complaints handling on our website.

11.7 For firms such as banks, who fall under the FOS's jurisdiction for activities other than payment services, there is no difference in the arrangements except in respect of the consumer awareness rules (see below).

11.8 Firms that are only regulated by us in relation to payment services are not required to record complaints, report complaint statistics to us, or publish their complaints data. However, it is in firms' interests to retain records of complaints so these can be used to help the FOS if necessary. Firms that are regulated by us in relation to other activities must record and report on all complaints, including payment service complaints and publish a summary of their complaints data if they receive 500 or more complaints in any half-year reporting period.

Providing information about complaints procedures

11.9 The PSRs require firms 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). This means informing payment service users about the firm's own complaints mechanism and the availability of the FOS. This information can be provided using the summary details required under DISP 1.2.

- For single payment transactions, this information must be made available 'in good time 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'.

11.10 In both cases, where the contract is concluded using distance means, the information can be provided immediately after conclusion of the contract if the method used to conclude the contract does not enable earlier provision.

11.11 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 firm 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.

11.12 So, payment service providers who also undertake other types of business regulated by ~~the FSA~~us will have to operate different arrangements for payment service users from those they operate for other customers. If they wish 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 FOS

11.13 The FOS operates the out-of-court complaint and redress procedures for payment services required by the PSD.

11.14 The FOS is a statutory, informal dispute-resolution service, established under FSMA and operationally independent of the ~~FSA~~FCA. 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 FOS 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.

11.15 There are three separate jurisdictions under the FOS.

- The compulsory jurisdiction (CJ). This covers all firms authorised or registered and regulated by us and all payment service providers with UK establishments.

- The consumer credit jurisdiction (CCJ). This covers businesses (other than those covered by the CJ) licensed by the Office of Fair Trading under the Consumer Credit Act 2006. Firms covered by the CCJ will move to the CJ when they become PIs. Firms using transitional arrangements that are currently within the CCJ will remain within it in relation to complaints that relate only to consumer credit activities, but will be within the CJ for complaints that relate partly or wholly to payment services.

- The voluntary jurisdiction (VJ). This covers financial services businesses that are not covered by the CJ or the CCJ but choose to join the VJ, for instance firms providing services in the UK from overseas.

11.16 Payment transactions provided by FSMA authorised persons such as banks are already covered by the FOS under the CJ, so the PSD brings consistency for consumers by bringing all payment

transactions into the FOS's jurisdiction. Complaints about breaches of the Cross-Border Transfers in Euro Regulation[9] are also covered under the CJ.

11.17 Further information about the FOS's processes for handling complaints is available on the FOS's website.

11.18 There is also information specifically for smaller businesses http://www.financial-ombudsman.org.uk/faq/smaller_businesses.html.

Eligibility to bring complaints to the FOS

11.19 Whether or not consumers can bring complaints about a payment service provider to the FOS depends on the type of firm and, in some cases, the date of the contract or service complained about.

- Authorised credit institutions and e-money issuers:

  – Complaints about payment services or contracts agreed prior to 1 November 2009 can be referred to the FOS (subject to time limits, see DISP 2.8).

- Other payment service providers:

  – Complaints about payment services or contracts agreed at any time can be brought against these firms in relation to acts or omissions that occurred on or after 1 November 2009 (again, subject to time limits, see DISP 2.8).

Is the complainant eligible?

11.20 Access to the FOS is available to:

- consumers;
- micro-enterprises (see paragraph 11.24 below);
- small charities – annual income under £1 million at the time of the complaint; and
- small trusts – net asset value under £1 million at the time of the complaint.

11.21 A business may not bring a complaint about an activity that it conducts itself.

11.22 The full details of who is eligible to bring a complaint are set out in DISP 2.7. If a firm 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 FOS, it will determine eligibility by reference to appropriate evidence, such as accounts or VAT returns in the case of micro-enterprises.

11.23 A 'micro-enterprise' is an enterprise which:

(a) employs fewer than 10 people; and
(b) has a turnover or annual balance sheet that does not exceed €2 million.

When calculating turnover or balance sheet levels, the European Commission's monthly accounting rate of the euro may be used (see paragraph 3.99).

11.24 For a complaint about payment services 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 firms to determine whether the complainant is eligible. Payment service

[9] *[Regulation 924/2009]*

providers should have arrangements in place to check whether their customers are micro-enterprises at the time of conclusion of the contract. But if this information is not easily available, the dual test would allow a complainant instead to rely on its status at the time of making the complaint.

11.25 For other activities covered by the FOS'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.

11.26 The dual test means that where the complaint is about a number of issues, including payment services, the firm 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 at the point of concluding the contract.

Transitional arrangements for small business complainants

11.27 Until 1 November 2009, the small businesses with a group turnover of under £1 million per year were eligible to take complaints to the FOS. Implementation of the PSD has resulted in a change to the eligibility criteria, meaning that some small businesses that until that date had been eligible to take complaints to the FOS lost that right from 1 November 2009. In order to protect the position of these small businesses, the old eligibility test will apply, if necessary, for complaints about any policy or contract taken out before 1 November 2009 where the payment service provider was subject to the FOS's jurisdiction before that date.

Territorial scope of the compulsory jurisdiction

11.28 The compulsory jurisdiction covers complaints about the payment services and ancillary activities of a firm carried on from an establishment in the UK. This includes EEA-authorised PIs' UK branches or agents.

11.29 The conduct of business requirements in the PSRs have limited application to payment transactions that are not made wholly within the EEA and using an EEA currency. For example, only the value dating and availability of funds requirements apply to a payment transaction that terminates or originates outside the EEA (a one leg transaction). However, eligible complainants are still able to take complaints about these payment transactions to the FOS.

11.30 The FOS determines complaints by reference to what is fair and reasonable in all the circumstances of the case, taking into account the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, good industry practice at the relevant time. So, although complaints about transactions within or outside the scope of the PSRs' conduct of business requirements are subject to the same overall test of fairness and reasonableness in all the circumstances of the case, the test takes account of the different regulatory position.

Cross-border disputes

11.31 The FOS actively co-operates with other dispute resolution services in other EEA countries in resolving cross-border disputes. The FOS's membership of FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in the EEA, helps to facilitate this.

Complaints to the FC~~S~~A

11.32 We are required to operate procedures to allow payment service users and other interested parties to submit complaints about payment service providers' alleged breaches of the PSRs. This may be done by using the complaints form on our website. These complaints will be acknowledged and used to inform our regulatory activities (see Chapter 12). However, we do not operate a redress mechanism and so in replying to complainants, we will tell them – where appropriate – that they may be able to refer their complaint to the FOS.

Complaints about the ~~FSA~~FCA

11.33 Anyone directly affected by the way in which the ~~FSA~~ FCA has exercised its functions (other than its legislative functions) may lodge a complaint. To do so, please contact the Complaints Team by email (complaints@~~fsa.gov.uk~~fca.org.uk) or by telephone (020 7066 9870).

12. Supervision

12.1 This chapter describes our approach to our responsibilities for supervising payment service providers.

Introduction

12.2 We have designed our supervisory approach to be appropriate to the level of risk we believe the payment services market presents to consumers.

12.3 Our supervisory strategy is mainly 'complaints-led' in respect of the conduct of business rules (the rules are summarised in *Chapter 8 – Conduct of business*) applicable to all payment services providers. We explain what we mean by this below.

12.4 For authorised PIs, we use reporting as our tool to monitor compliance with the capital requirements (see *Chapter 9 – Capital resources and requirements*). The report, which is required annually, also requires information on an authorised PI's safeguarding arrangements and the number of agents it has, to provide confirmation that the necessary notification of any changes to these areas has been made to us. The reports are required within 30 days of a firm's year end.

12.5 In respect of small PIs, we require an annual report of both the volume and the value of transactions carried out. This information enables us to make a report to the Commission (as we are required to do) and to ensure that the average monthly value of transactions undertaken by a firm has not risen above the level where it can remain a small PI. We also require information on the number of agents a small PI has and whether it is voluntarily safeguarding payment service user funds. The report covers the calendar year from 1 January to 31 December, and must be submitted by the end of the following January.

12.6 In addition to the complaints-led and report-based prudential supervision described above, we may ask PIs to attend educational roadshows and make them subject to a periodic regulatory review every four years.

12.7 We encourage PIs to speak to us at the earliest opportunity if they anticipate any issues they may have in complying with the PSRs so that we can discuss with them an appropriate way forward.

Supervising compliance with the conduct of business rules

12.8 We base our supervision of compliance with the conduct of business rules primarily on information such as complaints that we receive from payment service providers' customers and other interested parties.

12.9 When we receive a complaint alleging a breach of the conduct of business rules, we consider whether we need to take any supervisory action. In most cases, we expect simply to make the complainant aware of the right to take a complaint to the FOS if they are not satisfied with the payment service provider's response. We will not mediate between the firm and the complainant; this is the role of the FOS (see *Chapter 11 – Complaint handling*).

12.10 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 payment service provider concerned, or a request for a written explanation of the circumstances of the alleged breach.

12.11 It may be that, although individual complaints are not significant, over time a particular firm seems to be consistently non-compliant. This is likely to lead us to take supervisory action.

12.12 Where themes arise from the analysis of 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 firms to understand how they are managing the particular risk identified. Findings from such visits may lead both to specific action being required by certain firms and wider guidance being given to all firms.

12.13 In any case, where we are not satisfied that a payment service provider has dealt appropriately with the causes of the non-compliance, we will discuss the matter with our Enforcement division. *Chapter 14 - Enforcement* contains further details on enforcement.

12.14 We also analyse complaints made to FOS about payment service providers and consider these in the same way as complaints made directly to us.

12.15 If the FOS refers a PI to us for non-compliance in settling an award made against it we will take supervisory action. Continued non-compliance in settling an award will result in a referral to our Enforcement division.

Information from auditors of authorised PIs

12.16 The PSRs impose an obligation on an auditor of an authorised PI to report certain matters to us that they have become aware of in their capacity as auditor of that PI. For example, if the auditor reasonably believes that there is or has been a contravention of any of the requirements of the PSRs, they must report it to us (regulation 20).

12.17 On receipt of such information, we will review and follow up with the firm and/or the auditors as appropriate.

Credit institutions and other FSMA-regulated firms

12.18 For those credit institutions and other FSMA-regulated firms who are relationship managed because of their other regulated activities, we adopt the same complaints-led approach described above, but where payment services make up a significant element of the permitted activities, we consider those activities within the ongoing risk assessment ~~and ARROW arrangements~~ for those firms.

12.19 A PI that is part of a large FSMA-authorised group is likely to be supervised as part of that group by its relationship manager.

Supervising compliance with the authorisation and registration requirements and the capital requirements of authorised PIs

12.20 We monitor compliance with authorisation, initial and ongoing capital requirements and registration requirements, by analysing the reports that we require firms to provide. These reports are described in *Chapter 13 - Reporting*.

12.21 The reports we receive are analysed and supervisory action considered where, for example, a shortfall in capital is identified. It is likely in such circumstances that we will contact the PI to

hear its 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.

12.22 In addition to analysing reports made to us by PIs, we also consider compliance with authorisation requirements in our complaints-led supervisory activity. We consider that the complaints-led approach helps 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 are an indicator of whether a firm is maintaining appropriate arrangements in relation to governance, systems and controls, and internal controls.

~~12.23 A few firms may be sufficiently active in the payment services market to suggest that they pose a greater risk than most and that the impact on the market of any shortcomings at those firms would be significant. In these cases, the firm will have a closer supervisory relationship with us, working through a relationship manager who carries out a cycle of risk assessments (every one to four years) and a risk mitigation programme proportionate to the risks identified. In these cases, the focus of the relationship will primarily be the capital and safeguarding arrangements, rather than the conduct of business rules.~~

Changes in circumstances to authorisation or registration

~~12.24~~12.23 We must be notified of changes of certain details since authorisation or registration. These are described in *Chapter 4 – Changes in circumstances to authorisation and registration*.

~~12.25~~12.24 Notifications must be made using the form provided on our website or, where a form is not provided, by written confirmation to the Customer Contact Centre.

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

~~12.26~~12.25 We prefer to discharge our functions under the PSRs by working in open and cooperative relationship with payment service providers. 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 make use of our statutory powers. These include the following.

- The power to require specified information in connection with our responsibilities under the PSRs.
- 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 PSRs. Further information on our policy on the use of skilled persons and appointment and reporting process is contained in the supervision section of our Handbook (SUP), specifically at SUP 5.3 and 5.4.
- If it appears that there is a good reason for doing so, we can appoint competent persons to conduct an investigation on our behalf.

Supervision under the Money Laundering Regulations 2007 (MLR)

12.27 The PSD brings all payment service providers under the MLR. The majority are money service businesses, which remain registered and supervised by HMRC for the purposes of the MLR. We are responsible for PIs which are merchant acquirers and credit card issuers, who need to register with us for MLR purposes, unless licensed by the OFT as consumer credit providers. We will supervise these businesses in accordance with the strategy outlined in the Approach Document for the MLR, available on our website.

12.28 Our supervision of PIs' compliance with other financial crime obligations will follow the approach set out in this chapter. We may also include them in thematic financial crime reviews.

13. Reporting

13.1 We require PIs to provide us with annual reports to help us comply with our supervisory responsibilities under Regulation 81 (see *Chapter 12 – Supervision*), the requirements for statutory accounting and audit information under regulation 20 and our own reporting requirements to the Commission. We also need data from each authorised PI to be able to calculate its periodic fee contributions.

Authorised PIs

13.2 A summary of the reporting requirements for authorised PIs is shown in the two tables below.

Report required – FSA056 (Authorised Payment Institution Capital Adequacy Return) **Frequency:** Annual. **Submission date**: Within 30 business days of firm's Accounting Reference Date (ARD). **Method of submission**: GABRIEL	
Content	**Purpose**
Part One: Capital Requirement Calculation of the capital requirement showing: • the method used, A, B or C (see Chapter 8) to calculate the capital requirement (we confirm the method to use when we grant authorisation); • financial information to evidence the actual requirement.	To confirm that the capital requirement is appropriately calculated.
Part Two: Total Capital Resources A breakdown of the authorised PI's total capital resources is required.	To demonstrate that the capital requirement is being met or to show whether there is a capital resource deficit at the reporting date.
Part Three: Supplementary Information *Audited Accounts* Confirmation required: • whether, if incorporated, the authorised PI qualifies for	To confirm whether statutory accounts need to be audited and to

the Companies House small firms audit exemption • of the date, if the authorised PI is required to submit audited accounts, the firm's statutory accounts were most recently audited;	indicate when the separate accounting information will be available.
If the authorised firm is a 'hybrid firm' with an obligation to submit separate accounts for PSD business only confirmation is required of the date these were last sent to ~~the FSA~~us.	To ensure regulation 20 (the submission of payment service only accounts by 'hybrid firms') is met – see paragraphs 13.4 to 13.6.
Safeguarding of client assets Confirmation is required of how the authorised PI safeguards its clients' funds. The following safeguarding options are available: • placed in a separate account with an authorised credit institution; • invested in approved secure liquid assets held in a separate account with an authorised custodian; • covered by an insurance policy with an authorised insurer; • covered by a guarantee from an authorised insurer; or • covered by a guarantee from an authorised credit institution.	To confirm that appropriate arrangements are in place. *(See Chapter 10 – Safeguarding for further information)*
Number of agents Confirmation is required of the number of agents the authorised PI is responsible for and has registered at the reporting period end.	To enable us to verify the information recorded on our register. If the number reported does not match the number of agents appearing on our register, then we may ask the firm for an explanation.

Separate 'Payment services business only' accounting information for authorised PIs that are 'hybrid firms' *(See paragraphs 13.4 to 13.6 below*) **Frequency:** Annual. **Submission date**: • If the accounts are audited and filed with Companies House they should be sent to ~~the FSA~~us at the same time. • If, as small firms, they are not required to file audited accounts with Companies House we expect the 'payment services business only' accounts to be sent to us within 9 months of PI's Accounting Reference Date (ARD) **Method of submission**: in paper form	
Content	**Purpose**
For authorised PIs carrying on business other than the provision of payment services separate accounting information must be sent to us showing the payment services business element only	Requirement of the PSRs (regulation 20).

Small PIs

13.3 A summary of the reporting requirements for small PIs is shown in the table below.

Report required – FSA057 Payment Services Directive Transactions **Frequency:** Annual report covering 1 January to 31 December. **Submission date**: To be submitted by the end of the following January. **Method of submission**: GABRIEL	
Content	**Purpose**
Confirmation of the number and value of payment transactions (all transactions, including one leg).	To enable ~~the FSA~~us to provide the Treasury with the necessary information so that it can report the total value of Small PI payment transactions to the Commission. To demonstrate that the PI is not exceeding the Small PI condition of registration that its monthly average

	total amount of payment transactions carried out over the preceding 12 months must not exceed €3 million
Safeguarding of client assets Confirmation of whether the small PI has decided to voluntarily safeguard its clients' funds is required. If it has chosen to do this, further confirmation is required of which of the following safeguarding methods is used: • placed in a separate account with an authorised credit institution; • invested in approved secure liquid assets held in a separate account with an authorised custodian; • covered by an insurance policy with an authorised insurer; • covered by a guarantee from an authorised insurer; or • covered by a guarantee from an authorised credit institution.	To confirm that appropriate arrangements are in place if the small PI has chosen to safeguard. *(See Chapter 10 – Safeguarding for further information)*
Number of agents The authorised PI is required to confirm the number of agents it has registered at the reporting period end	To enable us to verify the information recorded on our register. If the number reported does not match the number of agents appearing on our register, then we may ask the firm for an explanation.

Separate payment services accounting information for 'hybrid' firms

13.4 Most authorised PIs need to have their annual accounts audited but there is no obligation for those accounts to be submitted to us. However, regulation 20 requires that where an authorised PI is a 'hybrid' firm, carrying out activities other than the provision of payment services, it must provide to us separate accounting information in respect of its provision of payment services. The requirements for this are summarised in the relevant table in 13.2 above.

13.5 If the authorised PI 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.

13.6 Firms should be aware that the activities other than the provision of payment services that are subject to separate accounting information in regulation 20 include, where they are not part of the payment service, the operational and closely related ancillary services included in regulation 27(1). These include:

- ensuring the execution of payment transactions;
- foreign exchange services;
- safekeeping activities; and
- the storage and processing of the data.

Reporting process & late submission of returns

13.7 For both authorised and small PIs, our electronic reporting system (GABRIEL) will monitor when the FSA056 and FSA057 returns are due to be submitted to us and issue a reminder to each PI one month before that date. Firms should then follow the instructions on the GABRIEL system to submit their returns electronically.

13.8 Where a hybrid firm (that is, a PI that conducts both payment services and non-payment services business) has to submit separate accounting information about its payment services, this must be done manually and not via GABRIEL. In this case, no electronic reminder will be sent to the firm.

Late submission of returns

13.9 Firms must comply with the deadlines for sending regulatory data to us. Our normal data collection processes will apply[10] so firms 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 FCSA-authorised or registered firms, which is received and processed in the same way as returns from PIs will be.

The FCSA's Annual Report to the Treasury

13.10 Every year the Treasury must inform the European Commission of the number of natural and legal persons that are registered with us as small PIs and, on an annual basis, of the total amount of payment transactions executed as of 31 December in each calendar year. This information is taken from the FSA057 return.

[10] http://www.fca.org.uk/firms/systems-reporting/gabriel/help~~http://www.fsa.gov.uk/Pages/Doing/Regulated/Returns/IRR/gabriel/faqs_general/index.shtml~~

14. Enforcement

14.1 This chapter describes our enforcement approach. It is relevant to payment service providers who are subject to our enforcement action.

Our enforcement approach

14.2 Our approach to enforcing the PSRs mirrors our general approach to enforcement under the Financial Services and Markets Act 2000 (FSMA).[11] This approach is set out in Chapter 2 of the Enforcement Guide (EG).

14.3 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 its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and where appropriate, to remedy the harm caused by the non-compliance.

How are cases referred to the Enforcement division?

14.4 When we consider whether to refer a case (whether under FSMA or the PSRs) 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 firm or individual to the issues we are considering for referral.

14.5 Not all the criteria will be relevant to every case and there may be other considerations which are 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 FCSA 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 firm?
- Is there evidence that the firm/individual has profited from the action or potential breaches?
- Has the firm failed to bring the actions or potential breaches to ~~the~~ our attention ~~of the FSA~~?
- What was the reaction of the firm/individual to the breach?

14.6 The criteria may change from time to time; more information can be found on our website.

[11] Any breaches of DISP will be enforced using the normal FSMA procedures.

What tools will we use when investigating payment service providers?

14.7 Those firms familiar with FSMA will note that the PSRs allow us to use many of the powers of investigation we have under FSMA. The regulatory powers which the PSRs provide to us include the following:

- Information requirements: we may require information by serving written notice on a payment service provider or any person connected to a payment provider.
- Interviews: we may require individuals working at or connected to a payment provider to attend an interview and answer questions.
- Entry without a warrant: we may enter and inspect premises.
- 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 a payment service provider breaches the PSRs?

14.8 The PSRs allow~~s~~ us to impose penalties and censures for breaches of the PSRs and instigate criminal prosecutions against those who provide, or claim to provide, payment services but are not authorised to do so. We can also order firms to provide restitution to their customers. We can cancel or place requirements on a PI's authorisation or registration where certain criteria, outlined in the PSRs, are met. In addition to serious breaches of the PSRs, examples of the circumstances where we may cancel an authorisation include, but are not limited to, persistent non-payment of fees and levies owed to ~~the FSA~~us, non-submission of an annual return and failing to provide us with current contact information ~~to the FSA~~. Our policy in relation to how we impose penalties on firms which breach our rules can be found in DEPP 6. ~~We have adopted a penalties policy; see here for more information: www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_04.shtml~~

What process will we follow when imposing penalties or censures?

14.9 Before imposing a penalty, we will inform the person or firm that we intend to do so. We will also tell them the reasons for imposing a penalty or censure and, where relevant, its amount. 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 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 ~~Financial Services and Markets Tribunal~~Upper Tribunal (Financial Services), which is an independent judicial body. As with cases under FSMA, we may settle or mediate appropriate cases involving civil breaches of the PSRs. Both DEPP 6.7 and EG 5 contain further information on our settlement process and settlement discount scheme.

14.10 We may publish enforcement information about a firm on the register if we consider it appropriate to do so.

Where can I find more information?

14.11 EG 19 sets out more detail on the use of enforcement powers in relation to the PSRs 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.

15. Fees

15.1 We are able to levy fees to recover ~~our costs of setting up the new payment services regime and for our ongoing~~the costs of meeting our regulatory responsibilities under the PSRs. This chapter summarises our fees structure for payment service providers.

15.2 The framework is described in greater detail in the consolidated policy statement on fees that we published in May 2012, PS12/11. Chapter 6 of the paper sets out the application fees, while Chapter 14 discusses periodic (annual) fees.

15.3 ~~Each year w~~We consult on ~~FSA~~ regulatory fees and levies each year~~for the FOS, Financial Services Compensation Scheme and Money Advice Service~~. In October or November each year, we publish policy proposals for regulatory fees and levies. This is followed in February or March with consultation on the rates to be charged for the following year, and these are finalised in a combined Policy Statement, which we issue in ~~May~~ June and includes an overview of the whole fees system. Firms are invoiced from ~~June~~July. All of these publications are likely to contain proposals affecting PIs, who should look out for them on our website so they can send us their comments. The FSA's payment services fees rules have been incorporated into the FCA Handbook (see CP12/28).

15.4 Our proposed fee rates for 2013/14 ~~will be~~are set out in our consultation paper on regulatory fees and levies~~,~~ that we ~~expect to~~ published in ~~March~~ April 2013, CP13/1. We will provide feedback on the comments received and set the final rates in our consolidated policy statement in June 2013.

Fees for applications and variations of permission

15.5 The application fee for small PIs is £500. It is £1,500 and £5,000 for authorised PIs, depending on the activities for which they are seeking authorisation.

15.6 Firms are authorised or registered to provide specific types of payment services. If a firm wants to apply for a variation of these services, it must apply to us. Our current fees for such applications are set out in ~~PS11/07~~PS12/11.

Notification of agents

15.7 We make a charge of £3 per agent when firms apply (in addition to the appropriate application fee) and £3 per notification for any changes after authorisation. We charge the notification fee annually in arrears, but only if the total number of notifications in any one year is more than 100. We have the same structure of agent registration and notification fees for electronic money institutions.

Periodic fees

15.8 PS12/11 describes the tariff base for the periodic (annual) fees PIs pay in fee-blocks G.2 – G.5 and sets out the current rates. Small PIs are liable to a flat fee of £400. Authorised PIs pay a variable periodic fee based on their payment services income, with a minimum annual rate of £400.

15.9 Firms already authorised under FSMA and paying fees in the A1 fee-block are allocated to fee-block G.2 for their payment services activities and subject to a periodic fee based on the existing A.1 fee-block tariff data they already submit.

Payment services fees proposal for the FOS

15.10 Payment service providers are subject to the jurisdiction of the FOS. The Financial Ombudsman Service charges an annual levy to firms in its compulsory jurisdiction, which we collect on its

behalf. The FOS also applies case fees for the fourth and subsequent cases referred to it each year. This is collected by the FOS once it has closed a chargeable case.

15.11 For the purposes of the general levy PIs sit in industry block 11. For authorised PIs, we are using income from payment services activities as a tariff base in line with the calculation ~~for the FSA's~~of our periodic fee tariff base. For small PIs and small e-money issuers, there is a flat fee of £75 a year.

15.12 Payment service providers already subject to the FOS will continue to contribute to the general levy through their existing industry fee blocks.

16. Access to payment systems

16.1 This chapter is relevant to all PIs who wish to access payment systems and to operators of payment systems. It has been written by the Office of Fair Trading, as the competent authority for Part 8 of the PSRs.

Part 8 and the Office of Fair Trading (OFT)

16.2 Part 8 of the PSRs concerns access to payment systems in the UK. Its key aim is to ensure that authorised PIs and small PIs are allowed access to payment systems in the UK on an even playing field. Because access to payment systems is essential to the operation of many PIs, it is important that there are no unnecessary barriers to participation. Part 8 sets out the requirements for ensuring that any rules or conditions governing access are objective, proportionate and non-discriminatory, and that they do not restrict access more than is necessary to ensure the safety and stability of the system. It also prohibits certain types of rules or conditions that could:

- restrict effective participation in other payment systems;
- discriminate between different authorised PIs, or different small PIs, in relation to the rights, obligations or entitlements of participants in the payment system; or
- impose any restrictions on the basis that a person is not of a particular institutional status.

16.3 As the UK's consumer and competition authority, the OFT aims to make markets work well for consumers. A key part of making markets work well is to ensure that firms can access markets without any unnecessary barriers. Therefore, the responsibility for enforcing Part 8 falls to the OFT.

Access to payments systems

16.4 Part 8 only applies to rules on access to a payment system by authorised PIs and small PIs. Rules that prevent, restrict or inhibit access are only allowed insofar as they are necessary to protect the system against specific risks, or to protect the financial and operational stability of the system and can be applied in a way that is objective, proportionate and non-discriminatory. Rules that discriminate against individual PIs, or groups of PIs, or that restrict participation in other payment systems, are not allowed.

16.5 Part 8 does not apply to payment systems that are designated as systemically important under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 – which includes CHAPS, Bacs and the Faster Payments system (which was designated as systemically important on 27 August 2010). Part 8 also does not apply to so-called proprietary three party payment systems, which are not membership-based systems or to payment systems that serve one group of companies where one company enjoys control over others in the group (such as a group of banks). There are currently a number of payment systems in the UK that must comply with Part 8 including the UK's ATM system LINK; and the Visa and MasterCard credit and debit card systems.

Powers of the OFT

16.6 If the OFT suspects that a rule breaches the Part 8 access requirements, it can carry out an investigation, including requiring documents and information to be provided to it. Refusing to provide the information that the OFT requests can lead to a court order requiring the information to be provided. If the OFT finds that a rule breaches the Part 8 access requirements, it can impose a fine of an amount it considers appropriate on such person (or persons) as it considers appropriate. It may also give such directions as it considers appropriate to such person or persons as it considers appropriate. The directions can:

- require the person to change any rule or condition so that it no longer contravenes the law; and
- relate to the conduct of a person in implementing any rule or condition.

16.7 Anyone who thinks that a payment system which must comply with Part 8 has a rule that prevents, restricts or inhibits access beyond what is necessary to safeguard against specific risks or to protect the financial and operational stability of the payment system, or grants access on terms that are not objective, proportionate and non-discriminatory (or otherwise breaches the access requirements in Part 8) can contact the OFT at the address given at the end of this chapter.

Appeals

16.8 Appeals by 'relevant persons' against directions made by the OFT, or the levels of fines will be heard by the Competition Appeals Tribunal.

Approach of the OFT

16.9 The OFT will pay close attention to the context of any potentially restrictive rules on access. Before making a decision that a rule falls foul of the access requirements in Part 8, the OFT will conduct an investigation and if the rule could have an effect on the financial and operational stability of the system, they will consult with the Bank of England and the FSCA. The OFT will normally also consider liaising with the Payments Council, the body with responsibility for setting the strategy for the UK payments industry for schemes that come under its umbrella. Part of the Payments Council's responsibility is to ensure that access to payment systems within its membership is open. Payment systems that come under the umbrella of the Payments Council include LINK and Faster Payments. Before taking any decision that rules fall foul of the Part 8 access requirements, the OFT will give notice of its concerns to the person (or persons) it considers are responsible for the contravention.

16.10 There are a number of ways that access to a payment system can be restricted in a way that might fall foul of the Part 8 access requirements. Some non-exhaustive examples are below.

16.11 It is likely that the OFT would find a rule unnecessarily restrictive if that rule does not play an important part in the stable and secure operation of a system. For instance, a rule that had the effect of denying access to PIs who aggressively marketed themselves at the expense of other members of the system could be considered unnecessarily restrictive if it did not contribute to the stability and security of the system. A rule that prevented one organisation from processing payments for another would have to be necessary to the stability or security of the system in order for it to be acceptable.

16.12 The OFT might find a rule disproportionate if it did not take into account the relevant differences between members of a system. For instance, a rule that said that all members of a system would have to pay the same fees, regardless of usage of the system, could be disproportionate. A system that made allowance for different levels of usage, perhaps by having a sliding scale of fees for

membership might be more proportionate. This wouldn't necessarily prevent a system from having a fixed element to its pricing.

16.13 Rules insisting that users of the system use one particular supplier of services could be restrictive. Instead, a rule that says that suppliers of a service must meet certain criteria, based on their ability to supply a safe, secure service, is more likely to be acceptable. This makes it more likely that users of a service will have a choice of suppliers for, for instance, processing payments.

Guidance

16.14 The OFT has published a Question and Answer document on its website: www.oft.gov.uk. If you have any specific queries you can contact the OFT:

Tel: 0207 211 8000
Post: Payment Systems Team
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Annex 1
Useful links

Web links are provided below to useful information resources.

Legislation

Payment Services Directive

Payment Services Regulations 2009

Payment Services (Amendments) Regulations 2009

Payment Services Regulations 2012

Electronic Money Regulations 2011

FSCA Handbook

Our Handbook is an extensive document that sets out the FSA's rules and guidance for financial services. There are a few areas of the Handbook that contain rules applicable to payment services. These are as follows:

- Glossary

  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 5 2

Contains provisions on interpreting the Handbooks.

  Includes an explanation of the terms of license which allows authorised PIs to use our logo in certain circumstances.

- Fees manual (FEES)

  Contains fees provisions for funding the FSA and the FOS relevant to payment service providers.

- Banking: Conduct of Business sourcebook (BCOBS)

  From 1 November 2009, banks and building societies are also be required to comply with the conduct of business rules for retail banking in this new module of the our Handbook.

- Supervision manual (~~GEN~~SUP) – SUP 9

  Describes how people can seek individual guidance on regulatory requirements and the reliance they can place on guidance received.

- Decision Procedure and Penalties Manual (DEPP)

  Contains the procedures we must follow for taking decisions in relation to enforcement action and setting penalties.

- Dispute Resolution: Complaints sourcebook (DISP)

  Contains the obligations on payment institutions for their own complaint handling procedures. It also sets out the rules concerning customers' rights to complain to the FOS. Banks, building societies and authorised e-money issuers already have to comply with our complaints handling requirements.

The Handbook website also contains the following regulatory guides that are relevant to payment service providers:

- Enforcement Guide (EG)

  Describes our approach to exercising the main enforcement powers given to us under FSMA and the PSRs.

- Financial Crime: a guide for firms

  This contains guidance on steps firms can take to reduce their financial crime risk.

- Perimeter Guidance manual (PERG) – PERG 15

  Contains guidance aimed at helping businesses consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK.

- Unfair Contract Terms Regulatory Guide (UNFCOG)

  Explains our powers under the Unfair Terms in Consumer Contracts Regulations 1999 and our approach to exercising them.

Complaint handling

- Dispute Resolution: Complaints sourcebook (DISP)

- Frequently asked questions about complaints handling.

- Information about the FOS's processes for handling complaints.

- Information from FOS specifically for smaller businesses.

FCSA reporting system for firms

- GABRIEL is our regulatory reporting system for the collection, validation and storage of regulatory data.

Money Laundering Regulations 2007 (MLR)

Information from HMRC about compliance with the MLR.

Annex 2

Useful contact details

Financial ~~Services~~ Conduct Authority (F~~C~~CSA)

25 The North Colonnade
Canary Wharf
London, E14 5HS

Contact Centre
0845 606 9966

Consumer Helpline
0845 606 1234

Financial Ombudsman Service

South Quay Plaza
183 Marsh Wall
London, E14 9SR

0845 080 1800 or 020 7964 0500

Her Majesty's Revenue and Customs (HMRC)

National Advice Service
Written Enquiries Section
Alexander House
Victoria Avenue
Southend
Essex, SS99 1BD

0845 010 9000

The Office of Fair Trading (OFT)

Payment Systems team
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London, EC4Y 8JX

0207 211 8000

Annex 3

Status disclosure sample statements

The following are suggested statements for payment service providers 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 payment service provider's authorisation status.

Note that regulation 40 requires, with respect to framework contracts, that the customer is provided with the information specified in Schedule 4. This includes 'details of the payment service provider's regulators, including any reference or registration number of the payment service provider'.

There is also a requirement with respect to individual payment service contracts in regulation 36 (2) (e) that the payment service provider provides such information specified in Schedule 5 'as is relevant to the single payment service contract in question'. We consider that details of the regulator will be relevant information and would expect firms to make reference to their regulated status.

Firms which require authorisation under both FSMA and the PSRs should make a reference to both authorisations.

Authorised PIs

[Name] is authorised by the Financial ~~Services~~ Conduct Authority under the Payment Service Regulations 2009 [register reference] for the provision of payment services.

Small PIs

[Name] is registered with the Financial ~~Services~~ Conduct Authority under the Payment Service Regulations 2009 [register reference] for the provision of payment services.

EEA Authorised PIs

Authorised by [name of Home State regulator] and regulated by the Financial ~~Services~~ Conduct Authority for the conduct of payment services business in the UK.

~~*Small E-money Issuers*~~

~~[Name] has been issued with a small e-money issuer's certificate and is regulated for the provision of payment services by the Financial Services Authority.~~

Annex 4

Members of PSD Stakeholder Liaison Group

American Express

Association of Foreign Exchange and Payment Companies

British Bankers Association (BBA)

Building Societies Association (BSA)

Citibank

Electronic Money Association (EMA)

HM Revenue and Customs

International Association of Money Transfer Networks (IAMTN)

Mastercard

Mobile Broadband Group

Money Gram

Payments Council

Post Office Ltd

Royal Bank of Scotland

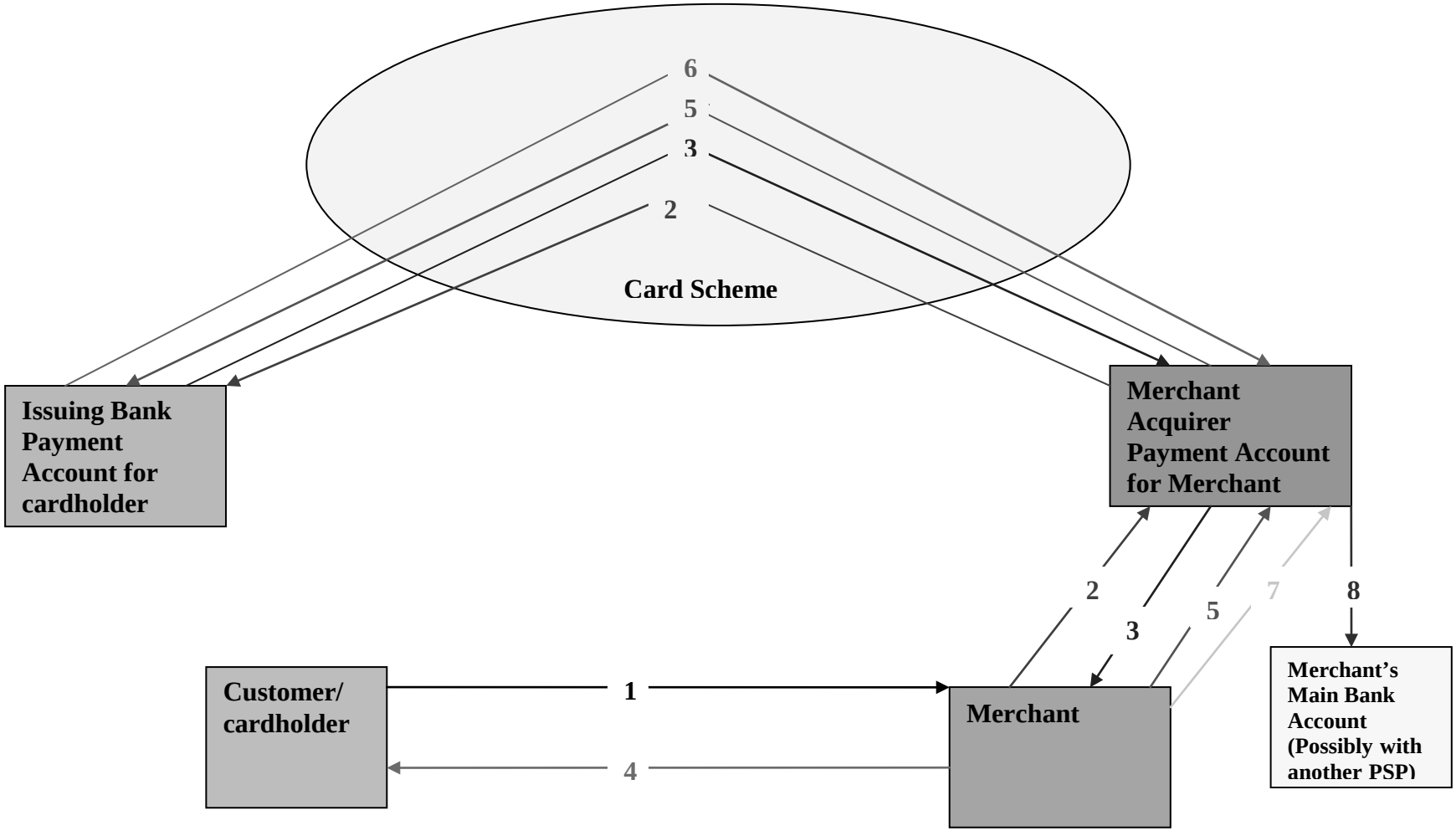
UK Money Transmitters Association (UKMTA)

Visa Europe

Western Union

Annex 5

Merchant acquiring



1) **Customer offers card for payment.**
2) **Merchant seeks authorisation from issuing bank (where required).**
3) **Issuing bank authorises payment (where required)**
4) **Merchant provides goods or services to customer**
5) **Merchant requests Acquirer to transmit payment order (Art 69(3) 'within time limits agreed between the payee and his PSP') – Acquirer requests settlement on behalf of Merchant through card scheme**
6) **Issuing bank makes payment to Merchant Acquirer through card scheme (funds held by Merchant Acquirer (in payment account in name of Merchant))**
7) **Merchant requests payment from Acquirer to his main account (may be standing instruction –at agreed frequency)**
8) **Transfer from Merchant Acquirer to Merchant's main account in accordance with contractual agreement**

Four-party card scheme

1. The above diagram sets out our understanding of the elements involved in a card transaction with a Merchant accessing the relevant card scheme through a Merchant acquirer. It shows how the Merchant acquirer operating a payment account in the name of the Merchant can hold funds due to a Merchant for a period to allow for chargebacks under the card scheme, before they are remitted to the Merchant's main operational bank account. This annex illustrates that the existing model can continue while still complying with the requirements of the Payment Services Directive in respect of execution time.

2. Under this model, the card issuer authorising the payment is not the beginning of the transaction. Rather, the first payment transaction begins when the Merchant acquirer, as the payee's (Merchant's) PSP, transmits the payment order to the payer's PSP (the card issuer). Under Article 69(3) this must be 'within the time limits ***agreed*** between the payee and his payment service provider.' So this allows them to agree how frequently such claims are made.

3. The point when the payer's PSP receives this payment order for the purposes of the execution time provisions in the PSRs will be the point at which the card issuer receives the claim. That card issuer is then responsible under regulation 70(1) to get the funds to the Merchant acquirer's account by the end of the following business day (D+1).

4. Regulations 70(5) and 73(1) then require the Merchant acquirer, as the payee's (Merchant's) PSP, to value date and make available the funds to the payee's payment account immediately. Under the model set out above, this will be the payment account it operates in its books for the Merchant. This is shown in points 5 and 6 in the diagram above. Our understanding is that Merchant acquirers already effectively run such accounts for the Merchants for whom they operate, although they are not currently labelled as payment accounts, in that they will have details of all the Merchant's transactions, and transfers to the Merchant's main operational bank account on its books.

5. In general terms there is nothing in the PSD which prevents firms from operating accounts which have some restrictions, such as minimum balances, or notice periods. In addition, given that there will be a standing instruction to transfer the funds to the Merchant's main bank account, this may be taken as a future dated instruction to transfer the funds '*on a specific day, or at the end of a certain period or on the day on which the payer has set funds at his payment service provider's disposal'* (regulation 65(4)). In this way, the funds are already the subject of a payment order, thus fulfilling the requirement that the funds are 'at the payee's disposal'.

6. So the transfer of the funds from the Merchant's payment account with the Merchant acquirer to the Merchant's main operational bank account will be a separate payment transaction. This is shown in points 7 and 8 above.

7. The funding of the cardholder's payment account is completely separate from the above process, so we have not included it.

8. We are aware that there a number of bureaux or aggregators providing merchant acquiring services in the UK whose position is not reflected in the model described above. We are currently in discussions with the card schemes and the UK industry bodies to clarify where responsibilities lie in the event of a breach by such a provider

Merchant Acquiring in Three-Party Schemes

9. A three-party card scheme is a card scheme offered by the card issuer, where both the card holder and the merchant are customers of the card issuer. Examples of such schemes are those offered by American Express and Diners Club. These schemes differ from the four-party schemes such as Visa and Master Card in that there is no need for interbank settlement, because both customers (cardholder and Merchant) hold accounts with the card issuer.

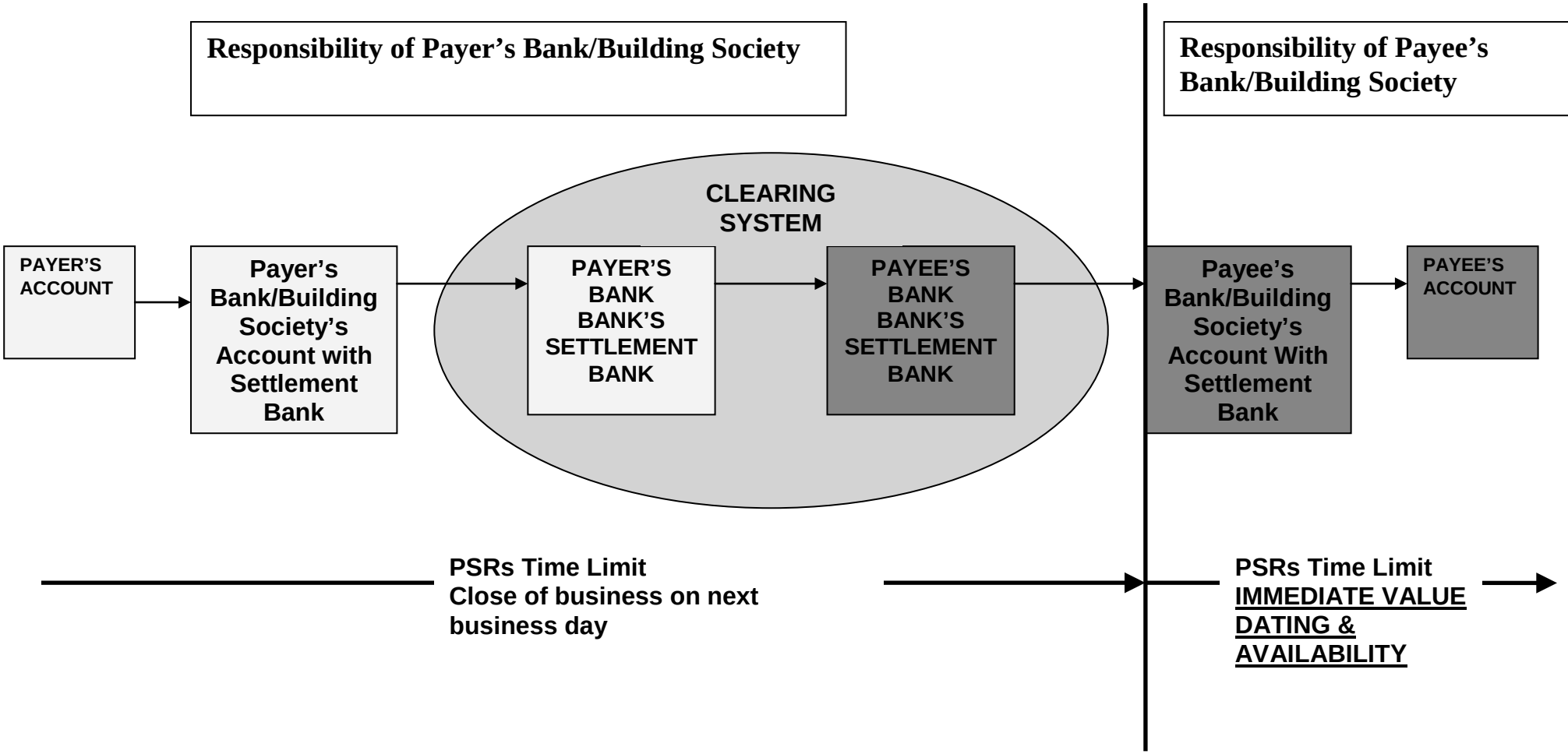
10. Transactions under a three-party card scheme are payment transactions under the PSRs, being the act of transferring funds from the payer to the payee.

11. Our understanding is that there are a number of possible organisational structures which a three-party card scheme can take, which may impact upon the particular requirements of the PSRs. Payment service providers operating three-party card schemes are therefore encouraged to contact us at an early stage to discuss their particular circumstances.

Annex 6

The Payment Process

PAYMENT PROCESS


Responsibility of Payer's Bank/Building Society
Responsibility of Payee's Bank/Building Society
CLEARING SYSTEM
PAYER'S ACCOUNT
Payer's Bank/Building Society's Account with Settlement Bank
PAYER'S BANK
BANK'S SETTLEMENT BANK
PAYEE'S BANK
BANK'S SETTLEMENT BANK
Payee's Bank/Building Society's Account With Settlement Bank
PAYEE'S ACCOUNT
PSRs Time Limit
Close of business on next business day
PSRs Time Limit
IMMEDIATE VALUE DATING & AVAILABILITY

Glossary of Terms

Many of the terms used in this document are defined in regulation 2 of the PSRs and are not repeated here. The following information is to understand this document more easily.

Financial Services and Markets Act 2000

This is the legislation that gives the ~~FSA~~ FCA its statutory powers.

Small charity

For the purposes of this document, a small charity is one with an annual income of less than £1 million. Such small charities are treated in the same way as consumers under the PSRs. This is the definition used in the PSRs, but note that the term 'charity' is used there instead.

Micro-enterprise

This is an enterprise whose annual turnover and/or balance sheet total does not exceed €2 million (or sterling equivalent) and employs fewer than 10 people.

'Enterprise' means any person engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

In determining whether an enterprise meets the tests for being a micro-enterprise, account should be taken of the enterprise's 'partner enterprises' or 'linked enterprises' (as those terms are defined in the European Commission's Micro-enterprise Recommendation (2003/361/EC)). An enterprise includes, in particular, a sole trader and family businesses, and partnerships or associations regularly engaged in an economic activity. For example, where one firm holds a majority shareholding in a second firm, if the first firm does not meet the tests for being a micro-enterprise then nor will the second.

One leg transactions

Payment transactions where either the payer or the payee's payment service provider is located outside the EEA.

E-money issuers

In this document, references to e-money issuers are, unless otherwise stated, references to non-bank e-money issuers, including e-money institutions that are authorised or registered by the F~~S~~CA.

Upper Tribunal (Financial Services)~~*Financial Services and Markets Tribunal*~~

The Upper Tribunal (Financial Services)~~Financial Services and Markets Tribunal~~ is an independent judicial body established under section 132 of the Financial Services and Markets Act 2000 (FSMA). It hears references arising from decision notices (for example, where the F~~S~~CA decides to reject authorisation applications) and supervisory notices (for example, where the FC~~S~~A decides to impose a requirement on a payment institution's authorisation or registration) issued by the F~~S~~CA.

Corporate opt-out

Payment service providers may agree with business customers (that is, payment service users who are not consumers, small charities or micro-enterprises) to vary the information they provide from that specified in the PSRs, and, in certain cases, agree different terms in relation to rights and obligations. This is referred to as the 'corporate opt-out'.

Abbreviations and Acronyms

BCOBS

The Banking: Conduct of Business sourcebook ~~of the FSA's Handbook~~

Commission

European Commission

Contact Centre

The F~~S~~CA's Customer Contact Centre (see *Annex 2 – Useful links*)

DISP

The Dispute resolution: complaints sourcebook ~~of the FSA's Handbook~~

EEA

European Economic Area, comprising the Member States of the European Union, plus Iceland, Liechtenstein and Norway

E-Money Regulations

The Electronic Money Regulations 2011

FCA

Financial Conduct Authority (the UK's competent authority for most aspects of the regulation of payment services from April 2013)

FSA

Financial Services Authority (the UK's competent authority for most aspects of the regulation of payment services from November 2009 until April 2013)

FOS

The Financial Ombudsman Service

Handbook

The ~~FSA's~~ FCA Handbook of Rules and Guidance, available at http://fs~~a~~handbook.info/

HMRC

HM Revenue and Customs

MLR

Money Laundering Regulations 2007 (SI 2007/2157)

PERG

The ~~FSA's~~ Perimeter Guidance

OFT

Office of Fair Trading

PIs

Payment Institutions

PSP

Payment Service Provider

FSMA

The Financial Services and Markets Act 2000

PSRs

The Payment Services Regulations 2009 (SI 2009/209)
The Payment Services (Amendments) Regulations 2009 (SI 2009/2475)
The Payment Services Regulations 2012 (SI 2012/1791)