

10/25**

Financial Services Authority

Implementation of the second Electronic Money Directive:

supplement to
HM Treasury's consultation

October 2010

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 30 November 2010. Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/Pages/Library/Policy/CP/2010/cp10_25_response.shtml). Alternatively, please send comments in writing to:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us 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 Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

List of acronyms used in this Consultation Paper

2EMD	Second Electronic Money Directive
BCD	Banking Consolidation Directive
BIPRU	Prudential sourcebook for Banks, Building Society and Investment Firms
CBA	Cost Benefit Analysis
CCJ	Consumer Credit Jurisdiction
CJ	Compulsory Jurisdiction
COBS	Conduct of Business sourcebook
COND	Threshold Conditions
CP	Consultation Paper
DEPP	Decision Procedure and Penalties manual
DISP	Dispute Resolution: Complaints sourcebook
EEA	European Economic Area
EG	Enforcement Guide
ELM	Electronic Money sourcebook
ELMI	Electronic money institution authorised under FSMA
EMA	Electronic Money Association
FIN-NET	Financial Dispute Resolution Network
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions
GENPRU	General Prudential sourcebook
PERG	Perimeter Guidance manual

PRIN	Principles for Businesses
PSD	Payment Services Directive
RDC	Regulatory Decision Committee
SELM	Small electronic money issuer registered under FSMA
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
VJ	Voluntary Jurisdiction

1 Overview

Purpose

- 1.1 The second Electronic Money Directive (2EMD)¹ is a new European Union directive that requires member states to make adjustments to how electronic money is regulated.² The Treasury proposes to make the necessary legislative changes to bring the directive into force in the UK by the implementation deadline, 30 April 2011.
- 1.2 The Treasury proposes that the FSA's powers and obligations in relation to regulating electronic money will largely derive from specific European Communities Act 1972 regulations – the Electronic Money Regulations 2010 (the Regulations) – rather than from the Financial Services and Markets Act 2000 (FSMA).³ The Treasury is consulting on the policy options for implementing 2EMD and the draft Regulations.⁴ Its consultation closes on 30 November 2010.
- 1.3 Most of the 2EMD changes will be implemented through the Regulations. This Consultation Paper (CP) is a supplement to the Treasury's. We are seeking views on technical changes we have to make to the Handbook, plus one change that affects payment services providers.

Proposals in this CP

- 1.4 The proposed changes to the Handbook can be summarised as follows:
 - changes to the Perimeter Guidance manual to help businesses consider whether they fall within the scope of the draft Regulations (Chapter 2);
 - proposals about reporting requirements, including a change for payment services providers (Chapter 3);
 - changes to the jurisdiction of the Financial Ombudsman Service (the

1 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

2 See Annex 1 for a summary of the principal changes in 2EMD.

3 Credit institutions, credit unions and municipal banks that wish to issue electronic money will still need to have Part IV permission under FSMA to issue electronic money.

4 www.hm-treasury.gov.uk/8439.htm

ombudsman service) so it can perform an out-of-court redress function for issuing and redeeming electronic money within 2EMD's scope and consequent changes in the scope of the complaints handling rules (Chapter 4);

- changes to the Enforcement Guide (Chapter 5); and
- some consequential changes to the Handbook (Chapter 6).

1.5 These proposals are based on the Regulations in the Treasury's consultation document. There may be changes to the Regulations that require us to change our proposals. If appropriate, we will consult further, probably in a Quarterly CP.

Compatibility statement and cost benefit analysis

1.6 Annexes 2 and 3 to this paper contain a cost benefit analysis and an analysis of the compatibility of these proposals with our statutory objectives and the principles of good regulation.

Equality and diversity

1.7 We believe that our proposals do not give rise to discrimination and note that the Treasury said in their Impact Assessment that the policy proposals in their consultation on implementing 2EMD do not have an impact on their statutory equality duties. We would welcome any comments respondents may have on any equality issues they believe arise.

Q1: Do you agree that our proposals do not raise any issues in relation to equality and diversity?

Next steps

- 1.8 We invite views on the questions set out in this paper (and listed in Annex 4) by 30 November 2010. This is a short consultation period but, given the mandatory nature of the majority of the changes and the limited time for implementation, this is felt to be appropriate under the circumstances.
- 1.9 We will publish feedback on responses to this CP in a Policy Statement, together with the final Handbook text. The final changes made will take effect on 1 May 2011.
- 1.10 Our thinking on our fee proposals for electronic money issuers is outlined in our annual fees CP,⁵ which was published on 26 October 2010.
- 1.11 We propose to give guidance about the regulatory regime for all electronic money issuers in an Electronic Money Approach Document. This is the same approach as was taken for the Payment Services Approach Document (PSD).⁶

5 www.fsa.gov.uk/pages/Library/Policy/CP/2010/10_24.shtml

6 www.fsa.gov.uk/pubs/other/PSD_approach.pdf

- 1.12 We will continue to discuss issues about implementing the 2EMD, including the content of the Electronic Money Approach Document, with the industry stakeholder liaison group we have established. The minutes of the group's meetings are available on our electronic money webpage.⁷
- 1.13 We will also work with the Consumer Financial Education Board (CFEB) to update the information provided on electronic money to consumers through the **moneymadeclear** and **whataboutmoney** websites.

Who should read this CP?

Firms

- 1.14 This CP will be of interest to electronic money issuers (and those considering issuing electronic money) and payment services providers, including:
- ELMIs⁸ and businesses that want to be authorised electronic money institutions under the new regime;
 - SELMIs and businesses that want to be small electronic money institutions under the new regime;
 - banks;
 - building societies;
 - payment institutions;
 - mobile phone companies; and
 - other technical service providers in the payments industry.

Consumers

- 1.15 This CP will be of interest to consumers and consumer groups, as the 2EMD provisions affect the level of protection offered to consumers and their ability to redeem electronic money after their electronic money contract terminates. The proposals concerning the ombudsman service will be of particular interest because they ensure its coverage extends to the activities of issuing and redeeming electronic money.

⁷ www.fsa.gov.uk/electronicmoney

⁸ In this CP we refer to existing authorised electronic money institutions as ELMIs and existing small electronic money issuers as SELMIs. Where we are referring to electronic money institutions under 2EMD we refer to them as either authorised electronic money institutions or small electronic money institutions.

2 Perimeter guidance

- 2.1 The second Electronic Money Directive (2EMD) defines electronic money and sets out the types of electronic money issuer that should be regulated. This chapter outlines our proposed changes to the Perimeter Guidance manual (PERG), which gives guidance to businesses on whether they need to be regulated. We propose to make the PERG guidance under powers we expect to receive in the Electronic Money Regulations (the Regulations).
- 2.2 Our guidance is aimed primarily at businesses uncertain about whether their activities fall within the scope of the Regulations and focuses on perimeter questions that are likely to be of relevance to many businesses and consumer bodies. To keep the text accessible, we do not propose to deal with questions that are likely to be of relevance to fewer businesses. The text of the draft guidance in Chapter 3 of the PERG manual can be found in Appendix 1, Annex O.

Proposed amendments

- 2.3 Businesses must consider in good time before 30 April 2011 whether the changes in the scope and substance of regulating electronic money will have an impact on whether or not they should be authorised or registered by us to carry on their business activities.
- 2.4 The draft Regulations define electronic money issuers as any of the following persons when they issue electronic money:
 - authorised electronic money institutions;
 - small electronic money institutions;
 - European Economic Area (EEA) authorised electronic money institutions;
 - credit institutions;
 - the Post Office Limited;
 - the Bank of England, the European Central Bank and the national central banks of EEA states other than the United Kingdom, when not acting in their capacity

as a monetary authority or other public authority;

- government departments and local authorities when acting in their capacity as public authorities;
- credit unions;
- municipal banks; and
- the National Savings Bank.

2.5 We have used a question and answer (Q&A) format to help readers consider whether and how their business may be impacted by the Regulations. More specifically, we have broken down the guidance into the following sections:

- general issues (PERG 3.2, Q2 to Q7);
- definition of electronic money (PERG 3.3, Q8 to Q13);
- small electronic money institutions, mixed business, distributors, agents and exempt bodies (PERG 3.4, Q14 to Q22);
- exclusions (PERG 3.5, Q23);
- territorial scope (PERG 3.6, Q24); and
- transitional arrangements (PERG 3.7, Q25 and Q26).

2.6 In the draft PERG guidance, the responses to the questions on the definition of electronic money (Q8 to Q13), the exclusion of electronic money in a limited network (Q23) and transitional arrangements (Q25 and Q26) may be of relevance to many businesses.

2.7 The draft guidance is based on the current draft of the Regulations, so we will update the final text to take account of any amendments in the final version of the Regulations.

Q2: Do you have any comments on the draft text of the perimeter guidance?

Q3: Do you think there are any issues not covered in the draft guidance that it should address?

3 Reporting requirements

- 3.1 One of the ways in which we supervise authorised or registered businesses is to require them to provide information regularly through reporting returns. This chapter outlines our proposed changes to the reporting requirements for some of the electronic money issuers. We also propose a late return administration fee for authorised electronic money institutions, small electronic money institutions and payment institutions to cover our costs.
- 3.2 The reporting requirements for ELMIs and credit institutions that issue electronic money are set out in chapter 16 of the Supervision manual (SUP). The reporting requirements for SELMIs are set out in chapter 8 of the Electronic Money sourcebook (ELM).
- 3.3 The draft Electronic Money Regulations (the Regulations) give us the power to request information from an electronic money issuer about its issuance of electronic money, provision of payment services and compliance with requirements imposed by or under Part 2 to 5 of the draft Regulations.
- 3.4 We propose to delete the current reporting rules for ELMIs in SUP 16.12.5R and create a new section (SUP 16.14) that will set out the forms, content, reporting period and due dates for the revised reports. The proposed changes are summarised below and the draft returns are included in Appendix 1, Annex I.
- 3.5 We believe the information requirements listed below are the minimum necessary for us to identify whether or not electronic money issuers are meeting their obligations under the second Electronic Money Directive (2EMD) and the Regulations.

Authorised electronic money institutions

3.6 ELMIs are required to complete reporting returns FSA020 to FSA026 and, if eligible, FSA028. We propose in future to require the following information from authorised electronic money institutions:

Reporting return	Summary	Based on
FSA059	Balance sheet – no change.	FSA020
FSA060	Income statement – addition of ‘retained profit’ field for cross-validation purposes.	FSA021
FSA061	Capital requirements. This return is as before except authorised electronic money institutions must also complete a separate section if they propose to take advantage of the option to provide non-integral payment services. If they do, they must provide the information required of payment institutions on their own funds calculation methods A, B or C1. ¹⁵	FSA022 and FSA056
FSA062	Large exposures – no change.	FSA024
FSA063	Safeguarding. Information is required on how the institution safeguards its clients’ funds concerning electronic money issuance and payment services by selecting from the following options: <ul style="list-style-type: none"> • placed in a separate account with an authorised credit institution; • invested in approved secure liquid assets held in a separate account with an authorised custodian; • covered by an insurance policy with an authorised insurer; • covered by a guarantee from an authorised insurer; or • covered by a guarantee from an authorised credit institution. For each option selected the institution will also be asked to provide the name of the institution, custodian or insurer.	none
FSA064	Supplementary information. The institution will be asked whether, for the reporting period, it has: <ul style="list-style-type: none"> • met its own funds requirement; and • immediately segregated and safeguarded all funds from customers throughout the reporting period. If either or both of the above requirements are not met, the institution must explain why. The institution will also be asked for the number of agents it is responsible for and the number of electronic money accounts it has open at the reporting period end.	FSA026

⁹ For more information see Chapter 9 of the Payment Services Regulations Approach Document, www.fsa.gov.uk/pubs/other/PSD_approach.pdf

- 3.7 We propose that the current foreign exchange risk (FSA023), liquidity (FSA025) and non-European Economic Area (EEA) sub-group (FSA028) returns will no longer be required. The complaints reporting return will also no longer be required (see paragraph 4.18).
- 3.8 We propose to require authorised electronic money institutions to submit their returns on a half yearly basis, 30 business days from the end of the reporting period, as is currently the requirement.
- 3.9 ELMIs currently submit their returns electronically by logging on to our GABRIEL system but from 1 May 2011 they will have to send their reports by email. This is because we consider it would be more cost effective for returns to be submitted by e-mail.
- 3.10 The requirement for ELMIs to provide their annual report and accounts within 80 business days of their accounting reference date will continue.
- 3.11 Authorised electronic money institutions that undertake other, non-regulated business will have to provide a separate set of accounts for the non-payment services business. If the accounts are audited and lodged at Companies House we would expect them to be submitted to us at the same time. If, as small companies, they are not required to lodge accounts at Companies House we will ask for these accounts to be submitted no later than nine months after their year-end.
- 3.12 The controller and close links report, required by SUP 16.4.5R and 16.5.4R from ELMIs, will continue to be required. More detail will follow in our Electronic Money Approach Document (see paragraph 1.11).

Q4: Do you have any comments on the proposed reporting requirements for authorised electronic money institutions?

Small electronic money institutions

- 3.13 SELMIs are required to complete the reporting return FSA027 (also referred to as FORM ELM-SI). Instead of this return, we propose to require two returns:

Reporting return	Summary
FSA065	<p>Capital requirements – the institution is required to provide figures that demonstrate how it meets its capital requirements. It must then provide a breakdown of its capital resources that shows where it is in surplus or deficit.</p> <p>Safeguarding – information is required on how the institution safeguards its clients’ funds with respect to electronic money issuance and payment services by selecting from the following options:</p> <ul style="list-style-type: none"> placed in a separate account with an authorised credit institution; invested in approved secure liquid assets held in a separate account with an authorised custodian; covered by an insurance policy with an authorised insurer; covered by a guarantee from an authorised insurer; or covered by a guarantee from an authorised credit institution. <p>For each option selected the institution will also be asked to provide the name of the institution, custodian or insurer.</p> <p>Supplementary information – this will ask the institution to confirm whether, for the reporting period, it has:</p> <ul style="list-style-type: none"> not exceeded the limit of €5 million of average outstanding electronic money; met its own funds requirement; and immediately segregated and safeguarded all funds from customers throughout the reporting period. <p>If any of the above requirements are not met, the institution will be required to explain why.</p> <p>The institution will also be asked for the number of agents it is responsible for and the number of e-money accounts it has open at the reporting period end.</p>
FSA066	<p>Total amount of outstanding electronic money issued at 31 December.</p> <p>This information is required by the draft Regulations to meet an obligation imposed by 2EMD to report to the European Commission.</p>

- 3.14 Small electronic money institutions will be required to provide FSA065 on a half yearly basis, 30 business days from the end of the reporting period. SELMIs must currently submit their return within ten business days of the year-end but, because of the enhanced information requirements, we propose to require the information from small electronic money institutions within 30 business days of the end of the reporting period as will be the case for authorised electronic money institutions. FSA066 will be required by the end of January each year.
- 3.15 We propose to require small electronic money institutions to provide their annual report and accounts within 80 business days of their accounting reference date.
- 3.16 Small electronic money institutions that undertake other, non-regulated business will also have to provide a separate set of accounts for the non-payment services business. If the accounts are audited and lodged at Companies House we would expect them to be submitted to us at the same time. If, as small companies, they are not required to lodge accounts at Companies House we will ask for these accounts to be submitted no later than nine months after their year-end.

3.17 Small electronic money institutions will provide their information by email.

Q5: Do you have any comments on the proposed reporting requirements for small electronic money institutions?

Credit institutions that issue electronic money

3.18 Credit institutions that issue electronic money currently report the amount of electronic money issued in the reporting return FSA001 on a quarterly basis for an unconsolidated UK bank or building society; and also half yearly if a UK consolidation group. The return requires the amount of electronic money liabilities (row 26).

3.19 We considered adding a requirement to provide the average outstanding electronic money, as defined by 2EMD, article 2(4):

‘average outstanding electronic money’ means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.’

3.20 This option was considered because, if we collected the information on a half yearly basis, we could add it to the information collated from other electronic money issuers to measure the size of the whole market.

3.21 However, we decided not to propose this option on the basis that there would be cost implications for changing the reporting return and because we already have information from FSA001 giving us the scale of the activity of credit institutions that issue electronic money.

Other electronic money issuers

3.22 If any of the other electronic money issuers¹⁰ begin to issue electronic money, we propose they should give us the average outstanding electronic money on a half yearly basis. If we do not ask for this information we will have no way of knowing the size of the regulated money market.

3.23 We propose this information should be provided by email on a half yearly basis, 30 business days from the end of the reporting period.

Q6: Do you have any comments on the proposed reporting requirement for other electronic money issuers?

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

Late return administration fee

3.24 ELMIs, like other FSMA firms, are currently subject to an administrative fee of £250 if they do not provide their complete report by the due date, as set out in SUP 16.3.14R. We propose to keep this requirement for authorised electronic money institutions and to extend it to businesses that are authorised or registered by us outside the FSMA regime. This means that small electronic money institutions, authorised payment institutions and small payment institutions would be subject to the fee if they do not provide complete reports on time.

Q7: Do you have any comments on the application of a late return administration fee for authorised electronic money institutions, small electronic money institutions, authorised payment institutions and small payment institutions?

4 Dispute resolution

- 4.1 The second Electronic Money Directive (2EMD) requires there to be an out-of-court complaint and redress system for electronic money holders. This chapter is a joint consultation by the FSA and the Financial Ombudsman Service (the ombudsman service). It sets out the changes we propose to make to the Dispute Resolution: Complaints sourcebook (DISP) to reflect the ombudsman service's new responsibilities under 2EMD and a consequent extension of the scope of the complaints handling rules.
- 4.2 The draft text showing the changes to DISP can be found in Appendix 1, Annex K.

Jurisdiction of the ombudsman service

- 4.3 Article 13 of 2EMD states that the Payment Services Directive (PSD) provisions for out-of-court complaints and redress procedures for the settlement of disputes will apply *mutatis mutandis*¹¹ to the provisions of 2EMD. Article 83 of PSD states that 'member states shall ensure that adequate and effective out-of-court complaint and redress procedures for the settlement of disputes between payment service users and their payment service providers are put in place for disputes concerning rights and obligations arising under this Directive, using existing bodies where appropriate.'
- 4.4 The Treasury proposes to amend the Financial Services and Markets Act 2000 (FSMA) to allow the ombudsman service to operate out-of-court complaint and redress procedures for electronic money issuers as required by 2EMD.
- 4.5 The ombudsman service is a statutory, informal dispute-resolution service, established under FSMA and operationally independent of the FSA. It operates as an alternative to the civil courts. Its role is to resolve disputes between individuals or small businesses and financial firms quickly and with minimum formality on the basis of what is fair and reasonable in the circumstances of each case. In considering what is fair and reasonable, the ombudsman service takes into account the relevant law, regulations, regulators' rules, guidance and standards, and good industry practice at the relevant time.

11 The necessary changes having been made.

4.6 There are three separate jurisdictions under the ombudsman service:

- **Compulsory Jurisdiction (CJ):** This currently covers all firms and payment service providers the FSA authorises and regulates. The FSA makes rules about the scope of the CJ and the level of compensation that can be awarded under it;
- **Consumer Credit Jurisdiction (CCJ):** This currently covers businesses (other than those covered by the CJ) that are licensed by the Office of Fair Trading under the Consumer Credit Act 1974; and
- **Voluntary Jurisdiction (VJ).** This currently covers financial services businesses that are not covered by the CJ or the CCJ but which choose to join the VJ, for example overseas firms or overseas payment institutions.

The ombudsman service (with the FSA's approval) makes rules about the scope of the CCJ and the VJ and the level of compensation that can be awarded under them.

4.7 The rules and standard terms for all three jurisdictions are set out in the FSA Handbook and have been coordinated to ensure that they are identical, wherever possible.

4.8 Through the ombudsman service, consumers already have access to out-of-court complaint and redress procedures for disputes about some institutions issuing and redeeming electronic money.¹² This includes banks, building societies, ELMIs and certain payment transactions provided by electronic money issuers. The objective of the Treasury's proposed change – and the changes proposed in this consultation – is to extend these procedures to cover complaints about the issuance and redeemability of electronic money by all electronic money issuers in the 2EMD's scope. This brings small electronic money institutions and the other electronic money issuers into the ombudsman service's compulsory jurisdiction concerning complaints about issuing or redeeming electronic money.

4.9 Under our current rules, persons that were formerly authorised firms or payment services providers fall into the compulsory jurisdiction of the ombudsman service concerning complaints about an act or omission which occurred when they were authorised, provided that the compulsory jurisdiction rules were in force at the time the activity in question took place. We propose to make this clear in our glossary and also add a similar provision to bring former electronic money issuers into the CJ. This will enhance consumer protection and provide consistency between all businesses authorised or registered by the FSA.

Q8: Do you agree that the FSA should amend the compulsory jurisdiction of the ombudsman service to cover all electronic money issuers in the scope of 2EMD in relation to issuing electronic money?

Q9: Do you agree that the FSA should extend the compulsory jurisdiction of the ombudsman service to cover former electronic money issuers?

12 Plus any ancillary activities, including advice, carried on by the business in connection with the issuance and redeemability of electronic money.

Eligibility to bring complaints to the ombudsman service

- 4.10 Consumers, micro-enterprises, small charities and small trusts are eligible to take a complaint to the ombudsman service if they have a relevant relationship with the business concerned.¹³
- 4.11 Under the current rules, a firm or payment service provider is not eligible to make a complaint that relates in any way to an activity which it is allowed to undertake itself. To keep these rules consistent across different types of business, we propose introducing a similar exception for activities that electronic money issuers are entitled to carry on under the Electronic Money Regulations. This would extend to complaints from electronic money issuers in respect of payment service provision, as all electronic money issuers are entitled to provide payment services.

Q10: Do you agree that the FSA should exclude from the ombudsman service complaints from electronic money issuers about activities they are entitled to undertake themselves?

Territorial scope of the compulsory jurisdiction

- 4.12 The CJ covers complaints about a firm's, a payment service provider's or an electronic money issuer's activities carried on from an establishment in the UK. This currently includes incoming European Economic Area (EEA) firms that exercise passport rights under FSMA¹⁴, incoming Treaty firms¹⁵ and incoming EEA-authorized payment institutions. UK branches or agents of EEA-authorized credit institutions or electronic money institutions will continue to be covered by the ombudsman service.¹⁶

Complaints handling rules within electronic money issuers

- 4.13 The ombudsman service will not consider a complaint until the business concerned has had an opportunity to consider it. It is important that businesses have their own complaint handling arrangements, and it is expected that these will resolve most complaints.
- 4.14 Businesses currently under the CJ of the ombudsman service are already subject to rules about how they should handle complaints. These rules are set out in Chapter 1 of DISP. They cover a range of issues, including internal complaint handling procedures and controls, publicity, timeliness, the requirement for a final response letter, rules on referral of complaints to others, and requirements to cooperate with the ombudsman service. Similar rules are applied for businesses covered by the CCJ and the VJ. For firms covered by the CJ, there are additional rules on keeping

13 These relationships are listed in DISP 2.7.6R.

14 A UK firm that wishes to carry on business in another EEA State may do so if it has an entitlement under a relevant single market directive.

15 A 'Treaty firm' is a firm whose head office is situated in an EEA State other than the United Kingdom and which is recognised under the law of that State as its national.

16 Small electronic money institutions elsewhere in the EEA cannot passport into the UK.

records of complaints, reporting complaint numbers to the FSA and publishing complaints data summaries.

- 4.15 We believe the complaints handling rules concerning electronic money made against small electronic money institutions and other issuers newly brought into the ombudsman service's jurisdiction as a result of 2EMD should follow the rules currently in place for businesses the ombudsman service already covers. Therefore, we propose to extend the existing complaint handling rules to cover these issuers in relation to complaints about electronic money. These businesses are already required to comply with these rules in relation to complaints about payment services, so they should already be familiar with them.
- 4.16 We do not propose to require small electronic money institutions and the other electronic money issuers newly brought into the ombudsman service's jurisdiction to report complaints statistics to us or publish complaints data summaries. This proposed exemption mirrors that already applying to payment service providers, consumer credit licensees and participants in the VJ. We propose to give guidance that it is in these businesses' best interests to retain records of complaints so they can be used to help the ombudsman service if necessary. In our view it would be disproportionate to impose the same recording, reporting and data publication rules on these electronic money issuers, as they do not need to be authorised.
- 4.17 No changes are proposed to the existing arrangements for credit institutions that issue electronic money. Credit institutions already fall under the ombudsman service's jurisdiction in relation to complaints about electronic money and are already covered by our complaints handling rules, including the complaints record rule, the complaints reporting rules, and the complaints data publication rules.
- 4.18 ELMIs currently fall under the definition of a firm and as such are covered by our complaints handling rules, including the complaints record rule, the complaints reporting rules, and the complaints data publication rules. Under the 2EMD regime, they will no longer fall under the definition of a firm (as they will not be regulated under FSMA). They will be separately covered by our standard complaints handling rules but, consistent with our approach to reporting requirements for electronic money institutions, will not be covered by the complaints record rule, the complaints reporting rules or the complaints data publication rules.

The voluntary jurisdiction of the ombudsman service

- 4.19 The ombudsman service operates a VJ to allow businesses to sign up with it for certain types of complaint which would not otherwise be covered by the CJ or CCJ. Activities covered by the VJ include those which are directed at UK consumers by financial businesses from an establishment elsewhere in the EEA. The VJ also covers complaints about acts or omissions that took place before the business was covered by the ombudsman service.
- 4.20 The ombudsman service proposes to extend the activity of issuing electronic money in the VJ to include businesses issuing electronic money outside the scope of the Regulated

Activities Order.¹⁷ This will ensure that authorised electronic money institutions will still fall within the VJ and will bring small electronic money institutions into the VJ for the first time concerning complaints about their acts or omissions in issuing electronic money before 30 April 2011. The VJ will continue to be available to electronic money institutions that carry on business in the EEA and direct services at UK consumers.

- 4.21 We have made a consequential change to DISP 2 Annex 1 G so that it will set out those regulated activities for the VJ at 30 April 2011 (as opposed to 1 July 2009). There are no amendments to the list of regulated activities in the Annex. This reflects the list as we expect it to be on 30 April 2011, but we will consult on the list if subsequent changes make this necessary.

Q11: Do you agree issuing electronic money should be within the scope of the ombudsman service's voluntary jurisdiction?

Complaint handling procedures of the ombudsman service

- 4.22 2EMD includes certain new conduct of business rules for all electronic money issuers (as summarised in Annex 1). The ombudsman service will have regard to these rules when considering complaints.
- 4.23 There is an additional obligation in 2EMD to make sure that dispute resolution bodies cooperate actively in resolving cross-border disputes. The ombudsman service's membership of FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in the EEA, will meet this requirement.

Consumer redress scheme

- 4.24 In October 2010, the FSA received a new power for facilitating consumer redress, through a consumer redress scheme.¹⁸ A scheme can be established to secure redress for consumers of services provided by authorised persons undertaking a range of activities as well as payment service providers. The FSA is discussing with the Treasury whether the scope of the power should be extended to apply to services provided by electronic money issuers.

Funding

- 4.25 We are consulting on the funding arrangements for the ombudsman service in respect of electronic money issuers as part of our normal fees consultation process. The Consultation Paper was published on 26 October 2010.

17 The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544), www.legislation.gov.uk/ukpga/2000/8/contents

18 Section 404 of the Financial Services and Markets Act 2000, as updated by Section 14 of the Financial Services Act 2010.

5 Enforcement

- 5.1 The Treasury proposes to give us responsibility for enforcing the Electronic Money Regulations (the Regulations). This chapter discusses additions we will make to the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG), and how we intend to enforce any breaches. The proposed changes are included in Appendix 1, Annexes J and N.
- 5.2 Our approach to enforcing the Regulations will mirror our approach to enforcement under the Financial Services and Markets Act 2000 (FSMA). EG and DEPP sets out the approach to be followed under FSMA. We are currently consulting on amendments to EG and DEPP, including proposed changes to the application of the settlement scheme to suspensions and the publication of decision notices.¹⁹ Our approach to enforcement of the Regulations will include some changes to our approach that result from that consultation.
- 5.3 We will seek to exercise our enforcement powers, as set out in EG, in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the electronic money issuer that is the subject of the action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, remedy the harm caused by the non-compliance.
- 5.4 The draft Regulations give us the power to:
- cancel an electronic money institution’s authorisation or registration;
 - vary an electronic money institution’s authorisation or registration on our own initiative;
 - require information from an electronic money issuer;
 - enter, inspect, observe the business of, or inspect any document on the premises of the electronic money issuer;
 - fine an electronic money issuer;

¹⁹ www.fsa.gov.uk/pages/Library/Policy/CP/2010/10_23.shtml

- suspend the authorisation or the registration of an electronic money institution;
- impose, for any specified period, limitations or other restrictions in relation to carrying out e-money issuance or payment services by electronic money institutions;
- publicly censure an electronic money issuer;
- apply to the court for an injunction;
- require an electronic money issuer to provide restitution to their customers; and
- remove an agent from the register.

5.5 The draft Regulations apply the following Parts of FSMA appropriately with certain modifications:

- Part 9 (deals with hearings and appeals);
- Part 11 (deals with our information gathering and investigatory powers);
- Part 12(b) (deals with controllers);
- Sections 66 – 70 (deals with disciplinary powers against relevant persons);
- Section 341 (deals with auditors and actuaries);
- Sections 348 – 349 and 351 – 352 (deals with the disclosure of confidential information);
- Sections 359; 367 – 368 (deals with insolvency); and
- Part 26 (deals with the procedure to be followed when we publish warning notices, decision notices and final notices. It also deals with third party rights and access to FSA material.

5.6 The application of Part 26 of FSMA means we are obliged to publish a statement of procedure that will set out our intended course of action with regard to issuing warning notices and decision notices. We propose to adopt policies that are broadly similar to those under FSMA.

5.7 The draft Regulations give us a new power to impose suspensions or restrictions on authorised or registered electronic money institutions under Regulation 51, and on relevant persons, under schedule 3, paragraph (1). We can impose a suspension²⁰ on an authorised or registered electronic money institution for a period not exceeding 12 months and on relevant persons for a period not exceeding two years.

5.8 The suspension power is a punitive power: we can use it to stop electronic money institutions or relevant persons from engaging in certain activities as a disciplinary sanction.

20 For the purposes of this CP, unless otherwise stated we will use the terms 'suspension/suspend' to cover both the power to suspend and the power to impose limitations or restrictions.

- 5.9 We believe the reasons for providing a discount for settling cases that involve financial penalty early on also apply to the early settlement of cases involving a suspension.
- 5.10 The application of Part 26 of FSMA obliges us to publish a statement of procedure that sets out our intended course of action with regard to issuing warning notices and decision notices. We propose to adopt policies which are broadly similar to those under FSMA.
- 5.11 We also propose that the procedures to be followed will be those set out in DEPP 3.2 or 3.3 (as appropriate) for Regulatory Decision Committee (RDC) decisions, and on DEPP 4 for decisions taken under executive procedures.
- 5.12 The draft Regulations also apply to sections 69 and 210 of FSMA. These sections require us to issue a statement setting out our policy on imposing penalties and the amount of such penalties under the Regulations.
- 5.13 We intend our policy in EG to be consistent with our new FSMA policy on the imposition and levels of penalties and on suspensions as set out in DEPP 6 and 6A respectively.

Q12: Do you agree with our proposed approach to enforcement and do you have any comments on the proposed changes to DEPP and EG?

6 Consequential changes to the Handbook

- 6.1 This chapter discusses how various Handbook modules will be affected as a result of the changes to the regulation of electronic money, in particular because electronic money institutions will no longer be authorised or registered under the Financial Services and Markets Act 2000 (FSMA). The draft text showing the changes can be found in Appendix 1.

Consequential changes to the Glossary

- 6.2 We propose to add Glossary definitions that reflect the definitions in the second Electronic Money Directive (2EMD) and the Electronic Money Regulations (the Regulations). The proposed changes to the Handbook glossary are shown in Appendix 1, Annex A.

Q13: Do you have any comments on the proposed consequential changes to the Glossary?

Consequential change to the Principles for Businesses (PRIN)

- 6.3 Our Principles for Businesses (the Principles) will not apply in future to issuing electronic money unless the issuer is an authorised person under FSMA.²¹ We propose to make clear in PRIN 3.1.8G that, for authorised persons, the Principles do not apply to the extent that they conflict with 2EMD; because of the maximum harmonising nature of 2EMD, obligations must not be imposed on firms that go beyond its requirements. In particular, Principle 6 may be limited by the harmonised conduct of business obligations applied by 2EMD to credit institutions (see Part 5 of the draft Regulations).
- 6.4 PRIN 3.1.6R already ensures that the Principles do not impose obligations upon firms which are inconsistent with an European Union instrument. The proposed change is shown in Appendix 1, Annex B.

21 Credit institutions, credit unions and municipal banks, as well as ELMIs and SELMIs during the transitional period.

Q14: Do you have any comments on the proposed consequential change to PRIN?

Use of the FSA logo

- 6.5 At present, ELMIs can use our logo; SELMIs and incoming electronic money institutions are not allowed to use our logo.
- 6.6 We propose to carry forward this policy and will therefore need to make a consequential change to the General Provisions (GEN) section of the Handbook, as shown in Appendix 1, Annex E.

Q15: Do you have any comments on the proposed policy on the use of the FSA logo?

Deletion of the Electronic Money sourcebook and minor amendments or deletions to other Handbook material

- 6.7 The current prudential supervisory regime for electronic money issuers is set out in the Electronic Money Sourcebook (ELM). It contains the rules and guidance for ELMIs on their own funds requirements, asset and liability management, systems and controls, redemption and purse limits, consolidated supervision and requirements for SELMIs. It also contains requirements applicable to credit institutions with permission to issue electronic money.
- 6.8 As a result of 2EMD being implemented largely through Regulations rather than under FSMA (issuing electronic money will remain as a regulated activity under article 9B of the Regulated Activity Order 2001 where it is carried out by credit institutions, credit unions and municipal banks, as well as ELMIs and SELMIs during the transitional period), ELM will no longer be required and will be deleted with effect from 30 April 2011, as shown in Appendix 1, Annex L.
- 6.9 ELM 6.8.5R (3), which requires pre-contract information to make it clear that electronic money is not covered by the Financial Services Compensation Scheme, will apply to those with Part IV permission to issue electronic money. It will be moved to the Conduct of Business sourcebook (COBS). For the same reason, ELM 6.8.2A, which relates to distance marketing disclosure obligations, will also be moved to COBS, as shown in Appendix 1, Annex H.
- 6.10 Consequential changes to the Handbook are necessary where reference is made to terms that have been changed because of changes made to the Banking Consolidation Directive²² (BCD) by 2EMD. The definition of ‘credit institution’ in article 4 of BCD was amended so it no longer includes an electronic money institution and the activity of issuing electronic money was added to the list of activities subject to mutual recognition in Annex I to BCD. Consequential changes

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

are also needed because the requirements for electronic money institutions will in future be in the Regulations rather than FSMA. Therefore, consequential changes will be made in the following sourcebooks:

- Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (Appendix 1, Annex C);
- Threshold Conditions (COND) (Appendix 1, Annex D);
- General Prudential sourcebook (GENPRU) (Appendix 1, Annex F);
- Prudential sourcebook for Banks, Building Society and Investment Firms (BIPRU) (Appendix 1, Annex G); and
- Conduct of Business sourcebook (COBS) (Appendix 1, Annex H).

Q16: Do you have any comments on the proposed deletion of the Electronic Money sourcebook and minor amendments or deletions to other Handbook material?

Transitional provisions

- 6.11 ELMIs that wish to continue as authorised electronic money institutions will be grandfathered into the new regime. SELMIs that wish to continue as small electronic money institutions must re-register. 2EMD allows for a transitional period for authorised electronic money institutions until 30 October 2011 and for small electronic money institutions to 30 April 2012.
- 6.12 We propose to require ELMIs and SELMIs to continue to meet their obligations under the current regime, including their reporting requirements, until they have been grandfathered or re-registered as appropriate. However, ELMIs and SELMIs will have to comply with the conduct of business requirements in Part 5 of the draft Regulations (the issuance and redemption of electronic money) during the transitional period. This means that where the provisions of ELM cover the same conduct of business ground as Part 5 of the draft Regulations, the ELM provisions will not apply during the transitional period.

Q17: Do you agree with the transitional provision?

Q18: Do you think there should be any other transitional provisions?

Summary of the principal changes in the second Electronic Money Directive

1. This background information on the second Electronic Money Directive (2EMD) is provided to help readers understand the changes made by 2EMD. The Treasury's consultation discusses how they propose to implement 2EMD and should be read alongside this CP.
2. Electronic money is prepaid, electronically stored monetary value that can be used to pay third parties. It is issued on receipt of funds for the purpose of making payments. Examples of electronic money include prepaid gift cards that can be used to pay for goods at a range of retailers or virtual purses that can be used to pay for goods or services online. We have regulated the issuance of electronic money since 2002.
3. 2EMD was adopted by the Council and European Parliament in September 2009. It seeks to remove barriers to market entry and facilitate the taking up of the business of electronic money issuance and ensure a level playing field. It replaces an earlier electronic money directive²³ and introduces new conduct requirements for all electronic money issuers, as well as incorporating many of the prudential requirements of the Payment Services Directive (PSD) for electronic money institutions. It is a 'maximum harmonising' directive which means that, in areas within the directive's scope, member states are not allowed to implement requirements that are different to those set out in the directive. There is some discretion for member states to choose options on particular issues. For example, member states can exempt small electronic money institutions (institutions with average outstanding electronic money that does not exceed €5 million) from all or parts of the general prudential, capital and safeguarding rules. The Treasury is currently consulting on these options. Small electronic money institutions will be registered rather than authorised.
4. The principal changes made by 2EMD are outlined below:
 - electronic money issuers²⁴ will no longer be able to set a time limit on the electronic money holder's right to redeem, although a proportionate fee that is commensurate with the actual costs incurred by the electronic money issuer

23 Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions.

24 See paragraph 2.4 for a full list of bodies defined by the draft Regulations as electronic money issuers.

can be charged in certain circumstances, such as where redemption is requested over one year after the contract is terminated, and if certain conditions relating to transparency of the fee are met. Electronic money issuers will no longer be allowed to set a minimum threshold of redemption;

- electronic money issuers will not be allowed to grant interest or other benefits related to the length of time the electronic money is held;
 - the current restriction on business activities of electronic money institutions will be removed. This allows them to provide unrelated payment services without additional authorisation and to engage in other business activities, subject to relevant EU and UK law. This is expected to open the market to new businesses, for example, mobile telephone companies;
 - the current exclusion from the regulated activity of issuing electronic money in Article 9C of the Regulated Activities Order is replaced by a less prescriptive exemption for monetary value stored on an instrument accepted as payment only within a limited network of service providers or for a limited range of goods or services;
 - the initial and minimum on-going capital requirement for authorised electronic money institutions is reduced from €1 million to €350,000, to reduce the potential that this might be a barrier to entry; and
 - 2EMD requires authorised electronic money institutions to safeguard funds received from customers for electronic money so that, if there is an insolvency event, the electronic money issued would be protected from other creditors' claims and can be repaid to customers. The Treasury is consulting on whether to also require small electronic money institutions to safeguard funds received from customers.
5. The Treasury's general approach is to create a proportionate regulatory regime that balances risks to consumers arising from the electronic money market in this country with our regulatory obligations.

Cost benefit analysis

1. When proposing new rules, we are obliged (under section 155 of the Financial Services and Markets Act 2000 (FSMA)) to publish a cost benefit analysis (CBA), unless we consider that the proposals will give rise to no costs or to an increase in costs of minimal significance. As a matter of policy, we also provide a CBA for significant proposed guidance relating to rules. The CBA is an estimate of the costs and an analysis of the benefits that will arise from the proposals. It is a statement of the differences between the baseline (broadly speaking, the current position) and the position that will arise if we implement the proposals.
2. The government is currently consulting on the draft Electronic Money Regulations (the Regulations) and has included an impact assessment in its consultation. Our CBA does not cover the impact of the Regulations but concerns the changes we are proposing to make as described in this CP.
3. This annex considers the costs and benefits associated with our proposals in chapters 2, 3, 4, 5 and 6 of this CP.
4. Overall, the main benefit of the changes proposed in this CP is that the Regulations will be supervised and enforced properly and the benefits presented in the Treasury's consultation will be realised.

Estimated population of electronic money issuers

5. The proposed changes will affect ELMIs, SELMIs and the electronic money issuers that do not need to be authorised or registered to issue electronic money. There are currently 17 ELMIs and 71 SELMIs. We expect that the population will change after the implementation of the second Electronic Money Directive (2EMD) because of the directive's intention to reduce barriers to entry and redefine the limited network exemption. We expect in the future there may be about 20 authorised electronic money institutions and 40 small electronic money institutions.²⁵ We are not aware of any intention to issue electronic money among the bodies that do not need to be authorised or registered.

25 Our population estimate is slightly different to the Treasury's because they are based on a slightly different assumption of how many SELMIs are likely to remain as small electronic money institutions and how many new small electronic money institutions there are likely to be in the future.

6. Given the uncertainty in estimating the future population we have based our assessment of the likely costs of the proposed changes on a 'per issuer' basis.

Direct costs to the FSA

7. We estimate that we will incur one-off costs for the project of between £1.3m to £1.4m. This estimate includes the cost of changing the Register and the reporting system. We estimate that our business as usual costs will increase by £250,000 per year.

Perimeter guidance

8. Changes in the perimeter guidance are expected to assist issuers identify if they need to apply for authorisation or registration, thereby reducing the number of businesses failing to meet regulatory requirements and increasing consumer protection. Given the nature of the proposed changes in perimeter guidance, we expect any costs arising for the FSA and the industry will be of minimal significance.

Reporting requirements

9. This section analyses the costs and benefits of the changes proposed to the reporting requirements. The baseline for this consideration will be the incremental costs above the current costs incurred by electronic money issuers in reporting to us.
10. We do not propose to make any changes for credit institutions that issue electronic money.
11. We propose to change the reporting requirements for the authorised electronic money institutions and the small electronic money institutions. In addition, we will require the authorised electronic money institutions to provide their returns by email, which is a change as they currently provide their returns electronically (by logging onto our system).
12. We will incur direct costs from developing and setting up the new reporting systems. The estimate of this cost is included in the one-off cost in paragraph 7. It has been decided that the changes required to enable electronic reporting were too expensive as these costs would have to be passed on to a small population of electronic money issuers.²⁶ We will also incur on-going costs from ensuring the quality and validity of the submitted data, which is included in the business as usual cost, also in paragraph 7.
13. Current ELMIs will incur one-off costs from changing their systems to submit their reports by email instead of logging on to our GABRIEL system. They, and any new authorised electronic money institutions, will incur the on-going cost of collecting and submitting the information but the information required should be readily available to them. They will also have to provide a set of their accounts, as they do currently, plus a separate set of accounts if they also do other, non-regulated business. Small electronic money institutions will have two reporting returns to submit. This information should be readily available to them within their own accounts and they will have longer to provide the new information (30 days from the year-end rather

26 Based on our discussion with the industry and the level of applications we anticipate that there will be 76 electronic money issuers in the initial period after 30 April 2011. We expect that given the new definition of the limited network there will be a number of businesses that will no longer need to be authorised or registered.

than 10 days). They will also have to provide a set of their accounts, plus a separate set of accounts if they also do other, non-regulated business.

14. In order to better understand the costs that would be incurred by industry because of the additional reporting requirements we asked the Electronic Money Stakeholder Liaison Group²⁷ to pass a survey to their members that are existing ELMIs and SELMIs and that plan to continue as such after implementation of 2EMD. One trade association, the Electronic Money Association (EMA), provided us with information. The list of their members on their website includes 11 ELMIs and four SELMIs.
15. Tables 1 and 2 summarise the one-off and on-going costs we received from the EMA for authorised electronic money institutions and small electronic money institutions. The EMA say the reason why the costs for small electronic money institutions are so much higher is because they are being required to provide significantly more information than before.

Table 1: Costs for authorised electronic money institutions

	One-off costs	Annual on-going costs
System costs	£1,000-£2,000	£500
Labour costs	£1,000-£2,000	£500
Compliance and legal costs	£500-£1,000	None
TOTAL	£2,500-£5,000	£1,000

Table 2: Costs for small electronic money institutions

	One-off costs	Annual on-going costs
System costs	£2,000-£3,000	£1,000
Labour costs	£2,000-£3,000	£1,000
Compliance and legal costs	£1,000-£2,000	None
TOTAL	£5,000-£8,000	£2,000

16. Authorised electronic money institutions that take advantage of their right to provide payment services that are not integral to the issuance of electronic money will have to provide additional information in respect of their capital adequacy. The EMA told us that one-off and on-going costs would be doubled if an electronic money institution that provides payment services that are not related to issuing electronic money has to submit all the information required of a payment institution. To avoid doubling the costs we have revised our reporting requirements. Authorised electronic money institutions that do payment services that are not related to issuing electronic money will provide the information on one return (FSA061) and provide additional information only on the method used to calculate their own fund requirements as indicated in the Payment Services Directive. The proposal means that authorised electronic money institutions do not have to report twice and means they only have to provide one additional item of information. Therefore we do not

²⁷ See www.fsa.gov.uk/electronicmoney for more information on the Electronic Money Stakeholder Liaison Group.

expect the costs for firms conducting mixed business to be materially different to the costs reported in tables 1 and 2 above.

17. We have also proposed that electronic money issuers that are exempt from authorisation provide us with the average outstanding electronic money on a half yearly basis, 30 business days from the end of the reporting period.
18. We invited the Post Office and the National Savings Bank as potential electronic money issuers to provide us with information on how much it would cost to tell us this information, but they were unable to do so.
19. Our proposed reporting requirements will allow us to understand how the electronic money market evolves, identify potential risks to consumers and respond accordingly, target our supervisory resources efficiently, ensure compliance of the electronic money issuers with our rules and assess the effectiveness of the regulation.

Dispute resolution

20. This part of the CBA examines the costs and benefits of the proposals of the FSA and the ombudsman service for implementing the changes on dispute resolution required by 2EMD.
21. The main impact of 2EMD is to extend the jurisdiction of the ombudsman service and our complaints handling rules to cover the issuance and redeemability of electronic money by small electronic money institutions and other electronic money issuers as well as former electronic money issuers. These changes may cause extra administrative costs for the ombudsman service and compliance costs for the newly covered electronic money issuers.
22. The ombudsman service's administrative costs may increase if there is an increase in the number of complaints. The ombudsman service receives approximately 400 complaints annually about electronic money, mainly from businesses that have chosen to join its voluntary jurisdiction. We do not have any indication whether extending the ombudsman service to cover small electronic money institutions and the other electronic money issuers will mean there will be a significant increase in the number of complaints that will go to the ombudsman service. Any increase in the ombudsman service's operating costs will be passed on to electronic money issuers through an increase in the ombudsman service levy and case fees.
23. Newly covered electronic money issuers may have one-off and on-going costs to comply with our rules. One-off compliance costs refer to costs arising from setting up a complaint handling procedure. We do not expect the electronic money issuers to have significant one-off costs to set up their complaints handling process as there should be little difference between the DISP requirements and good business practice in dealing with complaints.
24. On-going compliance costs include the levy paid to the ombudsman service, the cost of handling complaints and the cost of paying redress if a complaint arises and is proven.
25. Newly covered electronic money issuers will be liable to pay an annual levy towards the cost of the ombudsman service and will also have to pay a case fee (currently

£500) for any complaint that is referred to the ombudsman service, although this fee is not charged for the first three cases in any financial year. We are currently consulting on the structure of the levy for electronic money institutions, but will not be consulting on the rate until February 2011.

26. Newly covered electronic money issuers will also incur administrative costs per complaint for handling and paying redress. The complaint handling cost includes costs for legal and other services that are needed to investigate and respond to complaints. As this is a new requirement for small electronic money institutions we do not have data to calculate the average cost of handling a complaint. As an indication, the average cost per complaint for other businesses is between £30 and £120.²⁸
27. The size of any redress, or compensation, awarded by the ombudsman service depends on how well the electronic money issuer has handled the complaint itself. Currently the ombudsman service can award up to £100,000. However, we expect that redress for complaints about electronic money issuers would fall well short of this, as the amount held as electronic money tends to be small. For example, the average card value is less than £50 and the average prepaid card value is well under £1,000.²⁹
28. Authorised electronic money institutions will no longer be subject to the complaints record rule, the complaints reporting rules, and the complaints data publication rules. This should reduce their on-going compliance costs.
29. Our complaints handling rules and the ombudsman service protect consumers against the consequences of any misselling or misadministration that may happen if businesses have more information, or greater bargaining power, than consumers. Allowing consumers to take complaints to the ombudsman service benefits consumers that have a genuine complaint as it is an easier and less costly complaint-resolution process than taking a claim to the court. Consumers dealing with newly covered electronic money issuers should also benefit from a better complaints handling process because the complaints handling rules place minimum requirements on businesses.

28 These figures are based on the average cost per complaint provided by 15 firms responding to our recent survey on complaints handling costs. For more details refer to CP 10/21.

29 *Laying of regulations to implement the new E-money Directive: a consultation document*, HM Treasury (October 2010).

Enforcement

30. With regards to Enforcement, we do not anticipate that the implementation of the Regulations will significantly impact on our current allocation of resources. This is because our approach under the Regulations is expected to follow an enforcement policy and structure with which our staff are already familiar. FSA staff and electronic money issuers, who are already familiar with the process, will benefit from reduced policy development time, reduced risk of procedural errors and reduced need for additional staff training on new procedures. However, in the longer term there may be additional costs for us of supervising and enforcing increased activity in the market as it develops, which is the main aim of 2EMD, and monitoring the data provided in the returns.

Consequential changes

31. The proposed change to GEN clarifies existing policy in relation to the use of the FSA logo and does not constitute a change that will incur costs.
32. The proposed change to the Principles for Business (PRIN) makes the underlying legal position clear on the face of the rules and does not constitute a change that will incur costs.
33. The major cost for electronic money issuers will be the usual costs of compliance. This has been calculated by the Treasury in the Regulatory Impact Assessment that accompanies their consultation document. Any further costs should be minimal, for example the costs of familiarisation with newly published materials. Electronic money issuers who are already familiar with our FSMA policies will have reduced costs as a result of our proposed approach.

Q19: Do you have any comments on the cost benefit analysis?

Compatibility statement

1. The proposed changes to the Handbook in this Consultation Paper (CP) are necessary to enable us to discharge our responsibilities in respect to the second Electronic Money Directive (2EMD).
2. Section 155 of the Financial Services and Markets Act 2000 (FSMA) requires us to explain why we believe the proposed rules and guidance are compatible with our general duties under section 2 of FSMA.
3. This statement explains the reasons why we believe that our proposed rules and guidance:
 - are compatible with our regulatory objectives;
 - are the most appropriate way to meet our regulatory objectives; and
 - take account of the principles of good regulation to which we must have regard.

Statutory objectives

4. The changes to the Handbook will enable small electronic money institutions' consumers to have access to an out-of-court complaint and redress system for the issuance and redeemability elements of their electronic money, thus supporting our statutory objective of securing the appropriate level of consumer protection.
5. Changes to the Enforcement Guide (EG) and the Decision Procedure and Penalties manual (DEPP) will help us enforce breaches of the Electronic Money Regulations (the Regulations), which will support the consumer protection statutory objective, as well as maintaining confidence in the financial system and contributing to the protection of financial stability.
6. Our proposals described in the CP are not directly linked to the objective of reducing financial crime and we believe the proposals are compatible with this.

Principles of good regulation

7. Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to the principles of good regulation. The draft Regulation 46 requires us to have regard to almost identical principles when determining the general policy and principles by reference to which we will perform various functions under those Regulations. While we have had regard to all the principles, the most relevant are set out below.

The restrictions we impose on the industry must be proportionate to the benefits that are expected to result from those restrictions.

8. While 2EMD is a maximum harmonising directive, a suitably proportionate approach is being taken to implementation that recognises the level of risk to consumers in the UK electronic money sector. The Treasury is taking all the significant implementation decisions.
9. We are proposing a small number of minor changes to the Handbook that are necessary to enable us to discharge our responsibilities and we have conducted a cost benefit analysis to assess the proportionately of our proposals in Annex 2. Our approach to enforcement will remain risk-based and seek to minimise costs while providing benefits to consumers.

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

10. In preparing the draft perimeter guidance we have focused our attention on issues of wider relevance. When the guidance is made, this should reduce the amount of our resources used in responding to requests for guidance.
11. In terms of our enforcement responsibilities, we propose to implement a very similar regime to that currently exercised under FSMA, through expanding the scope of DEPP and EG to include statements of enforcement policy relating to these non-FSMA powers. By adopting procedures that are broadly akin to FSMA, we can ensure our regulation of the sector is efficient and effective.

The need to minimise the adverse effects on competition that may arise from our activities and the desirability of facilitating competition between the firms we regulate.

12. The changes to the Handbook are designed to create a common set of obligations for electronic money issuers and thereby facilitate increased competition which is a stated aim of 2EMD.

Q20: Do you have any comments on the compatibility statement?

List of questions

- Q1: Do you agree that our proposals do not raise any issues in relation to equality and diversity?
- Q2: Do you have any comments on the draft text of the perimeter guidance?
- Q3: Do you think there are any issues not covered in the draft guidance that it should address?
- Q4: Do you have any comments on the proposed reporting requirements for authorised electronic money institutions?
- Q5: Do you have any comments on the proposed reporting requirements for small electronic money institutions?
- Q6: Do you have any comments on the proposed reporting requirements for other electronic money issuers?
- Q7: Do you have any comments on the application of a late return administration fee for authorised electronic money institutions, small electronic money institutions, authorised payment institutions and small payment institutions?
- Q8: Do you agree that the FSA should amend the compulsory jurisdiction of the ombudsman service to cover all electronic money issuers in the scope of 2EMD in relation to issuing electronic money?
- Q9: Do you agree that the FSA should extend the compulsory jurisdiction of the ombudsman service to cover former electronic money issuers?

- Q10: Do you agree that the FSA should exclude from the ombudsman service complaints from electronic money issuers about activities they are entitled to undertake themselves?
- Q11: Do you agree issuing electronic money should be within the scope of the ombudsman service's voluntary jurisdiction?
- Q12: Do you agree with our proposed approach to enforcement and do you have any comments on the proposed changes to DEPP and EG?
- Q13: Do you have any comments on the proposed consequential changes to the Glossary?
- Q14: Do you have any comments on the proposed consequential change to PRIN?
- Q15: Do you have any comments on the proposed policy on the use of the FSA logo?
- Q16: Do you have any comments on the proposed deletion of the Electronic Money sourcebook and minor amendments or deletions to other Handbook material?
- Q17: Do you agree with the transitional provision?
- Q18: Do you think there should be any other transitional provisions?
- Q19: Do you have any comments on the cost benefit analysis?
- Q20: Do you have any comments on the compatibility statement?

Draft Handbook text

ELECTRONIC MONEY AND PAYMENT SERVICES INSTRUMENT 2011

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes:

- (1) the rules and guidance in Annexes A and K to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
- (2) the rules, standard terms and guidance in Annexes A and K to this instrument for VJ participants relating to the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 226A (Consumer Credit Jurisdiction);
- (b) section 227 (Voluntary Jurisdiction);
- (c) section 229(4A) (Awards);
- (d) section 230 (Costs);
- (e) paragraph 8 (Guidance) of Schedule 17;
- (f) paragraph 14 (The scheme operator’s rules) of Schedule 17;
- (g) paragraph 16B (The Consumer Credit Jurisdiction) of Schedule 17; and
- (h) paragraph 18 (The Voluntary Jurisdiction) of Schedule 17.

B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

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

- (1) the following sections of the Act:
 - (a) section 69 (Statement of policy) as applied by paragraph 1 of Schedule 3 to the Electronic Money Regulations 2010 (“the Regulations”);
 - (b) section 138 (General rule-making power);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 169(9) (Investigations etc. in support of overseas regulator) as applied by paragraph 3 of Schedule 3 to the Regulations;
 - (f) section 210(1) (Statements of policy) as applied by regulation 52 (6) of the Regulations;
 - (g) section 226 (Compulsory Jurisdiction);

- (h) section 229 (Awards);
 - (i) section 234 (Industry funding);
 - (j) section 395(5) (The Authority’s procedures) as applied by paragraph 8 of Schedule 3 to the Regulations;
 - (k) paragraph 17 (1) (Fees) of Schedule 1; and
 - (k) paragraph 13 (Authority’s procedural rules) of Schedule 17;
- (2) regulation 48 (Reporting requirements) of the Regulations;
 - (3) regulation 59 (Guidance) of the Regulations;
 - (4) regulation 82 (Reporting requirements) of the Payment Services Regulations 2009 (“the 2009 Regulations”);
 - (5) regulation 93 (Guidance) of the 2009 Regulations; and
 - (6) the other powers referred to in Schedule 4 of the General Provisions of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rules, standard terms and guidance made by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force as follows:
- (1) the amendments in Part 1 of Annex A, and Annex O come into force on 20 January 2011;
 - (2) the amendments in Part 3 of Annex A and Part 2 of Annex E come into force on 30 April 2012;
 - (3) the remainder of the instrument comes into force on 30 April 2011.

Notes

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

Revocation of the Electronic Money sourcebook (ELM)

- H. The provisions of the Electronic Money sourcebook (ELM) are revoked with effect from 30 April 2012.

Amendments to the Handbook

- I. The modules of the FSA’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).

	(1)	(2)
	Glossary	Annex A

Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
General Provisions (GEN)	Annex E
Conduct of Business sourcebook (COBS)	Annex F
General Prudential sourcebook (GENPRU)	Annex G
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex H
Supervision (SUP)	Annex I
Decision Procedure and Penalties manual (DEPP)	Annex J
Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Electronic Money sourcebook (ELM)	Annex L

Material outside the Handbook

- J. The Building Societies Regulatory Guide (BSOG) is amended in accordance with Annex M to this instrument.
- K. The Enforcement Guide (EG) is amended in accordance with Annex N to this instrument.
- L. The Perimeter Guidance manual (PERG) is amended in accordance with Annex O to this instrument.

Citation

- M. This instrument may be cited as the Electronic Money and Payment Services Instrument 2011.

[By order of the Board of the Financial Ombudsman Service Limited
TBC]

By order of the Board of the Financial Services Authority
[TBC]

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into effect on 20 January 2011

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

<i>authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>): (a) a <i>person</i> included by the <i>FSA</i> in the <i>FSA register</i> as an <i>authorised electronic money institution</i> pursuant to regulation 4(1)(a) of the <i>Electronic Money Regulations</i> ; or (b) a <i>person</i> deemed to have been granted authorisation by the <i>FSA</i> by virtue of regulation 73 of the <i>Electronic Money Regulations</i> .
<i>average outstanding electronic money</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) the average total amount of financial liabilities related to <i>electronic money</i> in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.
<i>EEA authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to issue <i>electronic money</i> and provide <i>payment services</i> in accordance with the <i>Electronic Money Directive</i> .
<i>EEA branch of an authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) a branch established by an <i>authorised electronic money institution</i> , in the exercise of its <i>passport rights</i> , to issue <i>electronic money</i> , provide <i>payment services</i> , distribute or redeem <i>electronic money</i> or carry out other activities in accordance with the <i>Electronic Money Regulations</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>Electronic Money Directive</i>	Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.
<i>electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) an <i>authorised electronic money institution</i> or a <i>small electronic money institution</i> .

electronic money issuer (1) any of the following *persons* when they issue *electronic money*

- (a) *authorised electronic money institutions;*
- (b) *small electronic money institutions;*
- (c) *EEA authorised electronic money institutions;*
- (d) *credit institutions;*
- (e) the Post Office Limited;
- (f) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority;
- (g) government departments and local authorities when acting in their capacity as public authorities;
- (h) *credit unions;*
- (i) municipal banks;
- (j) the National Savings Bank.

Note: article 2(3) of the *Electronic Money Directive*

(2) (in *DISP*) as in (1) but:

- (a) excluding *full credit institutions, credit unions* and municipal banks; and
- (b) including a *person* who meets the conditions set out in regulation 74 (1) or regulation 75 (1) of the *Electronic Money Regulations*.

Electronic Money Regulations

The Electronic Money Regulations 2010 (SI xxx)

passport right

(in accordance with regulation 2(1) of the *Electronic Money Regulations*) the entitlement of a *person* to establish a branch or provide services in an *EEA state* other than that in which they are authorised to provide *electronic money* issuance services:

- (a) in accordance with the Treaty establishing the European Community as applied in the *EEA*; and
- (b) subject to the conditions of the *Electronic Money Directive*.

small electronic money institution (in accordance with regulation 2 (1) of the *Electronic Money Regulations*) a person included by the FSA in the *FSA register* pursuant to regulation 4(1)(b) of the *Electronic Money Regulations*.

Amend the following definitions as shown:

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

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

electronic money (1) (except in *PERG* and *FEES*) ~~The~~ the *investment*, specified in article 74A of the *Regulated Activities Order* (Electronic money), which is monetary value, as represented by a claim on the issuer, which is:

- (a) stored on an electronic device;
- (b) issued on receipt of funds; and
- (c) accepted as a means of payment by *persons* other than the issuer.

(2) (in *PERG* and *FEES*) electronically (including magnetically) stored monetary value as represented by a claim on the *electronic money issuer* which is:

- (a) issued on receipt of funds for the purpose of making payment transactions as defined in Article 4 (5) of the *Payment Services Directive*; and
- (b) accepted by a *person* other than the *electronic money issuer*;

but does not include:

- (c) monetary value stored on instruments that can be used to acquire goods or services only:
 - (i) in or on the *electronic money issuer's* premises; or
 - (ii) under a commercial agreement with the *electronic money issuer*, either within a limited network of service providers or for a limited range of goods or services; or
- (d) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT

operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

Part 2: Comes into effect on 30 April 2011

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

Issuing electronic money the activity specified in article 9B of the *Regulated Activities Order* (Issuing electronic money), which is the activity of issuing *electronic money* by:

- (a) a *credit institution*, a *credit union* or a municipal bank; or
- (b) a person who is deemed to have been granted authorisation under regulation 73 of the *Electronic Money Regulations* or who falls within regulation 75(1) of the *Electronic Money Regulations*.

Amend the following definitions as shown:

base currency ...

(2) (~~in ELM~~, GENPRU and BIPRU) (in relation to a *firm*) the currency in which that *firm's* books of account are drawn up.

CAD investment firm has the meaning set out BIPRU 1.1.14 R (Types of investment firm: CAD investment firm), which in summary is an *investment firm* that is subject to the requirements imposed by *MiFID* (or which would be subject to that Directive if its head office were in an *EEA State*) but excluding a *bank*, a *building society*, ~~an ELM~~, a *credit institution*, a *local* and an *exempt CAD firm*.

Compulsory Jurisdiction the jurisdiction of the *Financial Ombudsman Service* to which ~~firms and~~ *payment service providers* and electronic money issuers (and certain other persons as a result of the Ombudsman Transitional Order or section 226(2)(b) and (c) of the Act) are compulsorily subject.

consumer credit activity any one of the following activities carried on by a *licensee firm*, ~~or~~ *payment service provider* or electronic money issuer:

(a) ...

...

where at the time of the act or omission complained of:

- (g) the *licensee, firm, or payment service provider or electronic money issuer* was:
- (i) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or
 - (ii) authorised to carry on an activity by virtue of section 34(A) of that Act; or
 - (iii) in accordance with regulation 26(2) of the *Payment Services Regulations* or regulation 31 of the *Electronic Money Regulations*, was not required to hold a licence for consumer credit business under section 21 of the Consumer Credit Act 1974; and
- (h) the activity was carried on in the course of a business of a type specified in accordance with section 226A(2)(e) of the *Act*:

...

- credit institution* (1) (except in *REC*) (in accordance with articles 4(1) and 107 of the *BCD*):
- (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; and
 - (b) ~~an electronic money institution within the meaning of the *E-Money Directive*; [deleted]~~

~~but so that:~~

- (c) ~~(except for the purposes of *GENPRU, ELM, BIPRU* and *IPRU(INV)* (in so far as it relates to *exempt CAD firms*)) an institution within (1)(b) that does not have the right to benefit from the mutual recognition arrangements under *BCD* is excluded [deleted]~~
- (2) ...
- (3) (in relation to the definition of *electronic money issuer*) a credit institution as defined by 1 (a) and includes a branch of the credit institution within the meaning of Article 4(3) of the *Banking Consolidation Directive* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in

accordance with Article 38 of the *Banking Consolidation Directive*.

...

electronic money ~~(1) (except in *PERG* (and *FEES*) the investment, specified in article 74A of the *Regulated Activities Order* (Electronic money), which is monetary value, as represented by a claim on the issuer, which is:~~

- ~~(a) stored on an electronic device;~~
- ~~(b) issued on receipt of funds; and~~
- ~~(c) accepted as a means of payment by persons other than the issuer~~

~~(2) (in *PERG* and *FEES*) electronically (including magnetically) stored monetary value as represented by a claim on the *electronic money issuer* which is:~~

- ~~(a) issued on receipt of funds for the purpose of making payment transactions as defined in Article 4 (5) of the *Payment Services Directive*; and~~
- ~~(b) accepted by a person other than the *electronic money issuer*;~~

but does not include:

- ~~(c) monetary value stored on instruments that can be used to acquire goods or services only:
 - ~~(i) in or on the *electronic money issuer's* premises; or~~
 - ~~(ii) under a commercial agreement with the *electronic money issuer*, either within a limited network of service providers or for a limited range of goods or services; or~~~~
- ~~(d) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.~~

...

financial institution (1) (in accordance with paragraph 5(c) of Schedule 3 to the *Act* (EEA Passport Rights: EEA firm) and article 4 (5) of the *Banking Consolidation Directive* (Definitions)), but not for the purposes of ~~*ELM*~~, *GENPRU*, *BIPRU* and *INSPRU*), an undertaking, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the

listed activities listed in points 2 to 12 and 15 of Annex I to the *BCD*, which is a subsidiary of the kind mentioned in article 24 of the *BCD* and which fulfils the conditions in that article.

- (2) for the purposes of ~~ELM~~, *GENPRU*, *BIPRU* and *INSPRU* and in accordance with Articles 1(3) (Scope) and 4(5) (Definitions) of the *Banking Consolidation Directive*) the following:
- (a) an *undertaking*, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the *listed activities* listed in points 2 to 12 and 15 of Annex I to the *Banking Consolidation Directive* including the services and activities provided for in Sections A and B of Annex I of the *MIFID* when referring to the financial instruments provided for in Section C of Annex I of that Directive;
 - (b) (for the purposes of consolidated requirements) those institutions permanently excluded by Article 2 of the *Banking Consolidation Directive* (Scope), with the exception of the *central banks* of *EEA States*; and
 - (c) ~~(for the purposes of ELM) an asset management company.~~

foreign currency (~~in ELM, GENPRU and BIPRU~~) (in relation to a *firm*) any currency other than the *base currency*.

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

- (a) ...
- (aa) *authorised payment institution* and its *EEA branches*;
- (ab) *small payment institution*;
- (ac) *agent* of an *authorised payment institution* or *small payment institution*;
- (aca) *authorised electronic money institution and an EEA branch of an authorised electronic money institution*;
- (acb) *small electronic money institution*;
- (acc) *agent of an authorised electronic money institution or small electronic money institution*;
- (ad) *credit union*, municipal bank and the National Savings Bank where such *persons* provide a *payment service* or *issue*

electronic money;

immediate group ...

(2) (in ~~ELM 7~~ and *BIPRU* and in relation to any *person*) has the same meaning as in paragraph (1), with the omission of (1)(e).

incoming ECA provider

a *person*, other than an *exempt person* ~~or a person who has been given a waiver in accordance with article 8(1) of the E-Money Directive~~, who:

- (a) provides an *electronic commerce activity*, from an *establishment* in an *EEA State* other than the *United Kingdom*, with or for an *ECA recipient* present in the *United Kingdom*; and
- (b) is a national of an *EEA State* or a company or firm mentioned in article 54 of the *Treaty*.

insurance holding company

(1) a *parent undertaking*, other than an *insurance undertaking*, the main business of which is to acquire and hold participations in *subsidiary undertakings* and which fulfils the following conditions:

- (a) its *subsidiary undertakings* are either exclusively or mainly *insurance undertakings*; and
- (b) at least one of those *subsidiary undertakings* is an *insurer* or an *EEA firm* that is a *regulated insurance entity* or a *reinsurance undertaking*;

a *parent undertaking*, other than an *insurance undertaking*, that fulfils the conditions in paragraphs (1) (a) and (b) of this definition is not an *insurance holding company* if:

- (c) it is a *mixed financial holding company*; and
 - (d) notice has been given in accordance with Article 4(2) of the *Financial Groups Directive* that the *financial conglomerate* of which it is a *mixed financial holding company* is a *financial conglomerate*.
- (2) For the purposes of:
- (a) the definition of the *insurance sector*;
 - (b) ~~ELM; and~~ [deleted]
 - (c) the definition of *material insurance holding*; paragraph (1)(b) of this definition does not apply.

investment management firm

(subject to *BIPRU* TP 1.3R (Revised definition of investment management firm for certain transitional purposes)), a *firm* whose *permitted activities* include *designated investment business*, which is not

an authorised professional firm, bank, BIPRU investment firm, ~~ELMI~~, building society, credit union, energy market participant, friendly society, ICVC, insurer, media firm, oil market participant, service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission), UCITS management company or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU-INV 3 or IPRU-INV 13 (Personal investment firms) and which is within (a), (b) or (c):

<i>lower tier two capital</i>	<p>(1) (in ELM) the lower tier two capital of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds). [deleted]</p> <p>...</p>
<i>material holding</i>	<p>(1) (for the purposes of ELM) a holding or position set out in ELM 2.4.17 R (Material holdings). [deleted]</p> <p>(2) (for the purposes of GENPRU and BIPRU) has the meaning in GENPRU 2.2.209R (Deductions from tiers one and two: Material holdings (<u>BIPRU firm only</u>)).</p>
<i>own funds</i>	<p>...</p> <p>(2) (in ELM) the own funds of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds). [deleted]</p> <p>...</p>
<i>participant firm</i>	<p>...</p> <p>(i) an ELMI in relation to issuing e-money. [deleted]</p> <p>...</p>
<i>payment service provider</i>	<p>(1) (except in DISP) (in accordance with regulation 2(1) of the <i>Payment Service Regulations</i>) any of the following persons when they carry out <i>payment services</i>:</p> <ul style="list-style-type: none"> (a) an authorised payment institution; (b) a small payment institutions; (c) an EEA authorised payment institutions; (d) a full credit institution; (e) an e-money issuer <u>electronic money issuer</u>; <p>...</p>

- (2) (in *DISP* and *FEES* 5.5) as in (1) but excluding a *full credit institution* and an *e-money firm*.

participation (for the purposes of ~~*ELM*~~, *UPRU* and *GENPRU* and for the purposes of *BIPRU* and *INSPRU* as they apply on a consolidated basis):

...

personal investment firm (subject to *BIPRU* TP 1 (Revised definition of personal investment firm for certain transitional purposes)) a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, *BIPRU investment firm*, ~~*ELM*~~, *building society*, *credit union*, *energy market participant*, *friendly society*, *ICVC*, *insurer*, *media firm*, *oil market participant*, *service company*, *incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), *UCITS management company* or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with *IPRU(INV)* 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):

...

qualifying debt security (1) (~~for the purposes of *ELM*~~) a security falling into ~~*ELM* 3.3.9R (Liquid assets)~~: [deleted]

(2) (for the purposes of *BIPRU*) a *debt security* that satisfies the conditions in *BIPRU* 7.2.49 R (Definition of a qualifying debt security).

respondent (1) (in *DISP*) a *firm* (except a *UCITS qualifier*), *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

(2) (in *DISP* 2 and 3) includes, as a result of sections 226 and 226A of the *Act*:

(a) an *unauthorised person* who was formerly a *firm* in respect of a *complaint* about an act or omission which occurred at the time when the *firm* was *authorised*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; ~~and~~

(b) a *person* who was formerly a *licensee* in respect of a *complaint* about an act or omission which occurred at the time when it was a *licensee*, provided the *complaint* falls within a description specified in the consumer credit rules in force at the time of the act or omission; ~~and~~

- (c) a person who was formerly a payment service provider in respect of a complaint about an act or omission which occurred at the time when it was a payment service provider, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and
- (d) a person who was formerly an electronic money issuer in respect of a complaint about an act or omission which occurred at the time when it was an electronic money issuer, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

securities and futures firm

(subject to BIPRU TP 1 (Revised definition of securities and futures firm for certain transitional purposes)) a firm whose permitted activities include *designated investment business*, which is not an *authorised professional firm, bank, BIPRU investment firm* (unless it is an exempt BIPRU commodities firm) ~~ELMI~~, *building society, credit union, friendly society, ICVC, insurer, media firm, service company, incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), *UCITS management company* or *UCITS qualifier* (without a *top-up permission*), whose permission does not include a requirement that it comply with IPRU(INV) (Investment management firms) or (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f) or (g):

...

tier one capital

(1) ~~(in ELM) the tier one capital of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds). [deleted]~~

...

tier two capital

(1) ~~(in ELM) the tier two capital of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds). [deleted]~~

...

upper tier two capital

(1) ~~(in ELM) the upper tier two capital of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds) [deleted]~~

....

Delete the following definitions. The deleted text is not shown.

absolute FX exposure limit

consolidated sub-group

consumer e-money card

consumer e-money device

consumer e-money holder

daily e-money outstandings amount

EEA consolidated group

EEA financial parent undertaking

EEA group large exposure

EEA group risk own funds

EEA group risk own funds requirement

ELM financial rules

ELMI

e-money

E-Money Directive

e-money electronic device

e-money firm

e-money float

e-money float exposure

e-money issue price

e-money issuer

e-money outstandings

e-money scheme rules

financial services undertaking

FX exposure

FX exposure limit

granting an e-money permission

group of closely related counterparties

initial capital

issuing e-money

large e-money float exposure

net FX open currency position

own funds requirement

qualifying liquid asset

redemption right

regulatory capital resources

relevant financial services company

reportable large exposure

sufficiency liquid

UK consolidated group

UK financial parent undertaking

UK group large exposure

UK group risk own funds

UK group risk own funds requirement

zero weighted asset

Zone A credit institution

Part 3: Comes into effect on 30 April 2012

Delete the following definitions. The deleted text is not shown.

ELM

small e-money issuer

small e-money issuer certificate

Annex B

Amendments to the Principles for Businesses (PRIN)

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

...

- 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* 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 *Electronic Money Directive* to credit institutions ~~and e-money issuers~~ (see Parts 5 and 6 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*).

...

Annex C

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

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

SYSC Application

12.1.1 R Subject to SYSC 12.1.2 R to SYSC 12.1.4 R, this section applies to each of the following which is a member of a *group*:

(1) a firm that falls into any one or more of the following categories:

...

(b) ~~an ELMF~~; [deleted]

...

...

...

BIPRU firms and other firms to which BIPRU 8 applies

12.1.13 R ...

12.1.14 R SYSC 12.1.13 R applies to a *firm* that is:

(1) ~~an ELMF~~; [deleted]

(2) a BIPRU firm; or

(3) a non-BIPRU firm that is a parent financial holding company in a Member State and is a member of a UK consolidation group.

12.1.15 R In the case of a *firm* that:

(1) is ~~an ELMF~~ or a *BIPRU firm*; and

(2) has a *mixed-activity holding company* as a *parent undertaking*;

the risk management processes and internal control mechanisms referred to in SYSC 12.1.8 R must include sound reporting and accounting procedures and other mechanisms that are adequate to identify, measure, monitor and control transactions between the *firm's parent undertaking mixed-activity holding company* and any of the *mixed-activity holding company's subsidiary undertakings*.

...

Annex D

Amendments to the Threshold Conditions (COND)

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

...

2.1 Threshold condition 1: Legal status

2.1.1

U
K

Paragraph 1, Schedule 6 to the Act	
(1)	If the regulated activity concerned is the effecting or carrying out of contracts of insurance the authorised person must be a body corporate (other than a limited liability partnership), a registered friendly society or a member of Lloyd's.
(2)	If the person concerned appears to the [FSA] to be seeking to carry on, or to be carrying on, a regulated activity constituting accepting deposits or issuing electronic money , it must be-
(a)	a body corporate; or
(b)	a partnership.

...

2.1.3

G

~~The words "or *issuing electronic money*" in paragraph 1(2) of Schedule 6 to the Act were added by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 with effect from 27 April 2002. [deleted]~~

Annex E

Amendments to the General Provisions (GEN)

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

Part 1: Comes into force on 30 April 2011

1.3.1 G The *FSA* recognises that there may be occasions when, because of a particular emergency, a *person* (generally a *firm*, but in certain circumstances, for example in relation to *price stabilising rules* ~~or *small-e-money issuer rules*~~, an *unauthorised person*) may be unable to comply with a particular *rule* in the *Handbook*. The purpose of GEN 1.3.2 R is to provide appropriate relief from the consequences of contravention of such a *rule* in those circumstances.

...

5.1.1 G This chapter contains:

(1) *guidance for firms* ~~and~~ *authorised payment institutions*; *authorised electronic money institutions* and their *appointed representatives, agents or tied agents* on the circumstances in which the *FSA* permits them to reproduce the *FSA* logo;

...

...

5 Annex 1G Licence for use of the FSA and keyfacts logos

Application	
1.1	The <i>FSA</i> grants this licence to <i>firms, authorised payment institutions, <u>authorised electronic money institutions</u>, appointed representatives, agents and tied agents</i> .
...	
Permission to use the FSA logo	
3.1	A <i>UK domestic firm, its appointed representatives and tied agents, and an authorised payment institution and its agents <u>and an authorised electronic money institution and its agents</u></i> are permitted to use the FSA logo:
	(1) as part of a statement by that <i>person</i> , in a letter or electronic equivalent, that it or, in relation to an <i>appointed representative, agent or tied agent</i> , its principal, is authorised and regulated by the <i>FSA</i> ; or

	(2)	if required to do so by the <i>FSA</i> .
...		

Schedule 4 Powers Exercised

...	
The following additional powers have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>GEN</i> :	
	...
	Regulation 92 (Costs of compliance <u>supervision</u>) of the <i>Payment Services Regulations</i>
	<u>Regulation 48 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>
	<u>Regulation 58 (Costs of supervision) of the <i>Electronic Money Regulations</i></u>
	...

...	
The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :	
	...
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> and <u>paragraph 1 of Schedule 3 to the <i>Electronic Money Regulations</i></u>)
	...
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i> and <u>paragraph 3 of Schedule 3 to the <i>Electronic Money Regulations</i></u>)
	Section 210 (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> and <u>regulation 52 (6) of the <i>Electronic Money Regulations</i></u>)
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> and <u>paragraph 8 of Schedule 3 to the <i>Electronic Money Regulations</i></u>).

The following additional powers and related provisions have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :	
	...
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i> .
	<u>Regulation 59 (Guidance) of the <i>Electronic Money Regulations</i></u>
	...

<u>The following additional powers and related provisions have been exercised by the <i>FSA</i> in <i>GEN</i> to direct, require or specify:</u>	
	<u>Regulation 48 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>

The following additional powers have been exercised by the <i>FSA</i> to make the other <i>guidance</i> in <i>GEN</i> :	
	...
	<u>Regulation 59 (Guidance) of the <i>Electronic Money Regulations</i></u>

Part 2: Comes into force 30 April 2012

The following additional powers have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>GEN</i> :	
	...
	Articles 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the <i>Regulated Activities Order</i>
...	

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> in <i>GEN</i> to direct, require or specify:	
	...
	Articles 9D (Applications for certificates) and 9F (Revocation of certificate on request) of the <i>Regulated Activities Order</i>

Annex F

Amendments to the General Prudential sourcebook (GENPRU)

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

3 Annex 1 Capital adequacy calculations for financial conglomerates (GENPRU 3.1.26R and GENPRU 3.1.29R)

...

7 Table

...

E-money	4.5	<p>If there are no full credit institutions or investment firms in a banking and investment services conglomerate but there are one or more <i>e-money issuers</i>, the sectoral rules in BIPRU 8 are amended as follows:</p> <p>(1) the rules in ELM that apply on a solo basis must be used to establish the capital requirements for the <i>e-money issuers</i>; and</p> <p>(2) for the purposes of (1), those rules in ELM shall be amended by calculating the amount of deductions in respect of ownership shares and capital falling into ELM 2.4.17R(6) in accordance with paragraph 3.3(2).</p> <p>[deleted]</p>

...

9 Table: PART 6: Definitions used in this Annex

...		
Solo capital resources requirement: Banking sector and investment service sector	6.2	<p>...</p> <p>(3) The <i>solo capital resources requirement</i> of an <i>e-money issuer</i> <u>electronic money institution</u> is <u>the capital resources requirement that applies to it under the <i>Electronic Money Regulations</i>.</u> ÷</p> <p>(a) (in the case of an <i>ELMI</i>) the capital resources requirement that applies to it under ELM; or</p>

		(b) (in any other case) the capital resources requirement that would apply to it under <i>ELM</i> if it were an <i>ELMI</i> incorporated in the <i>United Kingdom</i> .
--	--	---

Annex G

Amendments to the Prudential sourcebook for Banks, Buildings Societies and Investment Firms (BIPRU)

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

8.1.1 R This chapter applies to:

- (1) a *BIPRU firm* that is a member of a *UK consolidation group*;
- (2) a *BIPRU firm* that is a member of a *non-EEA sub-group*; and
- (3) ~~an *ELMI* that is a member of a *UK consolidation group* or a *non-EEA sub-group* if that group includes a *BIPRU firm*; and [deleted]~~
- (4) a *firm* that is not a *BIPRU firm* and is a *parent financial holding company* in a *Member State* in a *UK consolidation group*.

Annex H

Amendments to the Conduct of Business sourcebook (COBS)

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

- 1.1.1A R This sourcebook does not apply to a *firm* with respect to the activity of *accepting deposits* carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*, except for *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), *COBS 13* (Preparing product information) and *COBS 14* (Providing product information to clients) which apply as set out in those provisions, *COBS 4.1* and the Banking: Conduct of Business sourcebook (*BCOBS*).
- 1.1.1B R *COBS 4.4.3R, COBS 5 (Distance communications), COBS 15.2 (The right to cancel), COBS 15.3 (Exercising a right to cancel), COBS 15.4 (Effects of cancellation) and COBS 15 Annex I (Exemptions from the right to cancel) apply to a firm with respect to the activity of issuing electronic money as set out in those provisions.*
- ...
- 4.1.1A R *COBS 4.4.3G applies to a firm with respect to the activity of issuing electronic money.*
- ...
- 4.4.3 R *To ensure that a firm pays due regard to the information needs of its clients, and communicates information to them in a way which is clear, fair and not misleading with respect to the activity of issuing electronic money, a firm must ensure that, in good time before the firm issues electronic money to a person, it has been communicated to that person on paper or in another durable medium that the compensation scheme does not cover claims made in connection with issuing electronic money.*
- ...
- 15.1.1 G This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:
- (1) most providers of retail financial products that are based on *designated investments*; and
 - (2) *firms* that enter into *distance contracts* with *consumers* that relate to *designated investment business*; ~~and~~
 - (3) *firms that enter into distance contracts the making or performance of*

which by the *firm* constitutes, or is part of, the activity of *issuing electronic money*.

...

Cancellable contracts

15.2.1 R A consumer has a right to cancel any of the following contracts with a *firm*:

Cancellable contract	Cancellation period	Supplementary provisions
...		
Non-life/pensions (at a distance): a <i>distance contract</i> , relating to ...		
<ul style="list-style-type: none"> • <i>accepting deposits</i> • <i>designated investment business</i> • <u><i>issuing electronic money</i></u> 	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)

...

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional Provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
<u>2.15</u>	<u>The changes to COBS set out in Annex H of the Electronic Money Instrument 2011</u>	<u>R</u>	<u>In relation to a person deemed to have been granted authorisation by virtue of regulation 73 (1) or regulation 73(2) of the <i>Electronic Money Regulations</i>, the changes effected by the Annex listed in column (2) do not apply and <i>COBS 5 and COBS 15.3.1,</i></u>	<u>30 April 2011</u>	<u>30 April 2011</u>

			<p><u>COBS 15.3.4 and COBS 15.4 as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 73 (1) or regulation 73 (2) of the <i>Electronic Money Regulations</i>.</u></p>		
--	--	--	--	--	--

Annex I

Amendments to the Supervision Manual (SUP)

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

3 Auditors

3.1 Application

3.1.2 R Applicable sections (see SUP 3.1.1 R)

		(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
	...			
	(5B)	<i>ELMI</i>	SUP 3.1 – SUP 3.7	<i>SUP 3.1, SUP 3.2, SUP 3.8</i>
	...			

...

TP 1.2

(1)	(2)	(3)	(4) Transitional provision	(5)	(6)
	Material to which the transitional provision applies			Transitional provision: dates in force	Handbook provision: coming into force
	...				
12 L	...				

	(5) <i>SUP</i> 16.7.66	R	An <i>ELMI</i> that is required to report a consolidated reporting statement on capital adequacy in the case of <i>ELM</i> 7.3.2 R in respect of reporting dates after 31 December 2007 will use FSA003 in place of FSA009. FSA003 should be submitted in accordance with <i>SUP</i> 16.12.3R (3).	1 January 2008	1 January 2008
	...				
	(7) <i>SUP</i> 16.7.65R , <i>SUP</i> 16.7.66R	R	An <i>ELMI</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under <i>SUP</i> 16.12.5R.	1 January 2008 to 1 April 2009	1 January 2008
12 M	...				
	(18) <i>SUP</i> 16.7.65R , <i>SUP</i> 16.7.66R	R	An <i>ELMI</i> must submit the <i>ELM</i> CA/LE (unconsolidated and consolidated) for reporting dates between 1 January 2008 and 30 August 2008 in accordance with the rules set out in <i>SUP</i> 16.7.66R.	1 January 2008 to 30 August 2008	1 January 2008
...					

...

13A Annex 1 Application of the Handbook to Incoming EEA Firms

13A G
Annex 1

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>IPRU(BANK)</i>	Only the following apply, and only if the firm is a credit institution other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive</i> (<i>IPRU(BANK)</i>)	Does not apply. But if the firm is a credit institution whose notification to the FSA of its intention to provide services in the United Kingdom covers services provided through a branch, see column (2).

	3.2.1R): (1) <i>IPRU(BANK)</i> 3.5.1R; and (2) <i>IPRU(BANK)</i> chapters LM and LS.	
...		
ELM	ELM 6 applies.	Does not apply.
...		

...

15.4 Notified persons

15.4.1 R (1) An *overseas firm*, which is not an *incoming firm*, must notify the *FSA* within 30 *business days* of any *person* taking up or ceasing to hold the following positions:

...

...

(c) for a *bank* or an ~~*ELMI*~~: the two or more *persons* who effectively direct its business in accordance with *SYSC* 4.2.2 R and ~~*ELM* 5.3.1~~, respectively;

...

...

16 Reporting requirements

16.1 Application

16.1.1 R This chapter applies to every *firm* within a category listed in column (2) of the table in *SUP* 16.1.3 R and in accordance with column (3) of that table.

16.1.1A D The directions and *guidance* in *SUP* 16.13 apply to an *authorised payment institution* and a *small payment institution*.

16.1.1B D The directions and *guidance* in *SUP* 16.14 apply to *electronic money issuers* that are not *credit institutions*.

...

16.1.3 R Application of different sections of *SUP* 16 (excluding *SUP* 16.13 and *SUP* 16.14)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		

SUP 16.6	<i>Bank, ELMI</i>	SUP 16.6.4 R to SUP 16.6.5 R
	...	
SUP 16.7	<i>Bank, other than an EEA bank with permission for cross border services only.</i>	SUP 16.7.7 R to SUP 16.7.15 R
	...	
	<i>ELMI</i>	SUP 16.7.64 R to SUP 16.7.66 R
...		
<p>Note 1 = Where an <i>authorised professional firm</i> is required by <i>IPRU(INV)</i> 2.1.2R(1) to comply with chapter 3, 5, 10 or 13 of <i>IPRU(INV)</i>, section <i>SUP 16.7</i> applies to such a <i>firm</i> as if it were the relevant <i>firm</i> category in the right hand column of <i>IPRU(INV)</i> 2.1R.</p>		
<p><u>Note 2 = The application of <i>SUP 16.13</i> is set out under <i>SUP 16.13.1G</i> and the application of <i>SUP 16.14</i> is set out under <i>SUP 16.14.1G</i>.</u></p>		

...

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

(9) integrated regulatory reporting (SUP 16.12); ~~and~~

(10) reporting under the *Payment Services Regulations* ; and

(11) reporting under the *Electronic Money Regulations*.

...

16.6 Compliance reports

Application

16.6.2 G Applicable provisions of this section (see SUP 16.6.1 G)

Category of firm	Applicable provisions
<i>Bank, ELMI</i>	<i>SUP 16.6.4 R - SUP 16.6.5 R</i>

...	
-----	--

...

Banks

16.6.4 R A bank ~~and an ELMF~~ must submit compliance reports to the FSA in accordance with SUP 16.6.5 R.

16.6.5 R Compliance reports from a bank ~~and an ELMF~~ (see SUP 16.6.4 R)

...

16.12 Integrated Regulatory Reporting

...

Reporting requirement

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing		
		applicable <i>data items</i>	reporting frequency/ period	Due date
RAG 1	<ul style="list-style-type: none"> • accepting deposits • issuing electronic money • <i>meeting of repayment claims</i> • <i>managing dormant account funds (including the investment of such funds)</i> 	SUP 16.12.5 R	SUP 16.12.6 R	SUP 16.12.7 R
...				

Regulated Activity Group 1

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4 R are set out according to *firm* type in the table below

Description of <i>data</i>	Prudential category of firm, applicable <i>data items</i> and reporting format (Note
----------------------------	--

<i>item</i>	1)							
	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	<i>EEA bank ...</i>	<i>EEA bank ...</i>	<i>Electronic money institutions</i>	<i>Credit union</i>	<i>Dormant account fund operator (note 15)</i>
<i>Annual report and accounts</i>	No standard format		No standard format, but in English			No standard format		No standard format
<i>(+ various other entries)</i>								
...								
Balance sheet						FSA020		
Income statement						FSA021		
Capital adequacy						FSA022		
...								
Market risk						FSA023		
...								
Large exposures						FSA024		
...								

Liquidity (other than stock)						FSA025		
...								
ELMI questions						FSA026		
Non-EEA sub-group						FSA028 (note 8)		
...								

...

16.12.7	...	
Note 1	Applicable to UK banks, <u>and</u> dormant account fund operators and electronic money institutions.	

...

Purpose

16.13.2 G The purpose of this section is to give directions to *authorised payment institutions* and *small payment institutions* under regulation 82 (Reporting requirements) of the *Payment Services Regulations* in relation to:

...

16.13.2 G The purpose of this section is also to set out the rules applicable to *authorised payment institutions* and *small payment institutions* in relation to complete and timely reporting and failure to submit reports.

A

Reporting requirement

16.13.3 D (1) An *authorised payment institution* or a *small payment institution* must submit to the FSA the duly completed return applicable to it as set out in column (2) of the table in *SUP* 16.13.4D.

...

16.13.3 D *SUP* 16.3.11R (Complete reporting) and *SUP* 16.3.13R (Timely reporting) also apply to *authorised payment institutions* and *small payment institutions* as if a reference to *firm* in these rules is a reference to *authorised payments institutions* and *small payment institutions*.

A

- 16.13.3 B R SUP 16.3.14R (Failure to submit reports) also applies to *authorised payment institutions* and *small payment institutions* as if a reference to *firm* in this rule is a reference to *authorised payments institutions* and *small payment institutions*

16.14 Reporting under the Electronic Money Regulations

Application

- 16.14.1 G This section applies to *electronic money issuers* that are not *credit institutions* (see SUP 16.1.1BD).

Purpose

- 16.14.2 G The purpose of this section is to give directions to the *electronic money issuers* referred to in SUP 16.1. 1BD under regulation 48 (Reporting requirements) of the Electronic Money Regulations in relation to:
- (1) the information in respect of their issuance of *electronic money* and provision of *payment services* and their compliance with requirements imposed by or under Parts 2 to 5 of the Electronic Money Regulations that they must provide to the *FSA*; and
 - (2) the time at which and the form in which they must provide that information.
- 16.14.3 G The purpose of this section is also to set out the rules applicable to these types of *electronic money issuers* in relation to complete and timely reporting and, where relevant, the failure to submit reports.

Reporting requirement

- 16.14.4 D An *electronic money issuer* that is not a *credit institution* must submit to the *FSA*:
- (1) the duly completed return applicable to it as set out in column (2) of the table in SUP 16.14.7D; and
 - (2) the return referred to in (1):
 - (a) in the format specified as applicable in column (3) of the table in SUP 16.14.7D;
 - (b) at the frequency and in respect of the periods specified in column (4) of that table;
 - (c) by the due date specified in column (5) of that table; and
 - (d) by electronic means made available by the *FSA* where necessary.
- 16.14.5 D SUP 16.4.5 R (Annual Controllers Report) and SUP 16.5.4 R (Annual Close Links Reports) apply to an *authorised electronic money institution* as if a reference to

firm in these rules is a reference to an *authorised electronic money institution*.

16.14.6 D SUP 16.3.11R (Complete reporting) and SUP 16.3.13R (Timely reporting) apply to an authorised electronic money institution and a small electronic money institution as if a reference to firm in these rules is a reference to an authorised electronic money institution and a small electronic money institution.

16.14.7 R SUP 16.3.14R (Failure to submit reports) also applies to an authorised electronic money institution and a small electronic money institution as if a reference to firm in these rules is a reference to an authorised electronic money institution and a small electronic money institution.

16.14.8 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *electronic money issuers* that are not *credit institutions*.

	<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>
	<u>Type of <i>electronic money issuer</i></u>	<u>Return</u>	<u>Format</u>	<u>Reporting Frequency</u>	<u>Due date (Note 4)</u>
	<u><i>Authorised Electronic Money Institution</i> (Note 1)</u>	<u>Balance sheet</u>	<u>FSA059</u>	<u>Half yearly (Note 3)</u>	<u>30 <i>business days</i></u>
		<u>Income statement</u>	<u>FSA060</u>	<u>Half yearly (Note 3)</u>	<u>30 <i>business days</i></u>
		<u>Capital requirements</u>	<u>FSA061</u>	<u>Half yearly (Note 3)</u>	<u>30 <i>business days</i></u>
		<u>Large exposures</u>	<u>FSA062</u>	<u>Half yearly (Note 3)</u>	<u>30 <i>business days</i></u>
		<u>Safeguarding</u>	<u>FSA063</u>	<u>Half yearly (Note 3)</u>	<u>30 <i>business days</i></u>
		<u>Supplementary information</u>	<u>FSA064</u>	<u>Half yearly (Note 3)</u>	<u>30 <i>business days</i></u>
		<u><i>Annual report</i></u>	<u>No standard</u>	<u>Annual (Note 3)</u>	<u>80 <i>business</i></u>

	<u>and accounts</u>	<u>format</u>		<u>days</u>
<u>Small Electronic Money Institutions (Note 2)</u>	<u>Return</u>	<u>FSA065</u>	<u>Half yearly (note 5)</u>	<u>30 business days</u>
	<u>Total electronic money outstanding @ 31st December</u>	<u>FSA066</u>	<u>Annual (Note 5)</u>	<u>1 month</u>
	<u>Annual report and accounts</u>	<u>No standard format</u>	<u>Annual (Note 5)</u>	<u>80 business days</u>
<u>(a) the Post Office Limited</u> <u>(b) the Bank of England, the ECB and the national central banks of EEA States other than the UK</u> <u>(c) Government departments and local authorities</u> <u>(d) credit unions</u> <u>(e) municipal banks</u> <u>(f) the National Savings</u>	<u>Average outstanding electronic money</u>	<u>No standard format</u>	<u>Half yearly (Note 6)</u>	<u>30 business days</u>

	<u>Bank</u>				
	<u>Note 1</u>	<u>When submitting the completed returns required, the <i>authorised electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 29A D to SUP 16 Annex 29F D.</u>			
	<u>Note 2</u>	<u>When submitting the completed returns required, the <i>small electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 29G D to SUP 16 Annex 29H D.</u>			
	<u>Note 3</u>	<u>Where the <i>authorised electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>authorised electronic money institution's</i> accounting reference date.</u>			
	<u>Note 4</u>	<u>The due dates for returns are the last day of the periods given in column (5) of the table above following the relevant reporting frequency period set out in column (4) of the table above.</u>			
	<u>Note 5</u>	<u>The reporting frequency in relation to FSA066 is calculated from 31 December each calendar year. Otherwise, where the <i>small electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>small electronic money institution's</i> accounting reference date.</u>			
	<u>Note 6</u>	<u>This is calculated from 31 December each calendar year.</u>			
...					

After SUP 16 Annex 28BG insert the following new Annex. The text is not underlined.

16 D Authorised electronic money institutions - balance sheet return
Annex
29A

FSA059 Authorised electronic money institutions - balance sheet

	A
1 Cash	<input type="text"/>
2 Zero weighted governments and central banks	<input type="text"/>
3 20% weighted credit institutions	<input type="text"/>
4 Qualifying debt securities	<input type="text"/>
5 Material holdings in financial institutions	<input type="text"/>
6 Investments in own shares	<input type="text"/>
7 Other current assets	<input type="text"/>
8 Intangible assets	<input type="text"/>
9 Other fixed assets	<input type="text"/>
10 Total assets	<input style="border: 2px solid black;" type="text"/>
11 E-money outstandings	<input type="text"/>
12 o/w E money issue price	<input type="text"/>
13 Other current liabilities	<input type="text"/>

14	Non current liabilities (excl provisions)	
15	Paid up share capital	
16	Share premium account	
17	Audited reserves (excluding revaluations)	
18	Externally verified interim profits	
19	Partnership capital	
20	Initial capital	
21	Interim net losses	
22	Deductions from Tier One	
23	Upper Tier 2 subordinated capital	
24	Upper Tier 2 subordinated capital	
25	Revaluation reserves	
26	Upper Tier 2 capital	
27	Lower Tier 2 subordinated capital	
28	Tier 2 capital	
29	Own Funds	
30	Other subordinated debt capital	
31	Provisions	

32 Unaudited current year's profits

33 Total liabilities

After SUP 16 Annex 29AD insert the following new Annex. The text is not underlined.

16 D Authorised electronic money institutions - income statement
Annex
29B

FSA060 Authorised electronic money institutions - income statement

A

1 Total income

Expenses

2 Total expenses

3 Tax expense

4 Retained Profit

After SUP 16 Annex 29BD insert the following new Annex. The text is not underlined.

16 D Authorised electronic money institutions - capital requirements return
Annex
29 C

FSA061 Authorised electronic money institutions - capital requirements

	A	
Currency		<input style="width: 100px; height: 50px;" type="text"/>
Please select £ or €		
1 The firm completing this is subject to the capital rules for		
1A E-money issuers only		<input style="width: 100px; height: 25px;" type="text"/>
If 'yes' complete Part One, Section 1 only .		
1B E-money and payment institutions		<input style="width: 100px; height: 25px;" type="text"/>
If 'yes' complete both Part One, Sections 1 and 2.		

PART ONE: CAPITAL REQUIREMENT

Section 1 (e-money business)

2 Initial capital requirement	<input style="width: 100px; height: 50px;" type="text"/>	<i>minimum of €350,000</i>
Own funds requirement		
3 Total own funds	<input style="width: 100px; height: 25px;" type="text"/>	
4 E-money outstandings at period end	<input style="width: 100px; height: 25px;" type="text"/>	
5 Average daily e-money outstandings at the end of each calendar day over preceding 6 months	<input style="width: 100px; height: 25px;" type="text"/>	

6	Own funds requirement		2% of average e-money outstanding figure (field A5)
7	Total capital requirement (higher of initial capital and own funds requirements)		

Section 2 (firms engaged in e-money & other payment services)

8	Please indicate which method your firm uses to calculate its own funds requirement (<i>select one method only</i>)	
---	---	--

Method A (Fixed overheads method)

9	Total fixed overheads for preceding year	
10	Own funds requirement (10% of fixed overheads for preceding year)	

Method B (Scaled average monthly payment method)

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

Method C (Scaled income method)

Relevant Indicator

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

Multiplication Factor

25	10% of the first €2.5m of the total relevant indicator	
26	8% of the total relevant indicator between €2.5m and €5m	
27	6% of the total relevant indicator between €5m and €25m	
28	3% of the total relevant indicator between €25m and €50m	
29	1.5% of any remaining amount of the total relevant indicator	
30	Total	
31	Scaling factor	
32	Own funds requirement	

Total capital requirement

33	Initial capital requirement from Section 1 (A)	
34	Own funds requirement from Section 1 + own funds requirement calculated using methods A, B or C (B)	
35	Total capital requirement (higher of A and B)	

Part Two: TOTAL CAPITAL RESOURCES

36	Paid up capital	
37	Reserves	

38	Retained profit/loss	
39	Revaluation reserves	
40	Eligible general or collective provisions	
41	Eligible securities and instruments	
42	Cumulative preference shares (other than fixed term)	
43	Eligible members' commitments	
44	Eligible borrowers' commitments	
45	Eligible fixed term cumulative preference shares and subordinated loans	
46	Total resources	

Deductions

47	Own shares at book value	
48	Intangible assets	
49	Material losses	
50	Deductible holdings of shares	
51	Deductible participations	
52	Deductible instruments	
53	Total deductions	

54	Total capital resources	
55	Period end £/€exchange rate used	
56	Total capital resources (Euro equivalent)	
57	Total capital requirement (in Euro)	
58	Capital surplus/deficit (in Euro)	

After SUP 16 Annex 29C D insert the following new Annex. The text is not underlined.

16 D Authorised electronic money institutions - large exposures return
Annex
29D

FSA062 Authorised electronic money institutions - large exposures

For each large exposure, or group of closely related exposures, within 20% weighted credit institutions and qualifying debt securities

Counterparty, or group, name	Exposure at reporting date	% total of own funds
A	B	C
Total		

After SUP 16 Annex 29D D insert the following new Annex as SUP 16 Annex 29E D. The text is not underlined.

16
Annex
29E

D Authorised electronic money institutions – safeguarding return

FSA063 Authorised electronic money institutions – safeguarding

SAFEGUARDING OF CLIENT ASSETS

		A	B	C
(tick at least one box)		e-money	other payment services	Name of institution/ custodian/insurer
1	Placed in a separate account with an authorised credit institution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
2	Invested in approved secure liquid assets held in a separate account with an authorised custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
3	Covered by an insurance policy with an authorised insurer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
4	Covered by a guarantee from an authorised insurer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
5	Covered by a guarantee from an authorised credit institution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>

After SUP 16 Annex 29E D insert the following new Annex. The text is not underlined.

16
Annex
29F

D Authorised electronic money institutions - supplementary information

FSA064 Authorised electronic money institutions - supplementary information

		A	B
		explanation if NO	
1	Have the firm's own funds been equal to or greater than its own funds requirement throughout the reporting period?		
2	Have all funds received from customers been immediately segregated and safeguarded throughout the reporting period?		
3	Please report the number of e-money accounts open with the firm at the end of the reporting period.		
		e-money	other payment services
4	Please report the number of agents the firm was responsible for at the end of the reporting period		

After SUP 16 Annex 29F D insert the following new Annex. The text is not underlined.

16 D Small electronic money institution return
Annex
29G

FSA065 Small electronic money institution return

Capital adequacy

PART ONE: CAPITAL REQUIREMENT

Initial capital requirement

minimum
of
€75,000

Own funds requirement

Total own funds

E-money outstandings at period end

Average daily e-money outstandings at the end of each
calendar day over preceding 6 months

Own funds requirement

2% of
average e-
money
outstandin
gs figure
(field x)

**Total capital requirement (higher of initial capital and
own funds requirements)**

Part Two: TOTAL CAPITAL RESOURCES

Paid up capital

Reserves	
Retained profit/loss	
Revaluation reserves	
Eligible general or collective provisions	
Eligible securities and instruments	
Cumulative preference shares (other than fixed term)	
Eligible members' commitments	
Eligible borrowers' commitments	
Eligible fixed term cumulative preference shares and subordinated loans	
Total resources	

Deductions

Own shares at book value	
Intangible assets	
Material losses	
Deductible holdings of shares	
Deductible participations	
Deductible instruments	
Total deductions	

Total capital resources	
Period end £/€exchange rate used	
Total capital resources (Euro equivalent)	
Total capital requirement (in Euro)	
Capital surplus/deficit (in Euro)	

SAFEGUARDING

	e-money	other payment services	Name of institution/ custodian/insurer
Option 1			
Placed in a separate account with an authorised credit institution	<input type="text"/>	<input type="text"/>	<input type="text"/>
Invested in approved secure liquid assets held in a separate account with an authorised custodian	<input type="text"/>	<input type="text"/>	<input type="text"/>
Option 2			
Covered by an insurance policy with an authorised insurer	<input type="text"/>	<input type="text"/>	<input type="text"/>
Covered by a guarantee from an authorised insurer	<input type="text"/>	<input type="text"/>	<input type="text"/>
Covered by a guarantee from an authorised credit institution	<input type="text"/>	<input type="text"/>	<input type="text"/>

Supplementary information

explanation if NO

Have the firm's own funds been equal to or greater than its own funds requirement throughout the reporting period?

--	--

Has the firm's average level of outstanding electronic money been equal to or less than €m throughout the reporting period?

--	--

Have all funds received from customers been immediately segregated and safeguarded throughout the reporting period?

--	--

Please report the number of e-money accounts the open with the firm at the end of the reporting period.

--	--

e-money other
 payment
 services

Please report the number of agents the firm was responsible for at the end of the reporting period

--	--

After SUP 16 Annex 29G D insert the following new Annex. The text is not underlined.

16 D Small electronic money institutions - total outstanding e-money return
Annex
29H

FSA066 Small electronic money institutions - total e-money outstanding @ 31st December

1 Total amount of outstanding e-money issued at 31/12:

Amend SUP App 1.3 Prudential categories and sub-categories as shown

SUP Prudential categories and sub-categories
App 1.3

1.3.1 G Prudential categories and sub-categories used in the Prudential sourcebooks and the Supervision manual

	<i>Prudential categories (Note 1)</i>	Applicable prudential requirements (Note 2)	Prudential sub-categories
	...		
	ELMI	ELM	
	...		

Insert the following transitional provision after SUP TP 1.5 Transitional provisions

SUP TP 1.6 Electronic Money Transitional Provision

<u>(1)</u>	<u>(2) Materials to which the transitional</u>	<u>(3)</u>	<u>(4) Transitional Provision</u>	<u>(5) Transitional provisions:</u>	<u>(6) Handbook provisions:</u>
-------------------	---	-------------------	--	--	--

	<u>provision applies</u>			<u>dates in force</u>	<u>coming into force</u>
<u>1</u>	<u>The changes to SUP set out in Annex I of the Electronic Money Instrument 2011</u>	<u>R</u>	<u>In relation to a person deemed to have been granted authorisation by virtue of regulation 73 (1) or regulation 73 (2) of the <i>Electronic Money Regulations</i>, the changes effected by the Annex listed in column (2) do not apply and the provisions of SUP, as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 73 (1) or regulation 73 (2) of the <i>Electronic Money Regulations</i>.</u>	<u>30 April 2011</u>	<u>30 April 2011</u>

Schedule 4 Powers Exercised

...	
The following additional powers and related provisions have been exercised by the <i>FSA</i> to give the directions and make the <i>guidance</i> in <i>SUP</i> .	
	...
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 48 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>
	<u>Regulation 59 (Guidance) of the <i>Electronic Money Regulations</i></u>

Annex J

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Annex G Warning notices and decision notices under the Act and certain other
1 enactments

Insert the following table at the end of DEPP 2 Annex 1

<u>Electronic Money Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 9(6) and 15</u>	where the <i>FSA</i> is proposing to <u>refuse an application for authorisation as an <i>authorised electronic money institution</i>, or for registration as a <i>small electronic money institution</i>, or impose a requirement, or refuse to vary an authorisation or registration</u>		<u><i>Executive procedures</i></u>
<u>Regulations 9(7)(a) and 15</u>	when the <i>FSA</i> is deciding to <u>refuse an application for authorisation as an <i>authorised electronic money institution</i>, or for registration as a <i>small electronic money institution</i>, or impose a requirement or refuse to vary an authorisation or registration</u>		<u><i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 10(4), 10(5)(a) and 15</u>	when the <i>FSA</i> is proposing or deciding to either cancel an <u><i>authorised electronic money institution's</i> authorisation, or to cancel a <i>small electronic money institution's</i> registration otherwise than at that institution's own request</u> *		<u>RDC</u>
<u>Regulations 11(6), 11(9), 11(10)(b) and 15</u>	when the <i>FSA</i> is exercising its powers to vary an <u><i>electronic money institution's</i> authorisation on its own initiative</u>		<u>RDC or <i>Executive procedures</i> (Note 1)</u>
<u>Regulation 29(2)</u>	when the <i>FSA</i> is proposing to <u>refuse to register an <i>EEA branch of an authorised electronic money institution</i></u>		<u><i>Executive procedures</i></u>

<u>Regulation 29(3)(a)</u>	<u>when the FSA is deciding to refuse to register an EEA branch of an authorised electronic money institution</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulation 29(2) and Regulation 29(3)(a)</u>	<u>when the FSA is proposing or deciding to cancel the registration of an EEA branch of an authorised electronic money institution*</u>		<u>RDC</u>
<u>Regulation 34(9)</u>	<u>when the FSA is proposing to refuse an application for registration as an agent</u>		<u>Executive procedures</u>
<u>Regulation 34(10)(a)</u>	<u>when the FSA is deciding to refuse an application for registration as an agent</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 35(2) and 35(3)(a)</u>	<u>when the FSA is proposing or deciding to remove an agent from the FSA Register otherwise than at the request of the electronic money institution *</u>		<u>RDC</u>
<u>Regulations 52(1) and 52(3)</u>	<u>when the FSA is proposing, or deciding, to publish a statement that an electronic money issuer has contravened the Electronic Money Regulations *</u>		<u>RDC</u>
<u>Regulations 52 (1) and 52 (3)</u>	<u>when the FSA is proposing or deciding, to impose a financial penalty*</u>		<u>RDC</u>
<u>Regulations 52(1) and 52(3)</u>	<u>When the FSA is proposing or deciding to suspend the authorisation of an authorised or electronic money institution or registration of a small electronic money institution, or to limit or otherwise restrict the carrying on of electronic money issuance or payment services business by an electronic</u>		<u>RDC</u>

	<u>money institution*</u>		
<u>Regulations 55(1) and 55(3)</u>	<u>when the FSA is proposing or deciding to exercise its powers to require restitution*</u>		<u>RDC</u>
<u>Regulation 73 (7)</u>	<u>when the FSA is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</u>		<u>Executive procedures</u>
<u>Regulation 73 (8) (a)</u>	<u>when the FSA is deciding that it has not received the required information or that the required condition are not met as concerns deemed authorisation</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Schedule 3, paragraph 1</u>	<u>when the FSA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Electronic Money Regulations</i> (Note 2)</u>		<u>RDC</u>
<u>Schedule 3, paragraph 1</u>	<u>when the FSA is proposing or deciding to impose a financial penalty against a relevant person (Note 2)</u>		<u>RDC</u>
<u>Schedule 3, paragraph 1</u>	<u>when the FSA is proposing or deciding to suspend, limit or otherwise restrict the performance of any activity by a relevant person</u>		<u>RDC</u>

Notes:

(1) The RDC will take the decision to give the notice exercising the FSA's own initiative power if the action involves:

(a) removing a type of activity from an authorisation or registration; or

(b) refusing an application to include a type of activity in an authorisation or registration; or

(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or

(d) imposing or varying a capital requirement, or refusing an application to vary or cancel

such a requirement.

(2) The *Electronic Money Regulations* do not require third party rights and access to FSA material when the FSA exercises this power. However, the FSA generally intends to allow for third party rights and access to material when exercising this power.

Annex K

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

INTRO 1 Introduction

This part of the *Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms*, *payment service providers*, *electronic money issuers*, *licensees* and *VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms*, *payment service providers*, *electronic money issuers*, *licensees*, and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

Background

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) *persons* carrying on *regulated activities* (*firms*), ~~or~~ providing *payment services* (*payment service providers*) or providing *electronic money* issuance services (*electronic money issuers*) and which are covered by the *Compulsory Jurisdiction*;

...

...

Application to payment service providers

...

1.1.10B G (1) In this sourcebook, the term *payment service provider* does not include *full credit institutions* ~~or *e-money firms*~~ (which are covered by this sourcebook as *firms*), but it does include ~~*small e-money issuers*~~ *small electronic money institutions*.

...

Application to electronic money issuers

- 1.1.10C R This chapter (except the *complaints record rule*, the *complaints reporting rules*, and the *complaints data publication rules*) applies to *electronic money issuers* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its agent in the *United Kingdom*.
- 1.1.10D G (1) In this sourcebook, the term *electronic money issuer* does not include *full credit institutions*, *credit unions* or *municipal banks* (which will be carrying on a *regulated activity* if they issue *electronic money* and will be covered by this sourcebook as *firms* in those circumstances) but it does include *small electronic money institutions* and *persons* who meet the conditions set out in regulation 74 (1) or regulation 75 (1) of the *Electronic Money Regulations*.
- (2) Although *electronic money institutions* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should this be necessary.

Exemptions for firms, and payment service providers and electronic money issuers

- 1.1.12 R (1) A *firm*, ~~or~~ *payment service provider* or *electronic money issuer* falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FSA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.

...

...

1 Annex 2G

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>incoming EEA authorised payment institution providing cross-border payment services from outside the UK</i>
<u>electronic money issuer in relation to complaints concerning issuance of electronic money</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

<u>issuance of electronic money incoming branch of an EEA authorised electronic money institution in relation to complaints concerning issuance of electronic money incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK licensee</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK licensee</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
...
2.1.1	G	...	(1) the <i>Compulsory Jurisdiction</i> is not restricted to <i>regulated activities</i> , and <i>payment services</i> <u>and issuance of <i>electronic money</i></u> , and covers:	...		
...						
			Activities by payment service providers			
2.3.2A	R	...				

Activities by electronic money issuers

2.3.2B R The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by an electronic money issuer:

(1) when it issues electronic money (including when it redeems electronic money); or

(2) in carrying on consumer credit activities;

or any ancillary activities, including advice, carried on by the electronic money issuer in connection with them.

General

2.3.3 G *Complaints* about acts or omissions include those in respect of activities for which the *firm, or payment service provider or electronic money issuer* is responsible (including business of any *appointed representative* or *agent* for which the *firm, or payment institution or electronic money institution* has accepted responsibility).

...

To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The Ombudsman can consider a complaint under the Voluntary Jurisdiction if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities

...

(c) activities which (at ~~1 July 2009~~ 30 April 2011) were *regulated activities* or would be *regulated activities* if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1 G*);

...

(m) issuance of electronic money

...

What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R The *Compulsory Jurisdiction* covers only *complaints* about the activities of a *firm* (including its *appointed representatives*), ~~or~~ of a *payment service provider* (including *agents* of a *payment institution*) or of an *electronic money issuer* (including *agents* of an *electronic money institution*) carried on from an establishment in the *United Kingdom*.

2.6.2 G This:

- (1) includes incoming *EEA firms*, incoming *EEA authorised payment institutions*, incoming *EEA authorised electronic money institutions* and *incoming Treaty firms*; but
- (2) ...

...

Eligible complainants

...

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

- (1) the complainant is (or was) a customer, ~~or~~ payment service user or electronic money holder of the *respondent*;
- (2) the complainant is (or was) a potential customer, ~~or~~ payment service user or electronic money holder of the *respondent*;

...

- (14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a ~~customer~~ customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* to the *respondent*.

...

Exceptions

2.7.9 R The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, licensee or *VJ participant* whose *complaint* relates in any way to an activity which:
 - (a) the *firm* itself has *permission* to carry on; or
 - (ab) the *firm*, ~~or~~ *payment service provider* or *electronic money issuer* itself is entitled to carry on under the *Payment Services Regulations*

or the *Electronic Money Regulations*; or

(b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*;

...

2 Annex G Regulated activities for the Voluntary Jurisdiction at ~~1 July 2009~~ 30 April 2011
1

This table belongs to *DISP 2.3.1 R*

The activities which (at ~~1 July 2009~~ 30 April 2011) were *regulated activities* for the *Voluntary Jurisdiction* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

Annex L

Amendments to the Electronic Money sourcebook (ELM)

The following sections of ELM are deleted with effect from 30 April 2011. The text of the deleted sections and provisions is not shown.

ELM 1 (Application, contents, purpose and general)

ELM 2 (Initial and continuing own funds requirements)

ELM 3 (Management of the e-money float)

ELM 4 (Limitations on activities)

ELM 5 (Systems and controls; Rules for making calculations)

ELM 6 (Redemption, information requirements and purse limits)

ELM 7 (Consolidated financial supervision)

ELM 8 (Small e-money issuers)

Delete all of ELM TP 1 and replace with the following new text which is not underlined:

TP 1A Transitional Provision relating to the Electronic Money Regulations

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional Provision	Transitional provisions: dates in force	Handbook provisions: coming into force
1	The changes to ELM set out in Annex L of the Electronic Money Instrument 2011	R	In relation to a person deemed to have been granted authorisation by virtue of regulation 73 (1) or regulation 73 (2) of the <i>Electronic Money Regulations</i> , the provisions of <i>ELM</i> , as they were in force as at 29 April 2011, except for <i>ELM</i> 4.4, <i>ELM</i> 6 (excluding <i>ELM</i> 6.8.2A) and <i>ELM</i> 8, will	30 April 2011	30 April 2011

			apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 73 (1) or regulation 73 (2) of the <i>Electronic Money Regulations</i> .		
2	The changes to ELM set out in Annex L of the Electronic Money Instrument 2011	R	<p>In relation to a person who meets the conditions set out in regulation 75 (1) of the <i>Electronic Money Regulations</i> (a <i>small e-money issuer</i> who, before 30th April 2011 has carried on the activity of electronic money issuance in accordance with the <i>small e-money issuer certificate</i>), <i>ELM</i> 8.4, <i>ELM</i> 8.6, <i>ELM</i> 8.7 and <i>ELM</i> 8 Annex 2, as they were in force as at 29 April 2011, will apply from 30 April 2011 until:</p> <p>(a) 30 April 2012; or</p> <p>(b) that person is included in the <i>FSA register</i> as an <i>authorised electronic money institution</i> pursuant to regulation 4(1)(a) of the <i>Electronic Money Regulations</i> or as a <i>small electronic money institution</i> pursuant to regulation 4(1)(b) of the <i>Electronic Money Regulations</i> whichever is the earlier.</p>	30 April 2011	30 April 2011

Annex M

Amendments to the Building Societies Regulatory Guide (BSOG)

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

1.1.3 G The following terms are used in this Guide and have the meaning described here:

...

"credit institution"

an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; ~~or an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive (Directive 2000/46/EC) which has the right to benefit from the mutual recognition arrangements under the BCD~~

...

Annex N

Amendments to the Enforcement Guide (EG)

In this Annex, the text is all new and is not underlined.

After EG 19.103 insert the following new text.

Electronic Money Regulations 2010

The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the Electronic Money Regulations. The Electronic Money

Regulations impose requirements including, *amongst other things*, various provisions regulating the rights and obligations of electronic money institutions.

The FSA's approach to enforcing the Electronic Money Regulations will mirror its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the electronic money issuer who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.

The Electronic Money Regulations, for the most part, mirror the FSA's investigative, sanctioning and regulatory powers under the *Act*. The FSA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the *Act*. Key features of the FSA's approach are described below.

The conduct of investigations under the Electronic Money Regulations

The Electronic Money Regulations apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the Electronic Money Regulations.

The FSA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the Electronic Money Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FSA's policy in civil investigations under the Electronic Money Regulations is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Electronic Money Regulations

The *RDC* is the FSA's decision maker for some of the decisions under the Electronic Money Regulations as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. *DEPP 3.4* applies for urgent notices under Regulations 11(6), (9) and (10) (b) (including as applied by Regulation 15).

For decisions made by *executive procedures* the procedures to be followed will be those described in *DEPP 4*.

The Electronic Money Regulations do not require the FSA to have published procedures to commence criminal prosecutions. However, in these situations the FSA expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.

The Electronic Money Regulations require the FSA to give third party rights as set out in section 393 of the *Act* and to give access to certain material in certain cases as set out in section 394 of the *Act*.

Certain FSA decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the Electronic Money Regulations

When determining whether to take action to impose a penalty the FSA's policy includes having regard to the relevant factors in *DEPP 6.2*. When imposing or determining the level of a financial penalty the FSA's policy includes having regard to relevant factors in *DEPP 6.4* and *DEPP 6.5* to *6.5D*.

When determining whether to suspend the authorisation or, as the case may be, the registration of an electronic money institution or limit or otherwise restrict the carrying on of electronic money issuance or payments services business by an electronic money issuer the FSA's policy will have regard to the relevant factors in *DEPP 6A*.

As with cases under the *Act*, the FSA may settle or mediate appropriate cases involving civil breaches of the Electronic Money Regulations to assist it to exercise its functions under the Regulations in the most efficient and economic way. See *DEPP 5*, *DEPP 6.7* and *EG 5* for further information on the settlement process and the settlement discount scheme.

Statement of policy in section 169(7) interviews (as implemented by the Electronic Money Regulations)

The Electronic Money Regulations apply section 169 of the *Act* which requires the FSA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of *the Electronic Money Regulations* the FSA will follow the procedures described in *DEPP 7*.

Annex O

Amendments to the Perimeter Guidance manual (PERG)

Delete all of PERG 3 and replace with the following new text which is not underlined:

Chapter 3: Guidance on the scope of the Electronic Money Regulations 2010

3.1 Introduction

Q1. What is the purpose of these questions and answers ('Q&As') and who should be reading them?

The purpose of these Q&As is to help *persons* to consider whether they fall within the scope of the *Electronic Money Directive* which repealed and replaced an earlier Electronic Money Directive (2000/46/EC). The *Electronic Money Directive* is given effect in the UK by the *Electronic Money Regulations*. The Q&As are intended to help these *persons* consider whether they need to be authorised or registered for the purposes of *electronic money* issuance in the UK.

The *Electronic Money Regulations* create a separate authorisation and registration regime for issuers of *electronic money* that are not *full credit institutions*, *credit unions* or municipal banks:

- the conditions for authorisation as an *authorised electronic money institution* are set out at regulation 6 of the *Electronic Money Regulations*.
- *small electronic money institutions* have less stringent capital requirements than *authorised electronic money institutions*, however they need to be registered in accordance with regulation 13 of the *Electronic Money Regulations*.
- *full credit institutions*, *credit unions* and municipal banks are exempt from requiring authorisation and registration under the *Electronic Money Regulations* but must have a *Part IV permission* for *issuing electronic money* and are subject to some of the conduct of business requirements in the *Electronic Money Regulations*.

A reference in this chapter to individual regulations is a reference to the *Electronic Money Regulations* unless otherwise stated.

The Q&As that follow are set out in the following sections:

- General issues (*PERG 3.2*)
- Definition of electronic money (*PERG 3.3*)

- Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies (*PERG 3.4*)
- Exclusions (*PERG 3.5*)
- Territorial scope (*PERG 3.6*)
- Transitional arrangements (*PERG 3.7*)

3.2 General issues

Q2. Why does it matter whether or not we fall within the scope of the Electronic Money Regulations?

It matters because if you issue *electronic money* in the *UK* and do not fall within an exclusion or exemption you must be:

- (a) an *authorised electronic money institution*; or
- (b) a *small electronic money institution*; or
- (c) an *EEA authorised electronic money institution*; or
- (d) a *full credit institution*; or
- (e) the Post Office Limited; or
- (f) the Bank of England or a central bank when not acting in its capacity as a monetary authority or other public authority; or
- (g) a government department or local authority when acting in its capacity as a public authority; or
- (h) a *credit union*; or
- (i) a municipal bank; or
- (j) the National Savings Bank.

Otherwise you risk committing a criminal offence under regulation 62.

Q3. How much can we rely on these Q&As?

The answers given in these Q&As represent the *FSA's* views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of *Electronic Money Regulations* affects the regulatory position of any particular *person* will depend on their individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation. In addition to *FSA* guidance, some of the *Electronic Money Directive* provisions may be the subject of guidance or communications by the European Commission.

Q4. As an electronic money issuer am I carrying on the regulated activity of accepting deposits when I receive a sum in exchange for electronic money?

No, provided the sum paid over is exchanged immediately for *electronic money*; see article 9A of the *Regulated Activities Order*.

Some *electronic money* products may be charged up by means of scratch cards that can be purchased from shops. The price paid for the card is the monetary value of the

electronic money. The card contains a number. The purchaser then enters the number on a web site to activate the *electronic money* account. There is thus a delay between the payment for the *electronic money* and its use by the holder. In our view, this delay does not make the payment for the *electronic money* a *deposit*. This is because the means of spending the *electronic money* is put into the hands of the purchaser when they purchase the card.

Q5. I intend to issue electronic money in the UK. How does the authorisation and registration process apply to me?

It depends on a number of factors:

- i) Unless you are a *person* falling within ii) to iv) below you must apply under the *Electronic Money Regulations* for either –
 - authorisation to be an *authorised electronic money institution* (see regulation 6 for the relevant conditions); or
 - registration to be a *small electronic money institution* (see regulation 13).
- ii) If you are a *UK* or non-EEA *full credit institution, credit union* or municipal bank –
 - authorisation and variation of *permission* remains that imposed by Part IV of the *Act*. This means you will need to have a separate *Part IV permission* in order to issue *electronic money*;
 - where you issue *electronic money* you will be subject to the provisions on issuance and redeemability of *electronic money* in the *Electronic Money Regulations*;
 - note that you may also be subject to the conduct of business requirements in the *Payment Services Regulations*.
- iii) If your head office is located in an *EEA state* other than the *UK* you cannot apply for authorisation or registration under the *Electronic Money Regulations*. However you may be entitled to issue *electronic money* in the *UK* as an *EEA authorised electronic money institution*, in which case the Competent Authority in your Home State will be responsible for your authorisation.
- iv) Government departments, local authorities, the Post Office Limited and the National Savings Bank cannot apply for authorisation or registration under the *Electronic Money Regulations* but they must give notice to the *FSA* if they issue or propose to issue *electronic money*.

Transitional arrangements may also be relevant, see *PERG* 3.7.

Q6. We are a payment institution. How will the Electronic Money Regulations apply to us?

If you are a *payment institution* that does not intend to issue *electronic money* or act as agent for an *electronic money institution* the *Electronic Money Regulations* are unlikely to apply to you.

If you are a *payment institution* that wishes to also issue *electronic money* then, in our view, you should cancel your authorisation or registration as a *payment institution* and apply to be an *electronic money institution*. An *electronic money institution* does not need to be authorised or registered under the *Payment Services Regulations* to provide *payment services*.

Q7. As an electronic money institution how will be the Payment Services Regulations apply to us?

The issuance of *electronic money* is not itself a *payment service* but it may well entail providing *payment services*. For example issuing a *payment instrument* is a *payment service* and *electronic money* is likely to be issued on a *payment instrument* in order to make a payment transaction. See Q.20 at PERG 15 for more detail on what amounts to issuing *payment instruments*.

As an *electronic money institution* you are permitted to engage in the provision of *payment services* as well as other activities, see regulation 32 and Q16 below, without needing to be separately authorised or registered under the *Payment Services Regulations*.

However *small electronic money institutions* can only provide *payment services* that are not linked to the issuance of *electronic money* where the total of payment transactions for these types of *payment services* does not exceed 3 million euros over a particular 12 month period (see regulation 13(4)).

The conduct of business requirements in Parts 5 and 6 of the *Payment Services Regulations* apply to all *payment service providers*, including *electronic money issuers*.

3.3 The definition of electronic money

Q8. You have explained that the Electronic Money Regulations brought in a new definition of electronic money, what is it?

The definition in the *Electronic Money Regulations* mirrors that in the *Electronic Money Directive*. *Electronic money* means monetary value as represented by a claim on the issuer which is:

- (1) stored electronically, including magnetically,
- (2) issued on receipt of funds,
- (3) used for the purposes of making payment transactions (as defined in regulation 2 of the *Payment Service Regulations*),
- (4) accepted as a means of payment by persons other than the issuer

and is not otherwise excluded by the *Electronic Money Regulations*, see PERG 3.5.

Electronic money is an electronic payment product. The value is held electronically or magnetically and payments using the value are made electronically. So, monetary value stored on a:

- prepaid payment card,
- personal computer,
- a *plastic card* that uses magnetic stripe technology,

may all fall within the definition if the value is intended to be used for the purposes of making payment transactions.

Q9. Does the electronic money definition only apply to card-based schemes?

No. Any electronic payment scheme that involves prepaid monetary value that can be used to purchase goods and services directly from third party merchants is capable of being *electronic money*. This would include account-based schemes.

Recital (7) of the *Electronic Money Directive* states that the intention is to introduce a definition of *electronic money* in order to make it technically neutral so as to cover all situations where the payment service provider issues pre-paid stored value in exchange for funds. Hence the definition expressly captures both electronically and magnetically stored value and there is no longer a reference to there needing to be an 'electronic device' on which the *electronic money* is stored. These changes make it clear that *electronic money* stored on computers hard drives or account-based schemes are caught.

Q10. Can you explain why pre-payment is a necessary ingredient of electronic money?

The definition of *electronic money* says that for a product to be *electronic money*, it must be issued on receipt of funds. This part of the definition means that *electronic money* is a prepaid product. That is, unlike credit provided through a credit card, the *customer* pays for the spending power in advance. This is why credit cards are excluded from the definition of *electronic money*. This does not mean that *electronic money* paid for with a credit card falls outside the definition. The purchase of the *electronic money* represents the purchase of monetary value. The fact that the purchaser is lent the funds to buy the *electronic money* does not affect this. There are two contracts, one for the *sale* of *electronic money* and one for credit.

Value on a debit card may be *electronic money* or a *deposit*. *Guidance* on this is given in Q12 below.

Q11. Does it matter that the device on which electronic value is held may be used for other purposes?

No. The fact that the device on which monetary value is stored is made available, for example, on a *plastic card* that also functions as a debit or credit card or is a mobile phone does not stop that monetary value from being *electronic money*.

Q12. How does electronic money differ from deposits?

Recital (13) of the *Electronic Money Directive* provides that *electronic money* does not constitute a deposit-taking activity under the *BCD* “in view of its specific character as an electronic surrogate for coins and banknotes, which is used for making payments, usually of limited amount and not as a means of saving.”

In distinguishing *electronic money* and *deposits*, relevant factors include the following.

- If the monetary value is kept on an account that can be used by non-electronic means, that points towards it being a *deposit*. For example, an account on which cheques can be drawn is unlikely to be *electronic money*.
- If a product is designed in such a way that it is only likely to be used for making payments of limited amounts and not as a means of saving, that feature points towards it being *electronic money*. Relevant features might include how long value is allowed to remain on the account, disincentives to keeping value on the account and the payment of interest on it.
- If an account has features on it in addition to those necessary for a pure payment facility, such as an overdraft or direct debit facility, that points towards it not being *electronic money*.
- One should have regard to whether the product is sold as *electronic money* or as a *deposit*.

In other words, a *deposit* involves the creation of a debtor-creditor relationship under which the *person* who accepts the *deposit* stores value for eventual return. *Electronic money*, in contrast, involves the purchase of a means of payment.

Q13. What sort of factors will the FSA take into account in deciding whether a particular scheme might be electronic money?

In considering this question relevant factors include:

- the risks incurred by the holder of the value;
- the nature of the rights and obligations of the holder of the prepaid value, the issuer of the value and third parties involved in the scheme; and
- what the scheme allows the holder of the value to do.

Therefore artificial features of a scheme that disguise, or try to disguise, the payment function as the supply of another sort of service are not likely to prevent the scheme from involving the issuance of *electronic money*.

3.4 Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies

Q14. What criteria must we meet to be a small electronic money institution?

The relevant conditions are set out at regulation 13 and include the following:

- your total business activities immediately before the time of registration generates an *average outstanding electronic money* that does not exceed 5 million euros,
- immediately before the time of registration you must hold initial capital of at least 75, 000 euros or such other amount, between 60,000 and 90,000 euros, that the *FSA* may direct,
- you must have taken adequate measures for the purposes of safeguarding *electronic money* holders' fund as set out at regulations 20 to 22,
- you must satisfy the *FSA* that the persons responsible for the management of your *electronic money* and *payment services* are of good repute and possess appropriate knowledge and experience to issue *electronic money* and provide those *payment services* that you intend to undertake,
- none of the individuals responsible for the management or operation of your business has been convicted of offences relating to money laundering, or terrorist financing or financial crime,
- you must be a body corporate whose head office is in the *UK*,
- you must comply with the registration requirements of the Money Laundering Regulations 2007, where they apply to you.

Q15. We satisfy the conditions for registration as a small electronic money institution - does that mean we have to register as one?

No. If you register as a *small electronic money institution*, you cannot acquire passport rights under the *Electronic Money Directive*. So you may wish to become an *authorised electronic money institution* if you wish to take advantage of a passport.

Q16. We are a firm providing non-financial products and services to the general public. Would it be possible for us to obtain authorisation as an electronic money institution?

Yes. One of the changes made by the *Electronic Money Regulations* is to allow *electronic money institutions* to undertake mixed business. So, *electronic money institutions* may, in addition to issuing *electronic money*, engage in the following activities -

- the provision of *payment services*; and

- the provision of operational and closely related ancillary services, including ensuring the execution of payment transactions, foreign exchange services, safe-keeping activities and the storage and processing of data; and
- the operation of payment systems, as defined at regulation 2(1); and
- business activities other than the issuance of *electronic money*.

Though there are restrictions to the size of non-*electronic money payment services* a *small payment institution* can provide, see Q7.

Q17. We are a branch of a firm which has its head office outside the EEA, if we became an electronic money institution can we also engage in mixed business?

Yes, but you can only provide *payment services* that are linked to the issuance of *electronic money*. You cannot undertake any of the other *payment services*.

Q18. We are a mobile network operator allowing our customers the opportunity to use the pre-paid credit on their mobile devices to purchase music and applications from third party merchants. Will we be issuing electronic money?

We consider that the effect of the *Electronic Money Directive* is that:

- pre-paid airtime stored on a mobile device is *electronic money* if your customer can purchase goods and services from third party merchants in a manner not falling with an exclusion (see *PERG 3.5* for a description of the available exclusions).
- pre-paid airtime that is *electronic money* in this way should be treated as *electronic money* when the mobile device is charged with credit rather than when the *electronic money* is first used.

The European Commission Services published a guidance note in January 2005 on the application of the previous Electronic Money Directive to mobile network operators. The full text of this guidance is available at the following link: http://ec.europa.eu/internal_market/payments/docs/emoney/guidance_en.pdf

We consider that this Commission guidance is likely to remain relevant in describing scenarios where *electronic money* is being used, but that it should be read subject to the two bullet points listed above.

Q19. We distribute and redeem electronic money. Do we need to apply for FSA registration or authorisation as an electronic money issuer?

In some *electronic money* schemes an originator creates *electronic money* and then sells it to banks and other distributors. The latter then sell the *electronic money* to the public. In our view reference to the issuer of *electronic money* in the

Electronic Money Regulations is a reference to the originator and not the distributor.

So, provided you are not:

- issuing *electronic money* yourself, or on behalf of the *person* you are distributing for, or
- acting as an agent for an *electronic money institution*,

you do not need to be authorised or registered under the *Electronic Money Regulations*. However the *electronic money issuer* that is acting as your principal should notify the *FSA* that you are acting as a distributor.

You should also bear in mind that if, in distributing and redeeming *electronic money*, your activities amount to *payment services* you will need to consider whether you are required to be authorised or registered under the *Payment Services Directive*, see *PERG 15* for further guidance.

Q20. We have been registered by one of our principals as an agent under the Payment Services Regulations. If we wish to act as agent for an electronic money institution as well will we need to be registered again?

Yes. If your principal is an *electronic money institution*, it is its responsibility to apply for registration on your behalf even if you have been registered as agent under the *Payment Services Regulations*. Assuming your principal is not an *EEA firm*, you are required to be registered on the *FSA Register* before you provide *payment services* for your principal, subject to any relevant transitional provisions which may delay or avoid the need for registration. If your principal is an *EEA firm*, your principal will need to comply with the relevant Home State legislation relating to your appointment, and your Home State competent authority will need to notify the *FSA*.

Q21. We are a credit union. Are we exempt from the regulations?

Yes, in part. You are exempt from the authorisation and registration requirements in the regulations. However if you wish to issue *electronic money* you must ensure you have the relevant *Part IV permission*. You will also be subject to the safeguarding requirements in Part 3 and the redeemability provision in Part 5 of the *Electronic Money Regulations*.

Q22. We are a municipal bank. Are we exempt from the regulations?

Save that you are not subject to the safeguarding requirements in Part 3 of the regulations, your position is identical to that of *credit unions*, see Q21.

3.6 Exclusions

Q23. Are there any exclusions that we should be aware of?

Yes. The *Electronic Money Regulations* have two express exclusions.

- the first covers monetary value stored on instruments that may be used to purchase goods and services only in the issuer's premises or within a limited network of service providers or for a limited range of goods or services (regulation 3(a)). See *PERG 15*, Q40 & Q41 which deal with the same term for the purposes of the *Payment Services Regulations*; and
- the second covers monetary value used to make payment transactions executed by means of any telecommunication, digital or IT device where the goods or services are delivered to and used through such a device but only where the operator of the device does not act only as an intermediary between the user and the supplier (regulation 3(b)). See *PERG 15* Q23 for guidance on what 'acting only as an intermediary' might include.

3.6 Territorial scope

Q24. We are a non-EEA firm with a branch in the UK and we wish to issue electronic money. Can we apply for authorisation or registration?

Yes. You may apply to be an *authorised electronic money institution* if you are a body corporate (regulation 6(4)(b)). However you cannot apply to be a *small electronic money institution* unless your head office is in the *UK* (regulation 13(9)).

3.7 Transitional arrangements

Q25. We are a firm with a Part IV permission to issue electronic money - do we need to have applied for authorisation under the regulations prior to 30 April 2011?

No. Provided that:

- your head office is located in the *UK* or in another *EEA State*; and
- you have been lawfully issuing *electronic money* in the *UK* prior to 30 April 2011

regulation 73 will apply to grant you deemed authorisation under regulation 10 up until 30 June 2011.

In order to continue to be deemed to be authorised on or after 1 July 2011 you must :-

- tell us what type of *electronic money institution* you wish to become; and
- provide certain details (see regulation 73(2)).

We will then consider whether to include you on the *FSA register*. If we do then your deemed authorisation will cease at that time. If we do not then your deemed authorisation will cease when the period for a reference to the *Tribunal* has elapsed without a reference being made or, if the matter is referred, at such time as the *Tribunal* may direct.

Whilst you hold a deemed authorisation under regulation 73 you will also continue to retain your *Part IV permission for issuing electronic money*.

Q26. We are currently a small electronic money issuer – do we need to have applied for authorisation under the regulations prior to 30 April 2011?

No, provided:

- you are a *small electronic money issuer*; and
- before the 30 April 2012 you carried on the activity of issuing *electronic money* in accordance with your certificate,

you may continue until 30th April 2012 to carry on that activity without requiring authorisation or registration under the regulations.

However, Part 5 and 6 of the regulations will apply to you as will Articles 9C to 9I and 9K of the *Regulated Activities Order*.

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