

# **General standards and communication rules for the payment services and e-money sectors**

**Consultation Paper**

CP18/21\*\*

August 2018



## How to respond

We are asking for comments on this Consultation Paper (CP) by 1 November 2018.

You can send them to us using the form on our website at: [www.fca.org.uk/cp18-21-response-form](http://www.fca.org.uk/cp18-21-response-form).

### Or in writing to:

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### How to navigate this document onscreen



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# 1 Summary

## Why we are consulting

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- 1.1** The payment services and e-money sectors are evolving and innovating at a fast pace. In light of the revised Payment Services Directive (PSD2) applying from 13 January 2018, the sector has undergone a substantial degree of change recently.
- 1.2** We have seen some payment service providers (PSPs) and e-money issuers challenge more traditional players (credit institutions, such as banks and building societies) in banking related services and often in currency exchange transfer services as well.
- 1.3** The FCA regulates these activities, where they include payment services or issuance of e-money, under the Payment Services Regulations 2017 (PSRs) and the Electronic Money Regulations 2011 (EMRs) rather than the Financial Services and Markets Act 2000 (FSMA). However, different PSPs and e-money issuers are subject to different regulatory requirements, as both FSMA and non-FSMA businesses operate in these sectors. This has led to differences in the regulatory requirements on firms, including requirements in terms of behaviour and treatment of customers across the market.
- 1.4** With the introduction of new powers in the PSRs 2017,<sup>1</sup> we are now able to consult on extending the application of certain conduct and communication standards across the payment services and e-money sectors. This would help clarify expectations of behaviour and treatment of customers from PSPs and e-money issuers.
- 1.5** The FCA's Principles for Businesses set out the high-level standards that we expect firms we regulate to comply with. They do not currently apply to payment institutions (PIs), electronic money institutions (EMIs) or registered account information service providers (RAISPs). Neither do they apply (in most cases) to credit institutions providing payment services which are not connected to their regulated activities.
- 1.6** In this Consultation Paper (CP) we propose to extend the application of the Principles **to the provision of payment services and issuance of e-money (where not already a regulated activity), as well as other connected activities**. We also propose extending the application of the Principles to PIs, EMIs and RAISPs. Our proposals would help providers and customers to understand the standards of behaviour we expect in the market. They would also make it more efficient for us to intervene where we see harm.
- 1.7** We are also concerned about some PIs' and EMIs' communication practices, including misleading advertising and marketing of their services. We are able to consider these practices in respect of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). We also have powers to impose requirements on a firm's authorisation or registration under the PSRs and EMRs. However, these powers do not provide us with the ability to make specific rules about the form and content of communications.

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<sup>1</sup> Paragraph 3 of Part 1 of Schedule 6 of the Payment Services Regulations 2017 and Paragraph 2A of Schedule 3 of the Electronic Money Regulations



- 1.8** In this CP we consult on proposals to extend the application of certain communication rules and guidance in our Banking Conduct Of Business Sourcebook, Chapter 2 (BCOBS 2)<sup>2</sup> **to communication with payment service and e-money customers**. This would help us address the misleading communication and advertisement of payment and electronic money services more efficiently.
- 1.9** In addition, we have previously expressed particular concern with the way in which some PSPs and e-money issuers who provide currency exchange transfers communicate and advertise their services to customers.<sup>3</sup> To address these specific concerns, this CP proposes to introduce **rules and guidance on the communication and marketing of currency exchange transfer services, applicable to payment services and the issuance of e-money involving a currency conversion**.

### Who this applies to

- 1.10** PSPs and e-money issuers, as well as trade bodies representing them, should read this consultation. Our proposals affect credit institutions providing payment services and/or issuing e-money as well PIs, EMIs and RAISPs.
- 1.11** Customers using payment services and e-money will be impacted by this consultation. They do not need to read this document although we would welcome their feedback. Consumer bodies should read this consultation.
- 1.12** Our proposals are summarised in the table below:

Proposals	Applicability (activities)	Applicability (firms)
Extending the application of the Principles for Businesses	to the activities of provision of payment services and issuance of e-money (where not already a regulated activity) and activities connected with these activities	to PIs, EMIs and RAISPs in addition to credit institutions
Extending the application of rules and guidance in BCOBS 2 concerning communication with retail banking customers	to communication with payment service and e-money customers	to PIs, EMIs and RAISPs in addition to credit institutions
New rules and guidance in BCOBS 2 on currency exchange transfer services	to payment services and the issuance of e-money involving a currency conversion	to PIs and EMIs in addition to credit institutions, providing such services

### The wider context of this consultation

- 1.13** Payment services can be provided by both regulated firms under FSMA and businesses authorised or registered under the PSRs/EMRs. These cohorts of firms are subject to different regulatory requirements. Market conduct inconsistencies can therefore arise with regards to how services are provided and how we supervise providers. Our powers to take action to address potential harm differ depending on the legislation or FCA

<sup>2</sup> [www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter)

<sup>3</sup> [www.fca.org.uk/news/statements/use-interbank-rate-online-currency-converter-tools](http://www.fca.org.uk/news/statements/use-interbank-rate-online-currency-converter-tools)

rules in question, since our Handbook rules do not apply to both cohorts of firms (ie FSMA PSPs and e-money issuers compared to non-FSMA PSPs and e-money issuers).

- 1.14** The FCA has powers to make rules that apply to firms regulated under FSMA. While these powers included power to make rules with respect to 'unregulated activities',<sup>4</sup> such as the provision of payment services, in the past they could not be applied to businesses that were not FSMA regulated, but instead authorised or registered under the PSRs or EMRs. The FCA has generally not used these powers to make rules that apply to the provision of payment services, except where this activity is ancillary to a regulated activity, or to the extent that the rules apply to unregulated activity generally.
- 1.15** The issuing of electronic money by a credit institution, credit union or municipal bank is a regulated activity, and so in some cases the FCA's rules will apply to this activity. However detailed conduct requirements set out in the Banking: Conduct of Business Sourcebook<sup>5</sup> are not directly applied to this activity.
- 1.16** The PSRs 2017 extended the FCA's powers by applying the general rule making provisions in FSMA.<sup>6</sup> The FCA may now make rules that apply to PIs, EMLs and RAISPs when they are providing payment services, issuing electronic money or carrying on connected activities. These new powers may only be used where the FCA has made or is making equivalent rules that will apply to FSMA authorised firms.
- 1.17** This CP proposes to extend the application of certain existing rules to payment service and e-money activities (to the extent they do not already apply), extend these provisions to PSPs and e-money issuers that are not FSMA authorised, and make new rules that will apply equally to FSMA and non-FSMA firms when carrying out these activities.

## What we want to change

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- 1.18** We want to ensure that entities that provide payment services and issue e-money are subject to the FCA's Principles for Businesses. These are fundamental obligations that they should comply with, as they set our overarching expectations of businesses. We want these Principles to apply to any provision of payment services and issuance of e-money. Currently the Principles apply to the issuance of e-money by credit institutions, but, in most cases, to payment services only when such services are carried on as ancillary to a regulated activity.
- 1.19** PIs and EMLs are subject to the general prohibition against unfair commercial practices in Regulation 3 of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Although we have powers to seek Enforcement Orders under the Enterprise Act 2002 in respect of misleading commercial practices by PIs and EMLs within the meaning of the CPRs, we want our suite of disciplinary powers to be available to us where firms promote and advertise their services in a way that is not clear, fair or is misleading. We believe this will make it easier for us to take action to deter misleading

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4 By 'unregulated activity' we mean an activity that is not regulated under FSMA. This includes the provision of payment services. Issuing electronic money is a regulated activity where carried on by a credit institutions, credit unions or municipal banks – but unregulated in other circumstances.

5 [www.handbook.fca.org.uk/handbook/BCOBS/1/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/1/?view=chapter)

6 Paragraph 3 of Part 1 of Schedule 6 of the Payment Services Regulations 2017 and Paragraph 2A of Schedule 3 of the Electronic Money Regulations



practices and ensure communications are presented in a clear and transparent way. In particular, we want to prevent the marketing and promotion of currency exchange transfer services with exchange rates that are unachievable, as well as the use of any claims that cannot be substantiated.

## Outcome we are seeking

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- 1.20** Our proposals should set clear standards for the payment services and e-money sectors, improving trust and confidence in these markets.
- 1.21** Our proposals seek to ensure good consumer outcomes while supporting innovation and growth, and promoting competition in the payment services and e-money sectors.
- 1.22** We want to address, as far as is appropriate and we are able, differences between regulatory regimes under FSMA, the PSRs and the EMRs.
- 1.23** We want to ensure that consumers are confident that the information they receive from PSPs and e-money issuers is fair, clear and not misleading and that they are not misled about the rates they can achieve or alternative providers' services.
- 1.24** We have previously conducted investigations into misleading advertising in currency exchange transfer services. Our proposed rules will allow us to more effectively challenge such practices in the future.

## Measuring success

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- 1.25** We will know this intervention has been successful if:
  - firms and customers have clearer expectations in terms of market conduct and firm behaviour requirements across the payment services and e-money sectors;
  - customers are more capable of comparing and understanding services provided, facing a reduced risk of being treated unfairly;
  - PSPs and e-money issuers communicate their services to customers in ways which are fair, clear and not misleading.

## Next steps

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- 1.26** We want to know what you think of our proposals. Please send us your feedback by 1 November 2018.
- 1.27** Use the online response form on our website or write to us at the address on page 2.
- 1.28** We will consider your feedback and expect to publish our rules in a Policy Statement before 31 January 2019.

**1.29** We do not consider currently that there is a need for an implementation period following the publication of our Policy Statement. We would, however, welcome views on this.

**Q1:** **Do you agree that there is no need for an implementation period for any rules we introduce, following publication of our Policy Statement?**



## 2 The wider context

- 2.1** Payment services are provided by payment service providers (PSPs). These include credit institutions (such as banks, building societies), payment institutions (PIs), electronic money institutions (EMIs) and registered account information service providers (RAISPs). In recent years, as technology has transformed the payment services market, a diverse number of new firms, seeking to offer payment functionality, have entered the market.
- 2.2** The regulation of payment services and issuance of e-money in the United Kingdom is set out in the PSRs 2017 and EMRs 2011, implementing the revised Payment Services Directive (PSD2) and revised Electronic Money Directive (2EMD).
- 2.3** Credit institutions are authorised by the FCA under FSMA (FSMA firms) and must comply with our Principles for Businesses when carrying on FSMA regulated activities. They must also comply with them when carrying on activities that are ancillary to certain regulated activity and – in some cases – unregulated activity. Communication (including marketing communication) rules included in BCOBS 2 also apply to them in relation to the provision of retail banking services.
- 2.4** Provision of payment services is not a regulated activity under FSMA and so certain FCA Handbook rules (such as the Principles for Businesses) are currently only applicable where it is carried on as an activity ancillary to a regulated activity under FSMA, such as deposit taking (eg as is the case in the provision of current accounts).
- 2.5** Issuing e-money is a regulated activity when carried on by a credit institution, credit union or municipal bank, and so the Principles for Businesses do apply. However, communication rules (such as contained in our Banking Conduct of Businesses Sourcebook, Chapter 2 (BCOBS 2)) are not applied to this activity.
- 2.6** PIs providing payment services are authorised or registered under the PSRs and RAISPs are registered under the PSRs. EMIs issuing e-money or providing payment services are authorised under the EMRs. They do not currently have to comply with the Principles for Businesses or FCA Handbook rules about communications (including marketing communications) for any of their activity. We refer to these as 'non-FSMA firms'.
- 2.7** In addition to authorisation and prudential requirements for PIs and EMIs, the PSRs and EMRs include conduct of business rules (subject to full harmonisation) applicable to PSPs (including credit institutions) engaged in the provision of payment services and to e-money issuers engaged in the issuance of e-money.<sup>7</sup>
- 2.8** Businesses offering payment services or issuing e-money, including credit institutions, PIs, EMIs and RAISPs, are also subject to other legislative provisions (eg the prohibition on unfair commercial practices in Regulation 3 of the CPRs), which implement the Unfair Commercial Practices Directive (Directive 2005/29/EC) and which the FCA has power to enforce under the Enterprise Act 2002.

<sup>7</sup> Credit institutions are not required to seek further authorisation under the PSRs or EMRs in order to provide payment services or issue electronic money. Other firms (such as consumer credit firms) are required to do so – meaning that a business may be authorised under both FSMA and the PSRs/EMRs.

- 2.9** The provision of payment services and the issuance of e-money are not subject to restrictions on financial promotions under s21 FSMA. These apply only to activities specified under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.<sup>8</sup> The FCA does not have the power to extend the application of these specific requirements.
- 2.10** While conduct of business rules exist for PSPs and e-money issuers in the PSRs and EMRs and general consumer protection legislation applies, our powers to address potential harm are different, since our Handbook rules do not apply to both cohorts of firms (FSMA PSPs and e-money issuers and non-FSMA PSPs and e-money issuers).
- 2.11** We have observed instances of misleading advertising and marketing practices from PIs and EMIs when communicating their services to customers. For instance, some businesses have used references to terms that proved unavailable to customers when being provided with the service. Others have used claims regarding their services that were not substantiated.
- 2.12** A particular area where we have previously expressed concern is related to the way in which some PSPs and e-money issuers who provide currency exchange transfers communicate and advertise their services to customers.<sup>9</sup> There have been instances where entities promoted services in ways which may lead customers to believe that they will be able to transfer funds at rates which are unattainable. In other cases, firms have claimed to provide more advantageous rates, particularly in comparison with rates offered by credit institutions or other businesses; claims which we expect should be capable of being substantiated.
- 2.13** While we have seen some firms taking steps to ensure the appropriateness of their communications to customers, we still see instances of businesses communicating or advertising currency exchange transfer services in a potentially misleading way.
- 2.14** The PSRs 2017 provided the FCA with new powers to intervene in the payment services and e-money sectors and apply rules across PSPs and e-money issuers, including PIs, EMIs and RAISPs.
- 2.15** In this CP we consult for the first time on exercising these new powers. In formulating our proposals, we have considered existing requirements applicable to firms under:
- The PSRs and PSD2;
  - The EMRs and 2EMD;
  - The Directive on Unfair Commercial Practices (Directive 2005/29/EC);
  - The Price Indications (Bureaux de Change) (No 2) Regulations 1992;
  - The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which we enforce under the Enterprise Act 2002;
  - The Business Protection from Misleading Marketing Regulations 2008;

<sup>8</sup> [www.legislation.gov.uk/ukssi/2005/1529/contents/made](http://www.legislation.gov.uk/ukssi/2005/1529/contents/made)

<sup>9</sup> [www.fca.org.uk/news/statements/use-interbank-rate-online-currency-converter-tools](http://www.fca.org.uk/news/statements/use-interbank-rate-online-currency-converter-tools)



- The Consumer Rights Act 2015;
- The Code of Non-Broadcast Advertising and Direct & Promotional Marketing (CAP Code) issued by the Advertising Standards Authority (ASA), which is the rule book firms must follow for non-broadcast advertisements such as sales and direct marketing communications;
- The Broadcast Advertising Code (BCAP Code) issued by the ASA.

**2.16** We have taken into account existing requirements that relate to the disclosure of information, cost and charges for currency conversions contained in PSD2. We have also considered the current proposals to amend Regulation (EC) No 924/2009 in relation to charges on cross-border payments and that relate to currency conversion charges (CBPR2). These proposals focus on the information provided at point of sale or ATMs, in particular when offering 'dynamic currency conversion'.

**2.17** In this CP we are looking to clarify our expectations in relation to firms' communication practices. This includes the advertising and communication of payment services or e-money involving a currency conversion in advance of the customer using that service.

**2.18** We are not consulting on making rules regarding specific transparency requirements or disclosure of costs for payment transactions involving dynamic currency conversions. We aim to take account of related provisions in current legislation and proposals (eg PSD2, CBPR2), although we consider these will not fully address practices we are concerned with.

## The harm we are trying to address

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### Preventing potential market conduct inconsistencies and clarifying expectations

**2.19** PSPs and e-money issuers are subject to different regulatory requirements, as both FSMA and non-FSMA businesses operate in these sectors. This impacts our efforts to supervise and address harm consistently, as well as to clarify expectations in terms of firms' consistent behaviour and treatment of customers across the market.

**2.20** We consider that applying the same FSMA-based rules to the provision of payment services and issuance of e-money, where appropriate, will help us address harm more effectively and directly. It would prevent potential market conduct inconsistencies by clarifying our expectations for PSPs and e-money issuers and improving confidence and trust in this rapidly growing market. It would also encourage fair competition and greater choices that fit customer needs.

**2.21** We aim to be consistent in our regulatory approach towards FSMA and non-FSMA PSPs and e-money issuers with regards to their provision of payment services and issuance of e-money. We recognise the differences between the types of firms and the underlying regulatory frameworks, primarily FSMA and the PSRs, as described above. Nonetheless, we do not think it is unreasonable to expect the same basic standards of behaviour from providers across the sector, much as is the case with the conduct requirements under the PSRs and the EMRs which apply to both FSMA and non-FSMA firms.

- 2.22** Any instances of customers being treated unfairly would be more efficiently considered through applying the same set of standards across the market. For example, to date, we would not be able to ensure a fair treatment of customers when dealing with complaints about misleading marketing and advertising practices using the same supervisory tools.
- 2.23** The ASA has, in the past, made a number of rulings against firms advertising payment services that it found to be in breach of the CAP Code. The FCA has agreed with the ASA that it will, in future, handle complaints relating to the technical aspects of non-broadcast advertising of payment services and electronic money, in line with the agreed division of responsibility for other financial promotions.<sup>10</sup>
- 2.24** We have received complaints about misleading communication practices of firms offering payment services or issuing e-money that involve a currency conversion. We considered such complaints in light of the CPRs and our powers to impose requirements on a firm's authorisation or registration under the PSRs or EMRs. However, these tools do not provide us with the ability to make specific rules about the form and content of communications.

## How it links to our objectives

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### Competition

- 2.25** Our proposals to extend the Principles for Businesses and general communication (including marketing communication) rules aim to enhance competition amongst PSPs and e-money issuers by creating standards equally applicable to all firms. This will equip us to better respond to the evolving payments landscape and to address harm identified in the regulatory treatment of the firms in question, supporting fair competition. As a result, we will be able to effectively intervene in the market, if necessary.
- 2.26** Our proposals to apply specific communication (including marketing communication) rules to PSPs and e-money issuers providing currency exchange transfer services also seek to enhance competition. They will do this by ensuring that consumers are not misled about the services they use in advance of using them so they can choose the service that best meets their needs.

### Consumer protection

- 2.27** Our proposals also seek to protect consumers. If consumers are unable to understand communications or are misled about comparative merits of the services they use, they may miss out on services which are the best fit for their needs. Introducing requirements into the FCA Handbook and identifying specific misleading communication and/or advertising practices by firms providing currency exchange transfer services can help us limit consumer detriment.

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10 [www.fca.org.uk/publication/mou/mou-fca-asa.pdf](http://www.fca.org.uk/publication/mou/mou-fca-asa.pdf)

## Wider effects of this consultation

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### Unintended consequences of our intervention

- 2.28** By consulting on these requirements, we do not want to:
- constrain innovation or unreasonably burden firms in a fast-growing segment of the financial services market, or
  - discourage customers from using particular payment services or limit their access to certain providers of those services.
- 2.29** We do not believe that this will be the case. With our intervention, customers should be more able to rely on the statements that PSPs and e-money issuers make with regards to their services and will have more clarity on what these requirements mean in practice. We discuss this point further in relation to our equality impact assessment below.

## Equality and diversity considerations

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- 2.30** We have considered the equality and diversity issues that may arise from the proposals in this CP.
- 2.31** Overall, we do not consider that the proposals negatively impact any of the groups with protected characteristics under the Equality Act 2010. Members of certain minority groups may be more likely to have links to other countries, for example family outside of the UK, and so may use currency exchange transfers more frequently than those who do not. Other groups may use transfer systems specific to certain communities (eg 'hawala and other similar service providers'<sup>11</sup> transfer system). However, the effects are positive as they may derive greater benefits from this work. Aside from this, there is no indication that our proposals will impact any specific group with protected characteristics in a distinct way.
- 2.32** We consider that our proposals will increase consumer protection and potentially encourage competition, and will result in:
- clearer expectations with regards to firms' behaviour;
  - reduced risk in dealing with firms providing similar services but operating under different regulatory regimes;
  - increased transparency and fairness in promoting financial services;
  - more options for consumers to decide on service that best fits their needs;

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11 The Financial Action Task Force (FATF) has the following definition: *Hawala and other similar service providers ("HOSSP")*: Generally referred to as entities that provide MVTs, particularly with ties to specific geographical regions or ethnic communities, which arrange for transfer and receipt of funds or equivalent value which is settled through trade, cash and/or net settlement over an extended period of time, rather than simultaneously with the transfer. Source: FATF Guidance for a risk based approach for money or value transfer services February 2016, <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-money-or-value-transfer.html>

- reduced consumer bias regarding provider approach associated with best features of service;
- more clarity with regards to cost components of advertised services.

**2.33** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when making the final rules.

**2.34** In the meantime, we welcome your input to this consultation on this.

**Q2: Do you have any comments with regards to the equality and diversity implications of our consultation, in particular to certain groups and/or communities?**

## 3 Setting consistent expectations in the payment services and e-money sectors

- 3.1** This chapter sets out our proposals to extend certain FCA Handbook provisions to the provision of payment services and the issuance of e-money (where not already regulated) and connected activities. It also extends the application of these proposals to PIs, EMIs and RAISPs when conducting these activities.
- 3.2** The FCA Handbook rules we have considered in this chapter are:
- **Principles for Businesses** and associated guidance, which set out our overarching expectations of firms
    - extending their application to payment services and connected activities;
    - extending their application to the issuance of e-money (where not already a regulated activity) and connected activities;
    - extending their application to EMIs, PIs and RAISPs when carrying on these activities;
  - **Communications (including marketing communications) rules** and guidance in BCOBS 2, which clarify our expectations around firms advertising their services to customers
    - applying them to communications with payment service and e-money customers;
    - extending their application to EMIs, PIs and RAISPs.
- 3.3** As indicated in Chapter 2, the PSRs 2017 now enable the FCA to make rules applying across PSPs and e-money issuers, in certain circumstances. This equips us to set consistent expectations for all regulated actors in this sector, to address consumer harm in the evolving payments landscape. It allows the FCA to intervene more effectively to ensure consumer protection and effective competition between firms providing the same services.
- 3.4** Our analysis of the costs and benefits of these proposals is set out in Annex 2 of this CP.

### Consideration of possible interventions

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- 3.5** When developing this CP, we focused our analysis on the areas where intervention would bring the greatest benefit to consumers and firms. We considered the entirety of the regime under the PSRs and the EMRs. We concluded that the main gaps between the FSMA and PSRs/EMRs regimes stemmed from firstly the lack of consistent, basic expectations, and secondly the lack of rules in the PSRs and EMRs

concerning communications in advance of the use of the service (such as financial promotions). Although these gaps are addressed by the PSRs and EMRs in other ways, and in other legislation (particular the CPRs), this leads to a difference of approach to supervision and enforcement.

- 3.6** These were the areas in which our experience of regulating these sectors, and of firms' practices in the market, pointed to a need to clarify our basic expectations. At the moment, we consider that we do not have sufficient evidence to justify extending the application of other specific rules in our Handbook. We will continue to keep this under review as the market develops.
- 3.7** Likewise, while a small number of credit unions offer payment services (eg transactional accounts),<sup>12</sup> issue e-money to their customers, or offer cash to cash 'bureaux de change' type of services, we do not have sufficient evidence of harm to merit the extension of these rules to credit unions.
- 3.8** We have been mindful that the payments sector continues to undergo significant regulatory change as a result of PSD2 and other legislative measures. We have also taken account of the maximum harmonising nature of relevant directives. In addition, the PSRs 2017 and EMRs 2011 have been expressly designed to create a differentiated regime for PSPs and e-money issuers compared to banks.

## Principles for Businesses

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### Legislative framework

- 3.9** Firms carrying on an activity regulated under FSMA must comply with the Principles for Businesses (the Principles). The Principles play an important role in outlining the fundamental obligations that we expect firms to comply with. They set out in high-level terms how firms should treat their customers, how they should run their business and how they should interact with the regulator. We present the 11 Principles in Table 3 in this CP.
- 3.10** They provide a basis for supervisory or enforcement actions, for example, when a firm's behaviour has been unfair to customers (see Principle 6 (Customers' interests)).
- 3.11** As new activities and new types of businesses come within our regulatory perimeter (eg consumer credit or claims management companies), we have ensured that these Principles apply to them.
- 3.12** The Principles also apply to certain activities carried on as ancillary to a regulated activity, and in some cases, unregulated activities. According to PRIN 3.2.3,<sup>13</sup> unregulated activities are subject to Principle 3 (Management and control) in a prudential context, Principle 4 (Financial prudence) and Principle 11 (Relations with regulators).

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12 Prudential Regulatory Authority Rulebook – 'transactional account' means an account at a credit union that is regularly used by a member of that credit union for the receipt of funds from, and disbursement of funds to, third parties

13 PRIN 3.2.3 (R) – Subject to PRIN 3.2.4R, Principles 3, 4 and (in so far as it relates to disclosing to the FCA) 11 (and this chapter) also:  
(1) apply with respect to the carrying on of unregulated activities (for Principle 3 this is only in a prudential context); and  
(2) take into account any activity of other members of a group of which the firm is a member.

- 3.13** PSD2 and 2EMD have, by in large, been implemented in the UK through standalone regulations and not the FSMA regime. The regulations provide the regulatory framework for payment and e-money institutions, including the authorisation, prudential and passporting regimes. In addition, the regulations contain the conduct of business rules for all firms (including credit institutions) providing payment services and issuing e-money.
- 3.14** Because the regulatory regimes created by the PSRs and EMRs sit alongside FSMA, the FCA previously had limited power to make rules that applied to persons authorised or registered under them. While the FCA could have made rules about the provision of payment services and issuance of e-money by FSMA firms, we could not do so consistently across all firms offering such services.
- 3.15** As described above, new powers contained in the PSRs 2017 do now allow us to make rules that apply to most entities providing payment services and issuing e-money. In effect, these powers allow us to extend the application of rules made under FSMA rule-making powers to PIs, EMI and RAISPs.

**Table 3 – The Principles for Businesses**

<b>1 Integrity</b>	A firm must conduct its business with integrity.
<b>2 Skill, care and diligence</b>	A firm must conduct its business with due skill, care and diligence.
<b>3 Management and control</b>	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
<b>4 Financial prudence</b>	A firm must maintain adequate financial resources.
<b>5 Market conduct</b>	A firm must observe proper standards of market conduct.
<b>6 Customers' interests</b>	A firm must pay due regard to the interests of its customers and treat them fairly.
<b>7 Communications with clients</b>	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
<b>8 Conflicts of interest</b>	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
<b>9 Customers: relationships of trust</b>	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
<b>10 Clients' assets</b>	A firm must arrange adequate protection for clients' assets when it is responsible for them.
<b>11 Relations with regulators</b>	A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice.

## Application of the Principles

- 3.16** The Principles apply already to ancillary activities in relation to accepting deposits and credit related regulatory activity. They are therefore likely to apply to the provision of some payment services by FSMA firms, to the extent that they do not conflict with PSD2 (eg payment services provided as part of a retail banking service). They also apply to issuance of electronic money by credit institutions, but not generally to ancillary activities offered by these firms in connection to issuance of electronic money.

- 3.17** Although we acknowledge that the PSRs and EMRs have been deliberately designed to ensure a 'lighter' set of conditions than FSMA to businesses offering payment services or issuing e-money, the application of different regulatory requirements might lead to an uneven playing field. This happens when firms providing the same or similar services are held to different standards by the regulator. It might also lead to poor outcomes for customers and for efficient competition in the market.
- 3.18** It also makes it difficult to apply a consistent supervisory or enforcement approach across the market. While conduct of business rules exist for PSPs and e-money issuers in the PSRs and EMRs and general consumer protection legislation applies, our powers to take action to address potential harm are different, since our Handbook rules do not apply to both cohorts of firms (FSMA PSPs and e-money issuers and non-FSMA PSPs and e-money issuers).
- 3.19** We want to address, as far as we are able, differences between regulatory regimes under FSMA, the PSRs 2017 and the EMRs 2011, while recognising the different underlying regulatory framework. This is to ensure we can consistently tackle potential future harm in this rapidly growing market.

## Our proposals

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- 3.20** We propose to apply the Principles set out in our Handbook PRIN standards to credit institutions, PIs, EMIs and RAISPs when providing payment services as well as connected activities. We also propose to apply the Principles with respect to the issuance of electronic money (where not already a regulated activity) and connected activities.
- 3.21** We consider that extending the application of our Principles as a collective set of standards reflects our commitment to ensure this sector is regulated effectively. These Principles apply already to the vast majority of firms we regulate under FSMA.
- 3.22** The scope of application of the PSRs and EMRs is broad. They govern firms' dealings with all 'users' of payment services and 'holders' of e-money. We propose that in relation to the application of the Principles to the provision of payment services and issuance of e-money we reflect the distinction between corporate and non-corporate users of payment services in the PSRs. This means that we would define 'customers' as consumers (in the sense of an individual acting for purposes other than their trade, business or profession), micro-businesses and charities with an annual income of less than £1 million. This is consistent with the application of BCOBS.
- 3.23** The territorial application of the Principles as they apply to payment services and e-money would be in line with application to regulated activities, as set out in PRIN 3.3.<sup>14</sup> We propose applying the Principles to EEA PIs, EMIs and RAISPs providing payment services or issuing e-money in the UK. However, we would modify the application in line with the treatment of incoming firms under PRIN 3.1.<sup>15</sup> This means that Principle 4 would not be applied to these businesses, and the rest of the Principles would only apply in so far as responsibility for the matter in question is not reserved to the home state regulator under PSD2, 2EMD or another EU instrument.

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<sup>14</sup> [www.handbook.fca.org.uk/handbook/PRIN/3/3.html](http://www.handbook.fca.org.uk/handbook/PRIN/3/3.html)

<sup>15</sup> [www.handbook.fca.org.uk/handbook/PRIN/3/1.html](http://www.handbook.fca.org.uk/handbook/PRIN/3/1.html)



**3.24** When formulating our proposals in this CP, we have taken into account the consequences of maximum harmonisation of the directives in question and their specific requirements. We will apply the guidance issued under PRIN 3.1.8,<sup>16</sup> to ensure that the Principles do not apply to the extent that they purport to impose an obligation which is inconsistent with PSD2 and 2EMD.

**3.25** The following examples seek to illustrate the application of certain Principles.

#### **Integrity, skill, care and diligence**

**3.26** Principles 1 and 2 set out requirements on firms about integrity and diligent conduct. There are no explicit provisions in this respect under the PSRs or the EMRs when providing payment services or issuing e-money. That said, PIs, EMIs and RAISPs are subject to authorisation and registration conditions that (to differing extents) impose similar requirements, such as in relation to the fitness and propriety of the individuals responsible for running the business.

**3.27** We do not propose any additional requirements in relation to these or other Principles. However, application of these Principles gives us the ability to better supervise to existing standards. For example, financial institutions are already subject to Guidelines from the European Banking Authority (EBA). In relation to the development and marketing of products, for instance, these firms are required to make every effort to comply with the Guidelines on product oversight and governance arrangements for retail banking products.<sup>17</sup> They set out requirements for manufacturers and distributors when designing and bringing to market products including payment services and e-money.

**3.28** Extending the application of the Principles and making them a general requirement on the firms in question will make clear our overarching expectation to non-FSMA businesses that they must hold themselves to these standards of conduct.

#### **Management and control, financial prudence and market conduct**

**3.29** The authorisation and registration conditions under the PSRs and EMRs set requirements about management and control of PIs, EMIs and RAISPs. There are specific additional requirements in the PSRs as to the management of operational and security risks. The application of Principle 3 to PIs, EMIs and RAISPs articulates a requirement around the reasonable care that firms must take, including when carrying on activities that are connected to the provision of payment services and issuing of e-money, but outside the scope of the PSRs and EMRs.

**3.30** When proposing the extension of the Principles, we take into account details set out in our Approach Document on Payment Services and Electronic Money<sup>18</sup> and any related Guidelines set by the EBA (eg on the management of operational and security risks<sup>19</sup> or on outsourcing).<sup>20</sup>

16 PRIN 3.1.8 (G) – The Principles will not apply to the extent that they purport to impose an obligation which is inconsistent with the Payment Services Directive, the Consumer Credit Directive or the Electronic Money Directive

17 [www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products](http://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation/guidelines-on-product-oversight-and-governance-arrangements-for-retail-banking-products)

18 [www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf](http://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf)

19 [www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-security-measures-for-operational-and-security-risks-under-the-psd2](http://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-security-measures-for-operational-and-security-risks-under-the-psd2)

20 [www.eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-outsourcing-arrangements](http://www.eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-outsourcing-arrangements)

- 3.31** By extending the application of Principle 4 to Pls, EMLs and RAISPs we do not propose to impose additional capital requirements above those contained in the PSRs and EMRs.
- 3.32** We also want to ensure that market participants in the payment services and e-money sectors are collectively developing appropriate standards that help them meet the proper standard of market conduct, as set out by Principle 5. Currently, while payment services and e-money activities are regulated under the PSRs and EMRs, standards of conduct might be set by market practice itself or relevant market codes.
- 3.33** Principle 5 clearly articulates what the FCA expects of firms, and is separate from the equally important expectation set out in Principle 3 that a firm takes reasonable care to organise and control its affairs responsibly and effectively. If we were to extend the application of Principles 3 and 5 widely to the payment services and e-money activities, it would provide enhanced ability for the FCA to take action against firm-level misconduct. We would expect firms to observe relevant legislation, as well as EBA Guidelines that they are already required to comply with, and to take into account other accepted market practice or agreed industry guidance. This relates to Principle 3, whereby a firm must take reasonable care in organising and controlling its affairs.
- Treatment of customers and communications with clients**
- 3.34** We expect the firms we regulate to treat their customers fairly. This is enshrined in Principle 6 (with respect to FSMA-regulated activities). There is no similar overarching principle in the PSRs or the EMRs. Instead, the regulations tend to require the provision of specific pieces of information or certain specific conduct by firms. They also do not apply to 'connected' activities. In essence, these regulations seek to pursue a similar outcome from firms (eg that customers are treated well). Articulating the fair treatment of customers as an overarching requirement, however, provides firms with a clear understanding of our expectations. In other words, while meeting the requirements of the PSRs and/or EMRs is essential, customers must be treated fairly in general.
- 3.35** Likewise, while other consumer protection legislation (listed at paragraph 2.15 in our CP) applies and seeks to prevent unfair or misleading practices, it does not necessarily require the fair treatment of customers. This would suggest that while firms must meet their obligations under the relevant law, there is currently no overarching regulatory requirement to treat customers fairly. As such, we believe it is important to set out such a requirement for the firms we regulate.
- 3.36** Principle 7 concerns the way firms communicate with their customers. While legislation, including the PSRs, sets down a number of specific requirements, it is important to articulate that firms must pay due regard to the information needs of customers.
- 3.37** We are aware of instances where firms' communications have not been as clear as we would expect. Some businesses have used references to terms that proved unavailable to customers when being provided with the service. For instance, we have identified cases where certain non-FSMA PSPs and e-money issuers advertised themselves as offering bank accounts, or otherwise implying that they are a bank. This type of communication might also induce the customers into falsely believing they benefit from the protection of the Financial Services Compensation Scheme.



**3.38** We have also received complaints from customers about a number of PSPs and e-money issuers, alleging that their marketing and advertising is misleading. In certain instances, where services were advertised as free, the customer would have been unable to realise that he might be charged by other entities intermediating the service (and not necessarily the firm advertising the service). Therefore, communication of a service as free should be clear, fair and not misleading, so customers are aware of additional fees potentially charged within the chain.

**3.39** While the existing legislation might seek to ensure that communications are not unfair or misleading, the application of the Principles will clarify our expectation of firms to treat customers fairly and communicate in ways that are clear, fair and not misleading.

### **Conflicts of interest and relationships with customers**

**3.40** The PSRs and EMRs do not contain specific provisions on how firms should manage conflicts of interest, and advising on payment services or e-money is not a regulated activity under the PSRs/EMRs or FSMA (and so they also do not set down requirements on the suitability of advice or discretionary decisions). Application of Principles 8 and 9 would address this gap. With the advent of account information services (AIS), we expect firms increasingly to offer product recommendations (eg what is the best account for a customer based on transaction history). Some business models might involve commission or other such payments being made by other providers. By extending the application of Principles 8 and 9 we would require firms to consider the suitability of such advice (where the customer is entitled to rely on its judgement) in such circumstances and manage any conflicts of interest appropriately. It is important, in our view, that all firms are under a general requirement to adhere to the outcome sought by these two Principles.

### **Clients' assets**

**3.41** It is important that firms understand they are responsible for their clients' assets when providing payment and e-money services. By extending the application of the Principles to PIs and EMLs we do not propose additional requirements to the PSRs and EMRs, particularly in relation to the safeguarding of customers' funds. Also, we are not proposing to extend the application of the safeguarding requirements to small PIs and small EMLs (with respect to unrelated payment services). That said, all firms would have to consider what protections would be adequate in relation to the business they are conducting.

### **Communication with the regulator**

**3.42** Businesses authorised and registered under the PSRs and EMRs are under various duties to notify us of information or report to us periodically. While it is clear that meeting these specific obligations is essential for firms' compliance with their duties, Principle 11 (Relations with regulators) helps to clarify the nature of the relationship we expect: it must be open and cooperative. We do not intend the extension of their application to imply that additional reporting or notification requirements are being introduced.

**3.43** Although the way that the Principles express requirements may be new or different in some ways for PIs, EMLs and RAISPs, we would expect well-managed businesses to find much that is familiar, given the authorisation, prudential and conduct provisions of PSD2 and 2EMD and the other more general requirements that apply to them. We recognise that small PIs, small EMLs and RAISPs have a lighter set of conditions for registration under the PSRs and the EMRs, as opposed to authorised PIs and authorised EMLs. However, applying the Principles as a consistent set of standards to

the payment services and e-money sectors as a whole would clarify our expectations for businesses operating in this market.

- 3.44** We consider that non-FSMA PSPs and e-money issuers are likely to incur a certain level of costs as a result of our proposals to apply the Principles. However, we expect these costs to be around familiarisation with the regime and ensuring/demonstrating compliance. We explore this in more detail in the cost benefit analysis (CBA) included in Annex 2.

**Q3:** **Do you agree with our proposal to apply the FCA Principles for Businesses to the activity of provision of payment services and issuance of e-money (where not already a regulated activity) and connected activities?**

**Q4:** **Do you agree with our proposal to extend the application of all the Principles as a collective set of standards to PIs, EMIs and RAISPs?**

### **Communications (including marketing communications) for payment services and e-money**

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- 3.45** There are no requirements in the PSRs 2017 and EMRs 2011 that relate to marketing practices, such as prohibiting those that could be unfair or misleading. PSD2 recitals indicate that consumer protection against such practices should be ensured in accordance with Directive 2005/29/EC (the Directive on Unfair Commercial Practices), implemented in the United Kingdom through the CPRs.
- 3.46** The Directive states that in the context of financial services, including payment services, it is minimum harmonising. It acknowledges that more specific requirements might be needed for financial services and Member States have the option to consider that. The CPRs transposing the Directive do not provide the FCA with powers to make specific rules about the form and content of communications of payment services and e-money.
- 3.47** We have received complaints about a number of PSPs and e-money issuers, alleging that their marketing and advertising is misleading. In certain instances, they communicated their services as though no fees applied, but customers were charged due to the presence of intermediary firms in the provision of the service. Where firms are advertising their service as free, they should do so in a way that is fair, clear and not misleading and ensure it is clear to consumers where fees may be charged, albeit not by the firms themselves.
- 3.48** Because the FCA's rules, including the Principles for Businesses, do not apply to certain PSPs and e-money issuers, we have considered instead whether their communications are compliant with the CPRs. We have done that on the basis of our powers under the PSRs 2009 and under the Enterprise Act 2002, which allows us to seek an Enforcement Order from the Court (which is akin to an injunction) against misleading advertising activities in breach of the CPRs. However, it has been more difficult to supervise the sector as a whole (given both FSMA and non-FSMA businesses) in a consistent manner and correct potential anomalies.



- 3.49** We want to ensure that we not only address individual cases of a firm's misleading promotions in this market, but set wider standards for providers to follow. At present, we do this in many other markets by adopting requirements that providers must communicate with their customers in ways which are fair, clear and not misleading. We now have the ability under the PSRs 2017 to impose rules across the payment services sector that set clear expectations for PSPs and e-money issuers.
- 3.50** The financial promotions scheme in FSMA (s21 regarding the communication of a financial promotion for activities specified under the Financial Promotion Order) does not apply to payment services and e-money issuance and we do not have the power to extend it.
- 3.51** Under the PSRs 2017, we do have powers to extend our communications and financial promotion rules included in BCOBS 2.<sup>21</sup> These already apply to payment services or issuance of e-money where these are carried as part of the provision of a retail banking service.

## Our proposals

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- 3.52** While we will continue to supervise individual providers' conduct and take action against firms, if appropriate, under the CPRs we are proposing to extend the application of BCOBS 2. The high-level requirement for communications to be clear, fair and not misleading detailed in BCOBS 2.2.1<sup>22</sup> and associated guidance<sup>23</sup> is the backbone of our approach.
- 3.53** We propose to apply certain communications (including marketing communications) rules in BCOBS 2<sup>24</sup> to credit institutions, PIs, EMIs and RAISPs when providing payment services and connected activities. As noted above at paragraph 3.7, we do not propose to alter the existing application of BCOBS 2 in relation to credit unions. We also propose to apply such rules to credit institutions and EMIs in connection to issuance of e-money and connected activities.
- 3.54** We propose applying or making equivalent provision with respect of the following provisions of BCOBS 2:
- BCOBS 2.2 (The fair, clear and not misleading rule and associated guidance),<sup>25</sup> (with the exception of BCOBS 2.2.3<sup>26</sup> as we are not proposing extending the application of our rules on Senior Management Arrangements, Systems and Controls – SYSC<sup>27</sup> or Conduct of Business – COND<sup>28</sup> to payment services or to PIs, EMIs and RAISPs in this CP);

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21 [www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter)

22 BCOBS 2.2.1 (R) – A firm must take reasonable steps to ensure that a communication or a financial promotion is fair, clear and not misleading.

23 BCOBS 2.2.2 (G), BCOBS 2.2.4 (G), BCOBS 2.2.5 (G)

24 [www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter)

25 [www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter)

26 BCOBS 2.2.3 (G) – The rules in SYSC 3 (Systems and Controls) and SYSC 4 (General organisational requirements) require a firm to put in place systems and controls or policies and procedures in order to comply with the rules in COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1 R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions) and this chapter of BCOBS.

27 [www.handbook.fca.org.uk/handbook/SYSC/1/?view=chapter](http://www.handbook.fca.org.uk/handbook/SYSC/1/?view=chapter)

28 [www.handbook.fca.org.uk/handbook/COND/1/?view=chapter](http://www.handbook.fca.org.uk/handbook/COND/1/?view=chapter)

- BCOBS 2.3 (Other general requirements for communications and financial promotions and associated guidance).<sup>29</sup>

- 3.55** BCOBS 1.1<sup>30</sup> sets out the general application of BCOBS, which is to firms with respect to the activity of accepting deposits from banking customers carried on from an establishment maintained by it in the UK and activities connected with that activity. We intend to broadly mirror this application provision, so that the above provisions of BCOBS 2 will apply to credit institutions, Pls, EMIs and RAISPs with respect to the provision of payment services and issuance of e-money carried on from an establishment maintained by it in the United Kingdom, and activities connected with those activities. We will also apply these provisions where activities are carried on from an establishment maintained by an agent in the UK, reflecting the conduct provisions of the PSRs.
- 3.56** BCOBS 2.1.2<sup>31</sup> extends the application of BCOBS 2 to a communication, or approval for communication, to a person in the United Kingdom of a financial promotion of a retail banking service unless it can lawfully be communicated by an unauthorised person without approval. This reflects the application provisions of s21 of FSMA. Since s21 does not apply to a promotion of payment services or e-money, we do not propose extending the application in this way.
- 3.57** BCOBS 2.1.3<sup>32</sup> applies the rules to communications with, and promotions to, 'banking customers' – that is, persons that are a consumer (eg an individual acting outside their trade, business or profession), a micro-enterprise or a charity with an annual income of less than £1 million. We propose mirroring this and applying the BCOBS 2 provisions to communications with, and marketing to,<sup>33</sup> customers of payment and e-money services in the same categories. As noted above in relation to the Principles (paragraph 3.22 in our CP), we do not consider it appropriate to extend the application of these provisions to other 'users' of payment services or 'holders' of e-money.
- 3.58** These rules and guidance reinforce Principles 6 and 7, requiring a firm to pay regard to the information needs of customers when communicating with, or making a financial promotion to them and to communicate information in a way that is clear, fair and not misleading.
- 3.59** As set out in BCOBS 2.2.2,<sup>34</sup> the fair, clear and not misleading rule applies in a way that is appropriate and proportionate to the information the communication is intended to convey and the means of communication used.

<sup>29</sup> [www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter)

<sup>30</sup> [www.handbook.fca.org.uk/handbook/BCOBS/1/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/1/?view=chapter)

<sup>31</sup> BCOBS 2.1.2 (R) – In addition to the general application rule (BCOBS 1.1.1 R), this chapter applies to the communication, or approval for communication, to a person in the United Kingdom of a financial promotion of a retail banking service unless it can lawfully be communicated by an unauthorised person without approval.

<sup>32</sup> BCOBS 2.1.3 (R) – This chapter applies to a firm:

(1) communicating with a banking customer in relation to accepting deposits;  
(2) communicating a financial promotion that is not an excluded communication; or  
(3) approving a financial promotion.

<sup>33</sup> Provision or payment services and issuance of e-money are not 'controlled activities' within the meaning of the s21 FSMA, and so an invitation or inducement to engage in these activities is not subject to the restriction in that section, and is not a 'financial promotion' under the Handbook definition. We have therefore used the term 'marketing' in this CP to avoid any confusion.

<sup>34</sup> BCOBS 2.2.2 (G) – The fair, clear and not misleading rule applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a communication addressed to a banking customer who is not a consumer may not need to include the same information, or be presented in the same way, as a communication addressed to a consumer [www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter](http://www.handbook.fca.org.uk/handbook/BCOBS/2/?view=chapter).



- 3.60** Its associated guidance also reflects that firms should not describe a feature of a product or service as 'guaranteed', 'protected' or 'secure', or use a similar term unless that term is capable of being a fair, clear and not misleading description of it; and the firm communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.
- 3.61** Applying BCOBS 2 communication rules across the market would help us clarify our expectations around firms advertising their services towards customers. A consistent approach and level playing field across the market (between FSMA and non-FSMA businesses) providing the same services would allow us to address harm consistently and best protect customers' interest.
- 3.62** We consider that non-FSMA PSPs and e-money issuers are likely to incur a certain level of costs as a result of our proposals to apply certain communication rules in BCOBS 2. However, we expect these costs to be around familiarisation with the regime and ensuring/demonstrating compliance. We explore this in more detail in the CBA included in Annex 2.

**Q5:** **Do you have any comments on our proposals to apply the communications rules indicated in this CP to credit institutions, PIs, EMIs and RAISPs when providing payment services or issuing e-money?**

## 4 Misleading communication of currency exchange transfer services

- 4.1** This chapter sets out our proposed new rules and guidance for communications and promotions for currency exchange transfer services issued by credit institutions, PIs and EMIs.
- 4.2** Our proposals seek to address the harm we have seen where firms have issued potentially misleading communications to consumers. They are designed to enable consumers to make more informed choices about which services to use, without being misled about the rates they can achieve, the cost of those services or about alternative providers' fees.
- 4.3** The new rules and guidance will also enable the FCA to take more direct and efficient action in relation to any misleading communications.
- 4.4** The new rules will prevent firms from misleading consumers:
- by stopping firms promoting unachievable exchange rates to consumers;
  - by stopping firms making claims about the cost of a service provided by another provider unless the comparison is fair and balanced and the firm can prove that the claims made are true.
- 4.5** The design of our proposals takes account of existing requirements in PSD2 which cover disclosure of information, cost and charges for currency conversions. We have also considered the current proposals by the European Commission to amend Regulation (EC) No 924/2009 in relation to charges on cross-border payments and that relate to currency conversion charges (CBPR2). These measures are designed to increase transparency of charges for payments that involve currency exchanges and to increase the comparability of the options available for payment service users.
- 4.6** We refer to 'currency exchange transfer services' as a transfer or remittance of funds as part of a payment or e-money service that involves a currency conversion, or is carried in respect of funds that have been subject to a currency conversion (including where e-money is issued in a currency different to that used for its purchase).
- 4.7** Our proposals apply to communications to customers by businesses providing payment or e-money services involving a currency conversion, as well as related activities. They do not apply to other currency exchange transfer services that are not carried out as part of a payment or e-money service. For instance, these proposals do not apply to cash to cash 'bureaux de change' activities, which are generally outside the scope of FCA regulation.

## Our proposals

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- 4.8** The UK currency exchange transfer market for outbound customer transactions is estimated to be around £60 billion annually, out of which remittances reach up to £18 billion.<sup>35</sup> There are approximately 400 firms operating on the market, with different business models:
- traditional and challenger banks;
  - PIs operating based on agents' networks;
  - PIs operating online and telephonically;
  - PIs and EMIs operating mainly online (internet and mobile application based).
- 4.9** Existing research suggests that current misleading practices and unclear communications from firms providing currency exchange transfer services about transaction costs could lead to losses for consumers and SMEs.<sup>36</sup>
- 4.10** Problems identified include the presentation and promotion of unachievable rates such as an 'interbank' rate either through currency converter tools on firms' websites or mobile applications or in other promotional or communications material issued by firms.
- 4.11** Research and evidence collected on market practices, as well as customer behavioural trends, indicate that customers face challenges in understanding the total cost of a currency exchange transaction and we believe they may be misled by some information presented by some firms.
- 4.12** The ASA has upheld complaints against instances of misleading advertising in this market. These include firms communicating unsubstantiated claims about the costs of currency exchange services or the promotion of unachievable rates in their communications.
- 4.13** We have previously expressed our concern<sup>37</sup> with these practices and although some firms have taken action, we still see instances of potentially misleading advertising in the market (for example, providers advertising an 'interbank rate' in online currency converter tools).
- 4.14** We have also seen instances where customers have been attracted to a service by the promotion of an unachievable rate but have not become fully aware of the achievable rate until an advanced stage in the consumer journey, usually after registration or an account opening process. This is not a positive outcome for consumers who may not notice the difference in rate or be willing to look for another provider at this late stage.
- 4.15** Our proposed rules and guidance make clear that it is misleading to present a rate of exchange in a way that gives the impression that the rate is available to consumers if that rate is not likely to be available to those consumers in respect of a typical

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<sup>35</sup> Research commissioned by the FCA on the currency exchange transfer market

<sup>36</sup> Behavioural Insight Team, The impact of improved transparency of foreign money transfers for consumers and SMEs, March 2018

<sup>37</sup> [www.fca.org.uk/news/statements/use-interbank-rate-online-currency-converter-tools](https://www.fca.org.uk/news/statements/use-interbank-rate-online-currency-converter-tools)

transaction. Adding words or a disclaimer that qualifies the exchange rate, by saying for instance that the rate is not available to all does not prevent the rate from being misleading.

- 4.16** In other cases, we have seen firms make claims that they offer the 'best' or 'most competitive' rate, seemingly without evidence, or by making comparisons based on exchange rate or fees alone, and not taking account of the overall cost to the customer.
- 4.17** If customers are misled about the comparative prices of services, they may miss out on services which better suit their needs, with better quality, prices, or overall value. This can distort competition in favour of providers with services that are presented in a misleading way to customers.
- 4.18** We want to ensure that providers can compete effectively with one another, and that consumers are not misled by claims about the costs involved.
- 4.19** We propose to require that, where providers compare the costs of their service with other providers, they do so in ways which are meaningful, fair and balanced, and capable of being substantiated. We believe that this will encourage providers to ensure that they only make appropriate claims and do not mislead customers.
- 4.20** Where we refer to the costs of a service we include the charges payable in relation to a connected payment service or e-money issuance and the margin between the exchange rate that would be offered to a majority of customers to whom the promotion is directed and an independently published interbank spot rate.
- 4.21** Many different types of customers make use of currency exchange transfer services to move their funds for a variety of reasons such as to send money abroad to family and friends or to purchase an overseas property.
- 4.22** We propose to limit our proposals to communications to consumers who are individuals acting outside their trade, business or profession, micro-businesses and charities with an annual income of less than £1 million.
- 4.23** As set out in paragraph 4.7, our proposals will not apply to currency exchange services that are not carried out as part of a payment or e-money service.

**Q6:** Do you agree with our proposals to introduce new guidance for communications for currency exchange transfer services to credit institutions, PIs, EMIs and RAISPs when providing payment services or issuing e-money involving a currency conversion, to prevent misleading communications?

**Q7:** Do you agree with our proposed approach to prevent firms from issuing communications that use exchange rates that are not achievable?

**Q8:** Do you agree with our proposed approach to ensuring that any comparisons of costs are fair and meaningful?



**Q9:** Do you agree with the scope of our proposals to exclude other currency exchange transfer services that are not carried out as part of a payment or e-money service (such as 'bureaux de change' activities)?

## Annex 1

### Questions in this paper

- Q1:** Do you agree that there is no need for an implementation period for any rules we introduce, following publication of our Policy Statement?
- Q2:** Do you have any comments with regards to the equality and diversity implications of our consultation, in particular to certain groups and/or communities?
- Q3:** Do you agree with our proposal to apply the FCA Principles for Businesses to the activity of provision of payment services and issuance of e-money (where not already a regulated activity) and connected activities?
- Q4:** Do you agree with our proposal to extend the application of all the Principles as a collective set of standards to Pls, EMIs and RAISPs?
- Q5:** Do you have any comments on our proposals to apply the communications rules indicated in this CP to credit institutions, Pls, EMIs and RAISPs when providing payment services or issuing e-money?
- Q6:** Do you agree with our proposals to introduce new guidance for communications for currency exchange transfer services to credit institutions, Pls, EMIs and RAISPs when providing payment services or issuing e-money involving a currency conversion, to prevent misleading communications?
- Q7:** Do you agree with our proposed approach to prevent firms from issuing communications that use exchange rates that are not achievable?
- Q8:** Do you agree with our proposed approach to ensuring that any comparisons of costs are fair and meaningful?
- Q9:** Do you agree with the scope of our proposals to exclude other currency exchange transfer services that are not carried out as part of a payment or e-money service (such as 'bureaux de change' activities)?
- Q10:** Do you have any comments on our cost benefit analysis?

## Annex 2

# Cost benefit analysis

### Introduction

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1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made and subject to subsection (8) an estimate of those costs and those benefits'.
2. This analysis presents estimates of the impacts of our proposals. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, considering all the other impacts we foresee.
3. In summary, the proposals we are consulting on are:
  - to **extend the application of the Principles for Businesses**:
    - a. to the activities of provision of payment services and issuance of e-money (where not already a regulated activity) and activities connected with these activities;
    - b. to PIs, EMIs and RAISPs in addition to credit institutions;
  - to **extend the application of rules and guidance in BCOBS 2** over communication with retail banking customers so that they apply to:
    - a. communication with payment service and e-money customers;
    - b. PIs, EMIs and RAISPs in addition to credit institutions;
  - to provide **guidance in BCOBS 2 on when a communication concerning currency exchange transfer services may be misleading**, and make rules requiring comparisons of currency exchange transfer services with other providers to be **meaningful, presented in a fair and balanced way** and be capable of substantiation. This guidance will apply only to credit institutions, PIs and EMIs that provide currency exchange transfer services.
4. Our proposals affect credit institutions providing payment services and/or issuing e-money as well PIs, EMIs and RAISPs. However, we are not proposing to apply the changes to credit unions as we do not have sufficient evidence to consider it proportionate to do so.

## Summary of costs and benefits

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5. We expect our proposals to promote fair competition amongst PSPs and e-money issuers by creating standards equally applicable to businesses that provide payment and e-money issuance services. This would help clarify expectations of behaviour and treatment of customers from PSPs and e-money issuers in the evolving payments landscape. It would also make it more efficient for the FCA to intervene where we see harm.
6. Our proposals aim to help customers to make more informed choices about which services to use, without being misled about the service they will receive, the cost of those services or comparisons with alternative providers' services.
7. We do not consider it reasonably practicable to estimate the monetary benefits from our proposed rules. For example, for some of the proposals, carrying out benefits estimation would require substantial data gathering from trials, which would impose a disproportionate burden on any firms involved. We also expect our proposed extension of the Principles for Businesses to prevent harm that is not foreseen. It is not possible for us to quantify the benefits of this.
8. We expect firms to incur a total one-off familiarisation cost of approximately £769,000 from our proposals to extend the application of the Principles for Businesses. We estimate that resulting from our proposals on communication, including misleading advertising and marketing, firms may incur total one-off costs of between £2.4m and £9.5m and on-going costs of between £1.9m and £7.4m.

## Problem and rationale for intervention

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9. We want to address a mismatch in the regulatory tools available in relation to conduct standards and communications/fair treatment of customers, which currently apply differently to different cohorts of firms in the sectors. Clarifying our expectations for PSPs and e-money issuers would prevent potential market inconsistencies.
10. We are concerned about misleading communication practices, including marketing and advertising of services by businesses in these sectors. We have powers to consider these practices in respect of the CPRs and to impose requirements on a firm's authorisation or registration under the Payment Services Regulations (PSRs) or Electronic Money Regulations (EMRs). However, these powers do not provide us with the ability to make specific rules about the form and content of communications.
11. We consider that applying a set of standards to the provision of payment services and issuance of e-money will help address differences in regulatory approach between FSMA and non-FSMA regulated firms and support them competing on equal footing. It will also enable us to better address potential harm through a consistent supervisory and enforcement approach across the market.
12. The remainder of this section summarises the relevant market failures that drive the harm we have identified and that the proposed remedies seek to address. These are:
  - Regulatory inconsistencies;



- Information asymmetry;
- Behavioural biases.

### Regulatory Inconsistencies

- 13.** As discussed in Chapter 1, PSPs and e-money issuers are subject to different regulatory regimes. Credit institutions must comply with FCA rules set out in the Handbook when carrying out regulated activities, if the services they are providing are ancillary to certain regulatory activity and, in some cases, unregulated activity. PIs, EMIIs and RAISPs do not currently have to comply with the Principles for Businesses or FCA Handbook rules about communications (including marketing communications) for any of their activities. Credit institutions do not have to comply with these rules about communications if the services they are providing are not connected to a regulated activity.
- 14.** Conduct rules governing these activities exist in the PSRs and EMRs and general consumer protection legislation applies, but our powers to act to address potential harm under these rules are different. This creates scope for potential market conduct inconsistencies as well as inconsistencies in how we supervise across the payment services and e-money markets. We expect that clarifying our expectations for non-FSMA regulated PSPs and e-money issuers will ensure consistency and in turn improve confidence and trust in this rapidly growing market.

### Information asymmetry

- 15.** We have seen some of the firms providing payment services communicate and/or advertise such services to customers in ways which may be unfair, unclear or misleading. For instance, if in advance of use customers are misled about the service they will receive or the provider they might want to choose they may miss out on services which better suit their needs, with better quality, prices, or overall value.

### Behavioural biases

- 16.** Customers are subject to biases which impact their behaviour<sup>38</sup> and these can exacerbate the effects of information asymmetries or of misleading information in financial promotions.
- 17.** For example, in the case of currency exchange transfer services customers are usually informed of the actual rate they will receive at an advanced stage of the consumer journey, usually after the registration process. At this point the following distortions can impact their behaviour:
- Inertia – The customer may not necessarily check their rate or notice that it was different from the prevailing interbank rate;
  - Loss aversion/sunk-cost fallacy<sup>39</sup> – customers incur costs (time spent) shopping around. If, once they have registered with a provider, customers notice a difference in rate they may limit further searching and continue with their purchase to avoid the effort they have already invested going to waste;

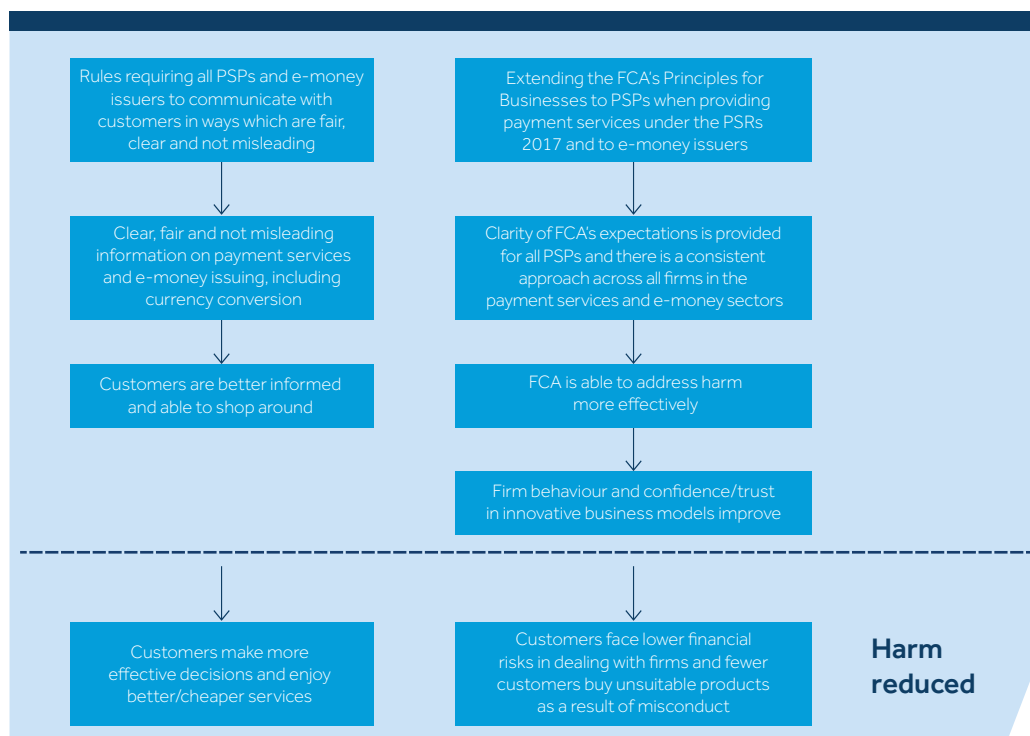
38 For more detail about behavioural biases see FCA, 2013, Occasional Paper 1 Applying behavioural economics at the FCA: [www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf](http://www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf)

39 Decisions are tainted by the emotional investments accumulated, and the more someone invests in something the harder it becomes to abandon it.

- Anchoring effects – Once a customer has committed to a currency exchange transaction, especially in a large volume, the small additional cost of a lower exchange rate at a later point may not appear as important.

18. The figure below outlines how our proposals are expected to mitigate harm.

**Figure 1: Causal chain of how FCA proposals and requirements are expected to lead to address harm**



### Baseline and key assumptions

19. It is necessary to establish a baseline, or counterfactual, against which to assess the costs and benefits of an intervention to ensure that only those attributable to the intervention are considered.
20. While market conditions may change as the macroeconomic environment changes, we have no reason to believe that there will be a material change in the situation we currently observe in this sector that would affect our proposals. The recent introduction of PSD2 has changed the regulatory environment that firms operate in and may bring different and innovative business models in to the market. However, it is difficult to predict how the market will develop over time.
21. We have taken into account existing requirements that relate to the disclosure of information, cost and charges contained in PSD2. We have considered the current proposals to amend Regulation (EC) No 924/2009 in relation to charges on cross-border payments and currency conversion (CBPR 2). These measures tend to focus on the information provided at the point of sale and/or when making a payment transaction, in particular when using the dynamic currency conversion option. The aim of these proposals is to ensure transparency of charges and, where relevant, comparability of options for payment services users whenever a currency conversion takes place in a cross-border transaction.



- 22.** We are looking to clarify our expectations in relation to firms' communication practices. This includes the advertising and communication of payment services or e-money involving a currency conversion in advance of the customer using that service. We are not consulting on making rules regarding specific transparency requirements or disclosure of costs for payment transactions involving dynamic currency conversions. We aim to take account of related provisions in current legislation and proposals (eg PSD2, CBPR2), although we consider these are less likely to address practices we are concerned with.
- 23.** We, therefore, use the current observed market structure as our baseline against which to measure our proposals.
- 24.** Research we undertook on the currency exchange transfer market found there are between 300 -500 firms operating in this market. We assume that 400 firms provide these services for our cost calculations. These firms include credit institutions, PIs, EMIs and RAISPs offering currency exchange transfer services.
- 25.** We currently regulate 1575 PSPs and e-money issuers (291 FSMA and 1284 non-FSMA) which will be impacted by our proposals to extend the Principles for Businesses and certain general communications (including marketing communications) rules in BCOBS 2.

## Principles for Businesses

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- 26.** Firms carrying out an activity regulated under FSMA must comply with the Principles for Businesses. Because the Principles also apply to ancillary activities in relation to accepting deposits and credit related regulatory activity, and, in some contexts, unregulated activities they are likely in many cases to apply to the provision of payment services by FSMA firms, to the extent that they do not conflict with PSD2. They also already apply to issuance of e-money for credit institutions, but not to ancillary activities offered by these firms in connection to issuance of e-money.
- 27.** Our proposals seek to extend the Principles for Business to PSPs and e-money issuers (credit institutions, PIs, EMIs and RAISPs) when providing payment services as well as connected activities. We also propose to apply the Principles with respect to the issuance of electronic money (where not already a regulated activity) as well as connected activities.
- 28.** The Principles play an important role in outlining the fundamental obligations we are expecting firms to comply with. They are also a basis for supervisory or enforcement action when a firm's behaviour has been unfair to customers but there is no specific rule to address non-compliance. The Principles are 11 standards firms need to adhere to, including acting with integrity, treating customers fairly and arranging adequate protection for client assets. These are outlined in Chapter 3.

## Costs

- 29.** We do not expect credit institutions to incur costs from these proposals. Where these firms provide payment services as ancillary to their regulated activity, the Principles already apply. Conversations with firms have indicated that, although the principles do not apply where they provide payment services independently from their activity regulated under FSMA, they already act as if they do apply. We understand that in the

majority of cases this is because their internal systems and processes do not ring-fence these services for different treatment as doing so would result in additional cost. For this reason, credit institutions have told us they do not foresee additional costs arising from our proposals to extend the application of the principles.

- 30.** We expect PIs, EMIs and RAISPs to incur few costs from the application of the Principles for Businesses to them. We consider that most PSPs will already conduct their business with integrity and treat their customers fairly. Most non-FSMA businesses should already be familiar to similar conduct provisions included in the PSRs and EMRs and the extension of our principles should inflict minimal costs.
- 31.** We have contacted non-FSMA PSPs to gather information on the costs associated with complying with the Principles (including costs associated with training staff and compliance monitoring). One response indicated that the business considers it already implements the standards as best practice. A few EMIs estimated the compliance costs of applying the Principles to be significant, with total one-off and ongoing costs per firm of more than £300,000. In those cases, we discussed those costs with firms and understand the figures provided relate to a 'worst case' scenario. Firms agreed that actual costs may be lower but were unable to confirm this without detailed analysis. They advised that a transition period would also lower costs. Given the limited cases in which non-FSMA PSPs provided significant costs related to complying with the Principles, our estimates showed a high variation of costs for these businesses. For this reason, we have not considered it proportionate to include these costs in the total figures.
- 32.** We expect firms to incur a certain level of costs from familiarising themselves with the new rules. We have estimated these familiarisation costs to be approximately £769,000 for the total population of 1284 non-FSMA regulated PSPs. We have included costs associated with gap analysis to review the legal instrument in this estimate. The estimate does not include credit institutions as we do not expect these firms to incur familiarisation costs.
- 33.** To estimate familiarisation costs, we assume an average of 20, 5 and 2 compliance staff in large, medium and small firms, respectively, read the document at an estimated reading speed of 3 minutes per page/300 words per page. For gap analysis, we assume that 4, 2, and 1 legal staff in large, medium and small firms, respectively, review and implement the legal instrument. The standard gap analysis time (referring to the time required to verify compliance with and implement new rules) is assumed to be 4, 3 and 1 days (of 7 hours) per 50 pages of legal instrument for large, medium and small firms, respectively. We use salaries of compliance staff (£42-£55 per hour depending on firm size) and legal staff (£51-£64 per hour depending on firm size) from the Willis Towers UK Financial Services Report, adding 30% overheads to account for non-wage labour costs.<sup>40</sup>
- 34.** We expect that applying PRIN will change firm behaviour in the future, with an associated cost. However, given the nature of the Principles for Businesses, we do not believe a reasonable estimate of these costs can be provided. This is because we cannot predict the types of activity that firms would engage in.

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40 Our estimate assumes that there are a total of 899 (70%) small, 257 (20%) medium and 128 (10%) large PSPs and e-money issuers.



### Benefits

35. Each of the Principles provides different types of benefits for consumers. We expect the benefits arising from the application of the Principles to cover all the categories of harm we set out in our Mission.<sup>41</sup>
36. Where not already applied by firms, the Principles collectively will help markets work well for the benefit of consumers. They also help to prevent harm that is not foreseen and so more specific rules cannot be made. Because of this we do not believe it is reasonably practicable to estimate these benefits nor that an estimate can reasonably be made.
37. Our proposals aim to increase the consistency of standards we apply to firms in the payment services and e-money markets. This means FSMA regulated and non-FSMA regulated PSPs and e-money issuers can compete on equal footing. Consistent standards will also make it easier for the FCA to supervise firms in the evolving payments landscape.

### Communications (including marketing communications) for payment services and e-money

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38. Our policy measures involving communications rules include two elements:
- to **extend the application of rules and guidance in BCOBS 2** on communication with retail banking customers so that they apply to:
    - a. communication with payment services and e-money customers;
    - b. PIs, EMIs and RAISPs in addition to credit institutions;
  - provide **guidance in BCOBS 2 on when a communication about currency exchange transfer services may be misleading**, and **make rules requiring comparisons** of currency exchange transfer services with other providers to be **meaningful, presented in a fair and balanced way** and be capable of substantiation. This guidance will apply only to credit institutions, PIs and EMIs that provide currency exchange transfer services.

### Costs

39. We expect that the costs of implementing these measures will only be incurred by certain PSPs and e-money issuers. In our survey to firms, credit institutions told us that they would not incur any additional costs associated with new rules around communications of currency exchange transfer services, in connection to a payment service. Some already providing these services referred to existing processes in place which already ensure that they communicate them to customers in a clear, fair and not misleading way.
40. PIs and EMIs that offer currency exchange transfer services are likely to incur costs from the extension of our existing communications rules and implementation of our new communication rules over currency exchange transfer services. We expect

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41 FCA, 'Our Mission 2017: How we regulate financial services', see [www.fca.org.uk/publication/corporate/our-mission-2017.pdf](http://www.fca.org.uk/publication/corporate/our-mission-2017.pdf)

the largest costs to arise from the design of new advertising and communication processes, as well as additional compliance monitoring costs.

- 41.** Overall, we expect the main costs to firms to consist of:
- additional costs associated with new advertising material design and communications processes;
  - costs incurred through system changes for producing advertisements and communication material;
  - the costs of training staff to understand and implement the new rules;
  - compliance monitoring and reporting costs;
  - IT development costs associated with configuring internal systems to change the way in which exchange rates and fees are displayed.
- 42.** Based on the estimates we have received from firms for our cost survey, we expect authorised EMIs to incur the most significant costs from our proposals. Using the responses to our survey, we estimate the average one-off costs to authorised EMIs to be approximately £71,000 per firm and the average on-going costs to be around £57,000 per firm. One authorised PI also told us they would incur a one-off cost of £2,000. All other PSPs and e-money issuers we surveyed did not report any costs arising from our proposals relating to communications rules.
- 43.** Research we undertook on the currency transfer market found there are between 300 to 500 firms operating in this market. We assume that 400 firms provide these services for our cost calculations. Using the total population of each type of PSP and e-money issuer, we estimate the total number of different types of businesses which are active in the currency exchange transfer market. We apply these estimates to our average costs to estimate the total costs to the sector.
- 44.** We estimate the total one-off cost of complying with the new communication rules to be approximately £2.4m for PSPs and e-money issuers. We also estimate the total ongoing cost at £1.9m.
- 45.** We also expect PIs and EMIs that do not offer currency exchange transfer services to incur costs from the extension of existing general communications rules in BCOBS.<sup>42</sup> We currently regulate 1284 non-FSMA PSPs and e-money issuers which our proposals to extend the existing general communications (including marketing communications) rules in BCOBS 2 would apply to.
- 46.** In the responses to our survey, businesses did not separate costs which arise from the new communication guidance applicable to currency exchange transfer services from costs related to the extension of existing general communication rules. Additionally, we asked firms to split the costs of the BCOBS 2 proposals between currency exchange transfer services and general communications. They were unable to provide a split of these costs. We have therefore applied our average estimates of the total communication costs to all 1284 PSPs and e-money issuers to estimate the total costs to all PSPs. We consider these estimates to be an upper bound as we have used

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42 We consider that it is not proportionate or reasonably practicable to estimate the costs for RAISPs.

firms estimates which combine the costs of extending BCOBS2 and the costs of new communications guidance around currency transfer services. In practice, these costs are likely to be lower for firms that do not offer currency exchange transfer services.

47. We estimate the total one-off cost of complying with the new and existing communication rules to be approximately £9.5m for PSPs and e-money issuers. We also estimate the total ongoing cost at £7.4m.
48. We outline the one-off and on-going costs to firms from our proposals on communications in Table 1 below.

**Table 1: Summary of total one-off and on-going costs to firms from our proposals around financial promotions and communication<sup>43</sup>**

Type of firm	Total number of firms	Estimated number of firms in currency exchange market	One-off incremental cost of implementation	On-going costs of complying with the rules
Authorised EMIs	130	33	£2.4m – £9.3m	£1.9m – £7.4m
Small EMIs	25	6	Minimal	Minimal
Authorised PIs	391	99	£50,000 – £200,000	Minimal
Small PIs	738	187	Minimal	Minimal
Credit institutions (except credit unions)	291	74	Minimal	Minimal
<b>Total</b>	<b>1,575</b>	<b>400</b>	<b>£2.4m – £9.5m</b>	<b>£1.9m – £7.4m</b>

49. Some businesses reported that they were unable to provide numerical estimates of costs at this stage as our proposals are not finalised and costs may vary significantly depending on their nature and timescale. Others also told us that they have existing compliance staff in place to ensure communications are clear, fair and not misleading.

### Benefits

50. Our proposals aim to enable customers to make more informed choices about which services to use, without being misled about the services they will receive, the cost of those services or the alternative providers' services.
51. We believe that it is not reasonably practicable to estimate the monetary benefits from our proposed remedies. Carrying out benefits estimation would require substantial data gathering from trials, which would impose a disproportionate burden on any firms involved. Instead we provide a qualitative assessment of the potential benefits for consumers and competition in the market. We note that the assessment of benefits for the general application of certain rules contained in BCOBS 2 is even more difficult given they would apply to both cohorts of firms operating in the payment services and e-money sectors (FSMA and non-FSMA regulated).
52. Research we commissioned found that customers using currency exchange transfer services are often unable to accurately assess the costs of a currency exchange transfer from the information providers show them. This suggests that customers

43 The lower bound of the cost estimates applies our average cost estimates to our estimate of the number of firms in the currency exchange transfer market. The upper bound of the cost estimates applies our average cost estimates to the total number of firms which provide payment services or e-money issuance.

may not understand the full cost of transfers, and that currency exchange providers may mislead customers when communicating their services, restricting their ability to make informed decisions.<sup>44</sup>

**53.** We expect the combination of proposed remedies to increase the level of competition in the currency exchange transfers market through increased demand-side pressure resulting from customers being more engaged with and making more effective decisions about their payment services involving a currency conversion. We expect this would result in more competitive prices and better provision of services in the market. As a result, customers could benefit from overall lower costs of their currency exchange transactions.

**54.** Our proposed rules allow us to supervise more consistently and efficiently, with the associated harm reduction, when identifying instance of misleading communication practices, including marketing and advertising of services. This is the result of applying the same set of standards across all businesses providing payment services and issuing e-money, as well as clarifying expectations in terms of behaviour and treatment of customers.

**Q10: Do you have any comments on our cost benefit analysis?**

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44 Research commissioned by the FCA on the currency exchange transfer market

## Annex 3

# Compatibility statement

### Compliance with legal requirements

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1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

### The FCA's objectives and regulatory principles: Compatibility statement

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7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objectives to promote effective competition and secure an appropriate degree of protection for consumers by ensuring that:

- consumers are able to understand the services they receive without being misled;
- consumers can understand the relative merits of different providers in order to avoid making a choice they might not have, if they had not received incorrect information;
- competition is not distorted in favour of firms which make misleading claims about their services;
- competition would be supported by creating a level playing field across the market for both FSMA and non-FSMA businesses.

8. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they will allow us to ensure that customers can understand the services they are using, driving improved competition in the currency exchange transfer market and more effective functionality. Extending existing Handbook rules to PIs and EMIs will allow us to address discrepancies between regulatory regimes of FSMA and PSRs 2017, helping us tackle consumer detriment (eg where there is a mismatch in standards relating to communications (including marketing communications) or fair treatment of customers applied to different cohorts) and an un-level playing field (eg where firms of similar sizes in each cohort are subjected to very different requirements to do business). For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.

9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

**The need to use our resources in the most efficient and economic way**

10. By providing greater clarity on our expectations, we can reduce the need for the FCA to use its resources to encourage better practice in this market. The areas where we believe our new rule making powers are likely to have the most impact are:

- ability to implement remedies across PSPs and e-money issuers (particularly with the evolution of the market beyond traditional boundaries);
- cross-firm supervisory work so we can consider operations of both FSMA and non-FSMA businesses against similar standards, to determine whether they have measures in place to ensure adequate consumer protection);
- ability to regulate firms' communications (including marketing communications) (neither the PSRs 2017 nor the EMRs 2011 impose requirements around communications (including marketing communications));
- ability to apply the Principles for Businesses and associated guidance to non-FSMA businesses (given that a number of currently unregulated entities are brought into the FCA's remit under the PSRs 2017, it would be useful to clarify our general expectations of how they should treat their customers).

**The principle that a burden or restriction should be proportionate to the benefits**

11. We see general benefits from consumers being able to understand the services they receive. However, as outlined in our cost benefit analysis in Annex 2, we also expect that these requirements do not impose additional burdens and restrictions beyond

existing cross-sector consumer protection law. As a result, we believe that our proposals are proportionate for firms.

### **The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

12. As our proposals focus on driving better outcomes for customers, and better competition, we expect that they can support growth in the United Kingdom's economy by encouraging more efficient allocation of resources, and greater consumer trust in the financial services sector.

### **The general principle that consumers should take responsibility for their decisions**

13. These proposals focus on ensuring that consumers are not misled by firms' advertising. As a result, they have the potential to empower consumers to take responsibility for their decisions by giving them the information they need to make a choice about which providers best suit their needs.

### **The responsibilities of senior management**

14. Senior managers' regime will not be impacted by our new proposed rules.

### **The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

15. We have considered differences between firms and we believe there is insufficient evidence to merit the application of our proposals to credit unions. We include building societies in our proposals, however the impact of new rules is likely to be less significant, given the limited number of such firms providing payment services and issuing e-money. We think that applying our proposals to PIs, EMLs and RAISPs will help to level the playing field of the payment services and e-money sectors by improving credibility and trust.

### **The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information**

16. Our proposals are compatible with this principle.

### **The principle that we should exercise of our functions as transparently as possible**

17. In developing our proposals, we have had regard to the importance of acting as transparently as possible. We have gathered evidence on the markets we are examining and are publishing this with our consultation to seek feedback on our proposals.
18. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). We do not consider this relevant to our proposals.

### **Expected effect on mutual societies**

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19. Our proposals will not apply to most mutual societies or credit unions. Where our proposals do apply, we do not expect them to have a significant impact.

## Equality and diversity

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- 20.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
- 21.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraphs 2.30 to 2.34 of our CP. We do not consider our proposals will adversely affect people with protected characteristics, but seek views on this.

## Legislative and Regulatory Reform Act 2006 (LRR)

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- 22.** We have had regard to the principles in the LRR for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are:
- Transparent – We are following an established consultation process in making these rules;
  - Accountable – We are seeking feedback from this CP on whether stakeholders agree with our proposed approach;
  - Proportionate – They result in an appropriate level of consumer protection, without creating undue burdens on firms or adverse impact on consumers;
  - Consistent – Our proposals aim to ensure we set consistent expectations from businesses across the payment services and e-money sectors;
  - Targeted – We have identified that action is needed to apply these rules to PSPs and e-money issuers.
- 23.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance. We consider that the proposals will be effective in helping firms understand and meet regulatory requirements in a manner that leads to improved outcomes for consumers.

## Treasury recommendations about economic policy

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- 24.** In developing our proposals, we have had regard to HM Treasury's recommendations to us about aspects of the Government's economic policy the FCA should have regard to when discharging its functions. In particular, our proposals should promote effective competition and secure an appropriate degree of protection for customers of PSPs and e-money issuers.

## Annex 4

### Abbreviations used in this paper

<b>ASA</b>	Advertising Standards Authority
<b>ATM</b>	Automated Teller Machine
<b>AIS</b>	Account Information Service
<b>BCOBS</b>	Banking Conduct of Business Sourcebook
<b>CAP</b>	Code of Non-Broadcast Advertising and Direct and Promotional Marketing
<b>CBA</b>	Cost Benefit Analysis
<b>CBPR2</b>	Revision of Cross-Border Payments Regulation
<b>COND</b>	Threshold Conditions
<b>CP</b>	Consultation Paper
<b>CPRs</b>	Consumer Protection from Unfair Trading Regulations 2008
<b>EBA</b>	European Banking Authority
<b>EC</b>	European Commission
<b>EEA</b>	European Economic Area
<b>2EMD</b>	Revised Electronic Money Directive
<b>EMI</b>	Electronic Money Institution
<b>EMRs</b>	Electronic Money Regulations
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>PI</b>	Payment Institution
<b>PIS</b>	Payment Initiation Service

<b>PRIN</b>	Principles for Businesses
<b>PSD2</b>	Revised Payment Services Directive
<b>PSRs</b>	Payment Services Regulations
<b>PSP</b>	Payment Service Provider
<b>RAISP</b>	Registered Account Information Service Provider
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls
<b>UK</b>	United Kingdom

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

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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# Appendix 1

## Draft Handbook text

**PAYMENT SERVICES AND ELECTRONIC MONEY (PRINCIPLES FOR  
BUSINESS AND CONDUCT OF BUSINESS) INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”) including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137T (General supplementary powers);
    - (c) section 138C (Evidential provisions);
  - (2) section 139A of the Act (Power of the FCA to give guidance);
  - (3) regulation 120 (Guidance) of the PSRs;
  - (4) regulation 60 (Guidance) of the EMRs; and
  - (5) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [1 April 2019].

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Business (PRIN)	Annex B
Banking: Conduct of Business sourcebook (BCOBS)	Annex C

**Citation**

- E. This instrument may be cited as the Payment Services and Electronic Money (Principles for Business and Conduct of Business) Instrument 2018.

By order of the Board  
[*date*]

## Annex A

### Amendments to the Glossary of definitions

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

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

*currency transfer service* a *payment service* or the issuance of *electronic money* that involves a currency conversion. For the purpose of this definition ‘currency conversion’ has the same meaning as it has in the *Payment Service Regulations*.

*electronic money customer* (in *BCOBS*):

- (a) a *consumer*;
- (b) a *micro-enterprise*; or
- (c) a *charity* which has an annual income of less than £1 million.

*payment service customer* (in *BCOBS*):

- (a) a *consumer*;
- (b) a *micro-enterprise*; or
- (c) a *charity* which has an annual income of less than £1 million.

*payment service or electronic money promotion* an invitation or inducement to:

- (a) enter into an agreement for the provision of a *payment service*;
- (b) initiate a *payment order*; or
- (c) acquire *electronic money*,

that is communicated in the course of a regular occupation or business activity.

Amend the following definitions as shown.

*client* ...

(B) in the *FCA Handbook*:

...

(1A) in relation to payment services or electronic money in addition to (1), includes a person to whom a payment service provider or electronic money issuer provides, intends to provide or has provided:

(a) a payment service;

(b) a service in the course of issuing electronic money; or

(c) a service connected to a service in (a) or (b).

*customer* ...

(B) in the *FCA Handbook*:

(1) (except in relation to SYSC 19F.2, ICOBS, a credit-related regulated activity, MCOB 3A, an MCD credit agreement, CASS 5, PRIN in relation to MIFID or equivalent third country business, DISP 1.1.10-BR, PROD 1.4 and PROD 4) and in relation to payment services and issuing electronic money (where not a regulated activity) a client who is not an eligible counterparty for the relevant purposes.

...

(7) in relation to payment services or issuing electronic money (where not a regulated activity) a client who is:

(a) a consumer;

(b) a micro-enterprise; or

(c) a charity which has an annual income of less than £1 million.

*firm* ...

(10) (in PRIN 2) includes an electronic money institution, an EEA electronic money institution, a payment institution, a registered

account information service provider and an EEA registered account information service provider.

Home  
State  
regulator

...

- (7) in relation to an EEA authorised payment institution or an EEA registered account information service provider, the competent authority designated in accordance with article 22 of the Payment Services Directive as being responsible for the authorisation or registration and prudential supervision of that EEA authorised payment institution or EEA registered account information service provider.
- (8) in relation to an EEA authorised electronic money institution, the competent authority designated in accordance with article 3 of the Electronic Money Directive as being responsible for the authorisation and prudential supervision of that EEA authorised electronic money institution.

private  
person

- (1) except in relation to a rule made under section 137A of the Act as applied by Schedule 3 to the Electronic Money Regulations or Schedule 6 to the Payment Services Regulations, (as defined in article 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2000 (SI 2001/2256)):

...

- (2) in relation to a rule made under section 137A of the Act as applied by Schedule 3 to the Electronic Money Regulations, as defined in regulation 72(3) of those regulations:
  - (a) any individual, except where the individual suffers the loss in question in the course of issuing electronic money or providing payment services; and
  - (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind,

but does not include a government, a local authority (in the United Kingdom or elsewhere) or an international organisation.

- (3) in relation to a rule made under section 137A of the Act as applied by Schedule 6 to the Payment Services Regulations as defined in regulation 148(3) of those regulations:
  - (a) any individual, except where the individual suffers the loss in question in the course of providing payment services; and

- (b) any person who is not an individual, except where that person suffers the loss in question in the course of carrying on business of any kind,

but does not include a government, a local authority (in the *United Kingdom* or elsewhere) or an international organisation.

regulatory (1) ...  
system

- (2) in *PRIN* and in *BCOBS* in addition to (1), the arrangements for regulating payment service providers and electronic money issuers in or under the *Payment Services Regulations* and *Electronic Money Regulations*, including conditions of authorisation or registration set out in those regulations, the *Principles* and other rules, codes and guidance, including any relevant directly applicable provisions of a Directive or Regulation.

...

rule (in accordance with section 417(1) of the *Act* (Definitions)) a rule made by the *FCA* or the *PRA* under the *Act* (including as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*), including:

- (a) a *Principle*; and  
(b) an *evidential provision*.

## Annex B

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

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

#### 1 Introduction

##### 1.1 Application and purpose

Application

...

- 1.1.1A     G     The *Principles* also apply to certain *payment service providers* and *electronic money issuers* that are not *firms*. *PRIN 3.1.1AR* sets out the application of the *Principles* to these *persons*. The references to a *firm* in *PRIN 2* includes such *persons*.

Purpose

- 1.1.2     G     The *Principles* are a general statement of the fundamental obligations of *firms* and the other *persons* to whom they apply under the *regulatory system*. This includes provisions which implement the *Single Market Directives*. They derive their authority from the *FCA*'s rule-making powers as set out in the *Act*, including as applied by the *Payment Services Regulations* and the *Electronic Money Regulations*, and reflect the *statutory objectives*.

Link to fit and proper standard ~~in the threshold conditions~~

...

- 1.1.4A     G     For *persons* authorised or registered under the *Payment Services Regulations* or the *Electronic Money Regulations*, the relevant "fit and proper standards" are the standards set in those Regulations.

Taking group activities into account

- 1.1.5     G     *Principles 3* (Management and control), *4* (Financial prudence) and (in so far as it relates to disclosing to the *FCA*) *11* (Relations with regulators) take into account the activities of members of a *firm's group*. Compliance by another *person* to whom the *Principles* apply with *Principles 3, 4* and *11* can also be affected by the activities of other *persons* who are members of their *group*. This does not mean that, for example, inadequacy of a *group* member's risk management systems or resources will automatically lead to a *firm* contravening Principle 3 or 4. Rather, the potential impact of a *group* member's activities (and, for example, risk management systems operating on a *group* basis) will be relevant in determining the adequacy of the *firm's* risk management systems or resources respectively.

## Standards in Markets outside the United Kingdom

- 1.1.6 G As set out in *PRIN 3.3* (Where?), *Principles 1* (Integrity), *2* (Skill, care and diligence) and *3* (Management and control) apply to world-wide activities in a prudential context. *Principle 5* (Market conduct) applies to world-wide activities which might have a negative effect on confidence in the *UK financial system*. In considering whether to take regulatory action under these *Principles* in relation to activities carried on outside the *United Kingdom*, the *FCA* will take into account the standards expected in the market in which the *firm or other person to whom the Principles apply* is operating. *Principle 11* (Relations with regulators) applies to world-wide activities; in considering whether to take regulatory action under *Principle 11* in relation to cooperation with an overseas regulator, the *FCA* will have regard to the extent of, and limits to, the duties owed by the *firm or other person* to that regulator. (*Principle 4* (Financial prudence) also applies to world-wide activities.)

...

## Consequences of breaching the Principles

- 1.1.7 G Breaching a *Principle* makes a *firm or other person to whom the Principles apply* liable to disciplinary sanctions. In determining whether a *Principle* has been breached it is necessary to look to the standard of conduct required by the *Principle* in question. Under each of the *Principles* the onus will be on the *FCA* to show that a *firm or other person* has been at fault in some way. What constitutes “fault” varies between different *Principles*. Under *Principle 1* (Integrity), for example, the *FCA* would need to demonstrate a lack of integrity in the conduct of a *firm’s or other person’s* business. Under *Principle 2* (Skill, care and diligence) a *firm or other person* would be in breach if it was shown to have failed to act with due skill, care and diligence in the conduct of its business. Similarly, under *Principle 3* (Management and control) a *firm or other person* would not be in breach simply because it failed to control or prevent unforeseeable risks; but a breach would occur if the *firm or other person* had failed to take reasonable care to organise and control its affairs responsibly or effectively.
- 1.1.8 G The *Principles* are also relevant to the *FCA’s* powers of information-gathering, to vary a *firm’s Part 4A* permission or authorisation or registration under the *Payment Services Regulations* or *Electronic Money Regulations*, and of investigation and intervention, and provide a basis on which the *FCA* may apply to a court for an injunction or restitution order or require a *firm or other person* to make restitution. However, the *Principles* do not give rise to actions for damages by a private person (see *PRIN 3.4.4R*).

...

## 1.2 Clients and the Principles

...

## Approach to client categorisation

- 1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers. The approach that a firm (other than for credit-related regulated activities, payment services and issuing electronic money (where not a regulated activity) in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, or other activities, as described in PRIN 1.2.3G.*

...

### 3 Rules about application

#### 3.1 Who?

...

- 3.1.1A R PRIN also applies:
- (1) to an electronic money institution, an authorised payment institution, a small payment institution or a registered account information service provider; and
  - (2) with the exception of Principle 4, and only in so far as responsibility for the matter in question is not reserved by the Payment Services Directive, Electronic Money Directive or other EU instrument to the person's Home State regulator, to an EEA authorised electronic money institution, an EEA authorised payment institution and an EEA registered account information service provider.

...

- 3.1.6 R *A firm or other person will not be subject to a Principle to the extent that it would be contrary to the UK's obligations under an EU instrument.*

...

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

## 3.2 What?

...

- 3.2.1B     R     Other than with respect to a *firm* that is a *credit union*, *PRIN* also applies with respect to:
- (1)     the provision of *payment services*;
  - (2)     issuing of *electronic money* (where not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*); and
  - (3)     activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*).

- 3.2.1C     G     Issuing of *electronic money* will therefore be covered under either *PRIN* 3.2.1AR(1) where it is the regulated activity of *issuing electronic money*, specified in article 9B of the *Regulated Activities Order* or under *PRIN* 3.2.1BR where it is not that *regulated activity*.

...

- 3.2.2-A     G     *PRIN* will also apply to the communication of promotions concerning *payment services* and *electronic money*.
- 3.2.2A     R     *PRIN* 1 Annex 1, *PRIN* 3.4.1R and *PRIN* 3.4.2R do not apply with respect to the carrying on of *credit-related regulated activities*, provision of *payment services* or issuing of *electronic money* (where not a *regulated activity*).
- 3.2.3     R     Subject to *PRIN* 3.2.4R, *Principles* 3, 4 and (in so far as it relates to disclosing to the *FCA*) 11 (and this chapter) also:
- (1)     apply to *firms* with respect to the carrying on of *unregulated activities* (for *Principle* 3 this is only in a *prudential context*); and
  - (2)     for *firms* and other *persons* that are subject to the *Principles*, take into account any activity of other members of a *group* of which the *firm* or other *person* is a member.

...

## 3.3 Where?

Territorial application of the Principles

- 3.3.1     ...

- 3.3.2      R      PRIN 3.3.1R applies to electronic money institutions, EEA authorised electronic institutions, payment institutions, registered account information service providers and EEA registered account information service providers as if the references to a firm were references to a person within that description, and references to an appointed representative were to an agent of such a person within the meaning of the Payment Services Regulations.

### 3.4      **General**

Clients and the Principles

...

- 3.4.3      G      ...

- (4)      PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the provision of payment services or the issuing of electronic money where it is not a regulated activity. Client categorisation does not apply in relation to carrying on of those activities. The definitions of customer in relation to those activities reflects the scope of the corporate opt out under the Payment Service Regulations.

...

References to “regulators” in Principle 11

- 3.4.5      R      Where *Principle 11* refers to “regulators”, this means, in addition to the *FCA*, other regulators with recognised jurisdiction in relation to regulated activities, payment services and electronic money whether in the *United Kingdom* or abroad.

## Annex C

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

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

#### 1 Application

##### 1.1 General application

The general application rule

...

##### Application to payment services and electronic money

- 1.1.1A R In addition to the general application rule, Chapter 2 of BCOBS applies to a firm (other than a credit union), an electronic money institution, an EEA authorised electronic institution, a payment institution, a registered account information service provider and an EEA registered account information service provider with respect to the provision of payment services or issuance or redemption of electronic money carried on from an establishment maintained by it or its agent in the United Kingdom and activities connected with those activities. These persons are referred to collectively in Chapters 1 and 2 as “providers”.

Limitations on the general application rule and BCOBS 1.1.1A

- 1.1.2 R The general application *rule* is modified:

...

...

- 1.1.5A R BCOBS 2 (Communications and financial promotions) does not apply to the provision of payment services, the issuance of electronic money or activities connected to those activities by a credit union, except to the extent that the activity is connected to the activity of accepting deposits from banking customers.

Exclusion of liability

- 1.1.6 R A firm or a provider must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a banking customer, a payment service customer or an electronic money customer unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.

...

## 2 **Communications ~~with banking customers~~ and financial promotions**

### 2.1 **Purpose and Application: Who and what**

- 2.1.1 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. *Principles 6 and 7 also apply to an electronic money institution, an EEA authorised electronic money institution, a payment institution, a registered account information service provider and an EEA registered account information service provider with respect to provision of payment services and the issuance of electronic money.* This chapter reinforces these requirements by requiring a *firm* and these other providers to pay regard to the information needs of *banking customers, payment service customers and electronic money customers* when communicating with, or making a *financial promotion* or a *payment service or electronic money promotion* to, them and to communicate information in a way that is clear, fair and not misleading.

...

- 2.1.3A R This chapter applies to a provider:
- (1) communicating with a payment service customer or an electronic money customer in relation to the provision of a payment service or the issuing of electronic money and activities connected with those activities; or
  - (2) communicating a payment service or electronic money promotion.

...

### 2.2 **The fair, clear and not misleading rule**

- 2.2.1 R A *firm* or other provider must take reasonable steps to ensure that a communication, ~~or a financial promotion~~ or a payment service or electronic money promotion is fair, clear and not misleading.
- 2.2.2 G The fair, clear and not misleading *rule* applies in a way that is appropriate and proportionate taking into account the means of communication and the information that it is intended to convey. So a communication addressed to a *banking customer, a payment service customer* or an *electronic money customer* who is not a *consumer* may not need to include the same information, or be presented in the same way, as a communication addressed to a *consumer*.
- ...
- 2.2.5 G A communication, ~~or financial promotion~~ or payment service or electronic money promotion should not describe a feature of a product or service as “guaranteed”, “protected” or “secure”, or use a similar term unless:

- (1) that term is capable of being a fair, clear and not misleading description of it; and
- (2) the *firm or other provider* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

2.2.6     G     A communication, or *payment service or electronic money promotion* relating to a *currency transfer service* is likely to be misleading if it presents an exchange rate in a way that is likely to give the impression that the rate is available to a *person* or a class of *persons* if that rate is unlikely to be obtained by that *person* or class of *persons* with respect to a typical transaction.

2.2.7     G     The inclusion of wording in a communication or *payment service or electronic money promotion* to the effect that an exchange rate shown is not available to particular *customers* will not necessarily prevent the inclusion of the exchange rate being misleading.

...

## **2.3     Other general requirements for communications and financial promotions**

...

2.3.1A     R     A provider must ensure that each communication made to a *payment service customer* or an *electronic money customer* and each *payment service or electronic money promotion* communicated by it:

- (1) includes the name of the provider;
- (2) is accurate and, in particular, does not emphasise any potential benefits of a *payment service or electronic money* product without also giving a fair and prominent indication of any relevant risks;
- (3) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and
- (4) does not disguise, diminish or obscure important information, statements or warnings.

2.3.2     G     The name of the *firm or other provider* may be a trading name or shortened version of the legal name of the firm, provided the *banking customer*, *payment service customer* or *electronic money customer* can identify the *firm or provider* communicating the information.

2.3.3     G     In deciding whether, and how, to communicate information to a particular target audience, a *firm or other provider* should take into account the nature of the *retail banking service*, the *payment service or electronic money*, the

*banking customer's, payment service customer's or electronic money customer's* likely or actual commitment, the likely information needs of a reasonable recipient, and the role of the communication, ~~or financial promotion or payment service or electronic money promotion~~ in the sales process.

2.3.4 G If a communication or a *financial promotion or payment service or electronic money promotion* names the *FCA, PRA* or both as the regulator of a *firm or other provider*, and refers to matters not regulated by the *FCA, PRA* or both, the *firm or other provider* should ensure that the communication, ~~or financial promotion or payment service or electronic money promotion~~ makes clear that those matters are not regulated by the *FCA, PRA* or both.

2.3.5 G When communicating information, a *firm or other provider* should consider whether omission of any relevant fact will result in information given to the *banking customer, payment service customer or electronic money customer* being insufficient, unclear, unfair or misleading.

...

2.3.7A G If a communication or a *payment service or electronic money promotion* compares a *payment service* or service in relation to *electronic money* with one or more other *retail banking service, payment service* or service in relation to *electronic money* (whether or not provided by the provider), the provider must ensure that the comparison is meaningful and presented in a fair and balanced way.

2.3.7B R If a communication or *payment service or electronic money promotion* compares the cost of a *currency transfer service* with the cost of a service provided by any other provider or providers (whether identified or not):

- (1) the comparison must be meaningful and presented in a fair and balanced way; and
- (2) the *firm or other provider* must be able to substantiate the claims made.

2.3.7C G For the purpose of BCOBS 2.3.7BR the cost of a *currency transfer service* includes:

- (1) any charges payable in relation to the currency conversion;
- (2) any charges payable in relation to a connected *payment service or e-money* issuance; and
- (3) the margin between the exchange rate that would be offered to a majority of *persons* of the class at whom the promotion is directed and a currently applicable interbank exchange rate, calculated using an independently published interbank spot rate.

...

