FINANCIAL CONDUCT AUTHORITY

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

Policy Statement
PS19/3

February 2019

This relates to

Consultation Paper 18/21
which is available on our website at
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1 Summary

1.1 This Policy Statement (PS) confirms the following changes to the FCA's Handbook following consultation in CP18/21 - General standards and communication rules for the payment services and e-money sectors:

- We are extending the application of our Principles for Businesses (Principles) to the provision of payment services and the issuance of e-money by certain payment service providers (PSPs) and e-money issuers (Chapter 2).
- We are also extending the application of certain communication rules and guidance in the Banking Conduct of Business Sourcebook, Chapter 2 (BCOBS 2) to communications with payment service and e-money customers (Chapter 2).
- We have made rules and guidance on the communication and marketing of currency transfer services, applicable to payment services and the issuance of e-money involving a currency conversion (Chapter 3).

1.2 Our Principles for Businesses and communication rules in BCOBS 2 do not currently apply to payment institutions (PIs), electronic money institutions (EMIs) or registered account information service providers (RAISPs). Neither do they apply (in most cases) to credit institutions providing payment services which are not connected to their activities regulated under the Financial Services and Markets Act 2000 (FSMA).

1.3 We have new rulemaking powers that allow us to extend rules made under FSMA so that those rules also apply to activities regulated under the Payment Services Regulations (PSRs 2017) and Electronic Money Regulations (EMRs 2011).

1.4 Firms will have to comply with our rules and guidance from 1 August 2019 (Chapter 4).

Who does this affect

1.5 Our rules and guidance affect both the provision of payment services and e-money by credit institutions and the conduct of PIs, EMIs and RAISPs. Customers using payment services or e-money will be affected.

1.6 The impact of the rules we are making is summarised in the table below:

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

The wider context of this Policy Statement

Our consultation

1.7 The PSRs 2017 provided the FCA with new powers to intervene in the payment services and e-money sectors and to apply rules across PSPs and e-money issuers including PIs, EMIs and RAISPs (see paragraph 3 of Schedule 6, and paragraph 31 of Schedule 8 of the PSRs 2017). In CP18/21 we consulted on using these powers to extend the application of certain conduct and communication standards across the payment services and e-money sectors. We consider this will help clarify expectations of behaviour and treatment of customers by PSPs and e-money issuers.

Extending the FCA's Principles to the provision of payment services and the issuance of e-money by certain PSPs and E-Money issuers

1.8 We consulted on proposals to extend the application of the Principles to the provision of payment services, the issuance of e-money and other connected activities by PIs, EMIs and RAISPs and (where not already a regulated activity) by credit institutions.

1.9 The Principles set out the high-level standards that we expect firms we regulate to comply with. They do not currently apply to PIs, EMIs or RAISPs. Nor do they apply (in most cases) to credit institutions providing payment services which are not connected to their regulated activities.

Extending BCOBS 2 to communications with payment service and e-money customers and introducing new rules and guidance about communication and marketing of currency transfer services

1.10 We also consulted on proposals to extend the application of certain rules and guidance about communication and marketing in our BCOBS 2 to communication with payment service and e-money customers.

1.11 In addition, we proposed to introduce rules and guidance on the communication and marketing of currency transfer services, applicable to payment services and the issuance of e-money involving a currency conversion.

1.12 Further context is provided in CP18/21.

How it links to our objectives

Competition

1.13 Extending the Principles and the general communication (including marketing communication) rules in BCOBS 2 will enhance competition among PSPs and e-money issuers by creating standards equally applicable to all firms. It will equip us to respond better to the evolving payments landscape and to address harm identified in the regulatory treatment of the firms in question, supporting fair competition. As a result, we will be able to intervene effectively in the market, if necessary.

1.14 Applying specific communication (including marketing communication) rules to PSPs and e-money issuers providing currency transfer services will enhance competition. It will do this by ensuring that consumers are correctly informed about services before they use them and can choose the best service for their needs.

Consumer protection

1.15 Our rules and guidance will also protect consumers. They will help providers and customers to understand and meet the standards of behaviour we expect in the market.

1.16 If consumers are unable to understand communications or are misled about the comparative merits of the service they use, they may miss out on services which are the best fit for their needs. Introducing requirements into the FCA Handbook and tackling specific misleading communication and/or advertising practices by firms providing currency transfer services can help us reduce consumer detriment.

What we are changing

1.17 We are making the rules and guidance we consulted on in CP18/21 (see Appendix 1). They come into effect on 1 August 2019. This allows firms 6 months to review their practices and make any necessary changes.

1.18 We want to make sure that PSPs and e-money issuers communicate in ways which are fair, clear and not misleading when providing services (including currency transfer services) to customers. This will enable us to reduce harm because customers can make more effective decisions and enjoy services that better fit their needs.

1.19 We want to ensure that our expectations of PSPs and e-money issuers are clear and that there is a consistent approach across all firms in the payment services and e-money sectors. As a result, we will be able to address harm more effectively. Improvements in firm conduct will improve trust in innovative business models. Harm will be reduced as fewer customers will buy unsuitable products.

Measuring success

1.20 We will know this intervention has been successful if:

- firms and customers have clearer expectations in terms of market conduct and firm behaviour requirements across the payment services and e-money sectors
- customers are better able to compare and understand services provided, and so have a reduced risk of being treated unfairly
- PSPs and e-money issuers communicate their services to customers in ways which are fair, clear and not misleading.

Summary of feedback and our response

1.21 We are making the rules and guidance that we consulted on in CP18/21.

We consulted on extending the FCA's Principles and communication rules to the provision of payment services and the issuance of e-money by certain PSPs and e-money issuers

1.22 Respondents agreed that we should extend some or all of the Principles to the activities of providing payment services and issuing e-money and connected activities. Most firms suggested they already aim to comply with the Principles for these activities.

1.23 Some respondents suggested certain Principles should not apply or asked for guidance on how they should apply. They felt there were potential conflicts between some of the Principles and the PSRs 2017 / EMRs 2011 regimes.

1.24 Some respondents agreed with our proposals to extend certain communication rules in BCOBS 2 to the payment services and e-money sectors. Others did not consider it necessary as the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) already provide consumer protection. They highlighted that different terminology used in the revised Payment Services Directive (PSD2), BCOBS and the Principles could cause confusion.

FCA response

1.25 We are making these rules because we want to ensure that our expectations of PSPs and e-money issuers are clear and that there is a consistent approach across all firms in the payment services and e-money sectors. We consider that firms can be more effectively supervised and consumers can be more confident of their treatment where the same set of Principles and communication standards apply across the market.

1.26 In response to requests for further guidance, we consider that the guidance we are providing is sufficient. However, we acknowledge that further development by industry of good practice examples may be helpful, and we will engage with the development of these examples.

We consulted on introducing new rules and guidance about the communication and marketing of currency transfer services

1.27 Most respondents agreed in principle with our proposals to prevent the misleading communication of currency transfer services. Some respondents queried how the proposals interacted with existing regulatory requirements.

1.28 Some argued that the proposed rules and guidance (eg BCOBS 2.2.1R which requires that providers must take reasonable steps to ensure that a payment service or electronic money promotion is fair, clear and not misleading) did not go far enough to address the issue of disclosing total cost of currency transfer services. Others argued that firms should be able to provide information about interbank or market rates, as this is useful for customers tracking the market, if it is explicitly stated that rates shown are not available. They asked for guidance on how they should evidence claims about how their costs compare with other providers.

FCA response

1.29 We are making the rules and guidance we consulted on to help address the harm we have identified in this sector in a consistent way.

1.30 We consider it misleading to give the impression that a rate of exchange is available to consumers if it is not likely to be available to those consumers for a typical transaction. Providers may show the interbank (or similar rates) if that is the rate they use or if they do so in a way that is not misleading.

1.31 We recognise that it can be difficult for customers to compare currency transfer service providers, and that the removal of cost information from firms' communications and websites could aggravate this. We want to ensure good cost disclosure and more competition based on price. Our rules and guidance are designed to require providers to ensure that their communications are accurate, balanced and do not disguise, diminish or obscure important information. Our rules also require providers, when comparing the costs of their currency transfer service to other providers, to make comparisons that are meaningful, presented in a fair and balanced way, and that can be substantiated.

1.32 We want providers to disclose costs in a way that customers understand. We are not introducing more prescriptive, standardised cost disclosure rules. Proposals that include consistent communication standards for transaction costs have been developed at EU level (revision of the Regulation (EC) No 924/2009 for charges on cross-border payments and that relate to currency conversion charges (CBPR2)). Now that political agreement on these proposals has been reached, we expect industry to work together to improve and standardise cost disclosure, eg through the development of good practice. We will engage with this work and, if we do not see improvements in cost disclosure to customers, we will consider consulting on additional rules and guidance in 2020.

'Connected activities', hybrid business models and businesses outside of the scope of our proposals

1.33 Respondents queried how the Principles and communication rules would apply to 'connected activities' and hybrid business models, eg where firms provide both regulated and unregulated currency exchange services.

1.34 Respondents felt that customers using businesses outside the scope of our proposals (eg bureaux de change) should not be disadvantaged compared to customers using currency transfer services provided by businesses that are within scope. One respondent was concerned that placing additional requirements on firms offering currency transfer services, but not other firms offering currency exchange, could lead to providers separating their FX business from their payment service business.

FCA response

1.35 We consider that there is currently no need for additional FCA guidance around the definition of 'connected activities' or the impact of our new rules and guidance on 'hybrid' business models.

1.36 We note concerns that providers could attempt to circumnavigate our rules by adjusting their business models. We can only make rules for activities that fall within our regulatory remit as provided by Parliament. We do not consider that this should prevent us from taking appropriate action in relation to those businesses we do regulate.

1.37 Industry bodies have already expressed their willingness to develop guidance or examples of how our rules apply to various business models. We consider this to be the right approach given the complexity of business models in this sector, and we will engage with this process.

Implementation

1.38 In response to feedback that firms will require an implementation period to ensure that they are compliant with the new rules and guidance, we will allow an implementation period of 6 months.

Equality and diversity considerations

1.39 We have considered the equality and diversity issues that may arise from the approach outlined in this PS. We do not consider that our rules and guidance negatively impact any of the groups with protected characteristics under the Equality Act 2010.

1.40 Members of certain minority groups may be more likely to have links to other countries, for example family outside of the UK, and so may use currency exchange transfers more frequently than those who do not. The changes we are making to prevent the misleading communication of currency transfer services may particularly benefit these groups.

What you need to do next

1.41 If your firm is affected by these changes, you need to ensure you meet the requirements by 1 August 2019.

1.42 Industry efforts are already under way to develop good practice examples and guidance on a range of issues, including some of the points covered by our rules. Over the coming months we will engage with industry efforts to help providers develop a consistent view of how different business models are affected by our rules and guidance. We encourage you to offer support to efforts being led by industry bodies.

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

2.1 In this chapter, we summarise and respond to the feedback we received to our proposals to extend application of our Principles and certain communication rules and guidance in BCOBS 2 to the provision and communication of payment services and the issuance of e-money by certain PSPs and e-money issuers.

Principles for Businesses

2.2 The Principles set out in high-level terms how firms should treat their customers, how they should run their business and how they should interact with the regulator. They currently apply to the vast majority of firms we regulate under FSMA, but not to the firms and activities that fall within the regulatory regimes created by the PSRs 2017 and EMRs 2011.

2.3 In CP18/21, we noted that provisions in the PSRs 2017 created new powers allowing us to extend the application of rules made under FSMA rulemaking powers to PIs, EMIs, RAISPs. This allows us to address differences between the regulatory regimes, to ensure we can consistently tackle potential future harm in this market.

2.4 We proposed to apply the Principles set out in our Handbook to credit institutions, PIs, EMIs, and RAISPs when providing payment services as well as connected activities. We also proposed to apply the Principles with respect to the issuance of e-money (where not already a regulated activity) and connected activities.

2.5 We set out in the consultation paper examples which sought to illustrate the application of certain Principles.

We asked:

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

2.6 All respondents agreed that we should extend some or all of the Principles to the activities of providing payment services and issuing e-money and connected activities. Most suggested that firms already aim to or comply with the Principles for these activities.

2.7 Some respondents agreed fully, but some PIs, EMIs and their representatives suggested that further guidance is needed about the scope of application of the new rules. In particular, several requested clarification of the definition of 'connected activities' and whether unregulated foreign exchange services fall outside 'connected activities'.

2.8 Several respondents also requested guidance on the impact of the Principles on hybrid firms and business models which include regulated currency transfer services alongside unregulated foreign exchange provision. Some respondents queried interaction of the Principles with safeguarding requirements in the PSRs 2017 for hybrid firms.

2.9 Respondents all agreed with our proposal that in applying the Principles to the provision of payment services and the issuance of e-money we should use a definition of 'customer' that reflects the one used in the PSRs 2017.

2.10 Several respondents suggested that certain Principles should not be applied, and that further guidance is needed on how the Principles would be applied in practice. One respondent expressed agreement with principles-based supervision but wanted further collaboration with industry on best practice examples. These points are discussed under question 4 below.

Our response

We have made the rules as set out in the consultation paper.

Concerning the scope of application, 'connected activity' has its natural broad meaning.

The impact of applying the Principles to hybrid firms will depend on business models and their particular characteristics. Given the variety of different payment services that exist and the variety of different payment services that may be connected to them, we do not see value in seeking to further define or provide guidance on what the phrase 'connected activity' means. A similar phrase 'ancillary activity' is used in the Handbook for FSMA activities and it does not include further definition or guidance.

Respondents particularly queried how the Principles would apply to 'unregulated foreign exchange services'. To clarify, there are 3 relevant categories of foreign exchange services:

(1) regulated activities (such as transactions covered by MiFID II)

(2) unregulated activities that will become covered by the Principles because they are carried on by FSMA firms, PIs and EMIs and are connected to either FSMA regulated activities or regulated payment services or e-money issuance, eg currency transfer services

(3) unregulated activities that will not be covered by the Principles because they are not connected to either FSMA regulated activities or regulated payment services or e-money issuance (eg simple cash to cash currency conversion at a bureaux de change)

There is guidance on when foreign exchange services may be covered by MiFiD in our perimeter guidance PERG 13.4. There is also relevant guidance on when foreign exchange services are payment services in our perimeter guidance PERG 15 (particularly PERG 15.2, questions 12 and

13). Our Payment Services and E-Money Approach Document Chapter 10, (particularly paragraphs 10.20 and 10.21) also provides detail about safeguarding customers' funds and/or client assets related to foreign exchange transactions, including for hybrid institutions.

We consider that the existing rules and guidance are sufficient and we do not plan to provide additional guidance. However, we welcome and will engage with industry-led attempts to create a consistent understanding amongst firms of how the Principles apply to different business models. If, as a result of this engagement, we see the need for some further specific, targeted guidance, we would consider consulting on this.

We asked:

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

2.11 All respondents agreed that we should extend some or all of the Principles to PIs, EMIs and RAISPs. Most suggested that these 'non-FSMA firms' already aim to or do comply with the Principles. There were mixed views on whether the Principles should be applied as a collective set of standards to these firms. Most respondents said that an implementation period would be necessary, and this is discussed in Chapter 4.

2.12 Some respondents fully agreed with the proposals. However, some PIs, EMIs and their representatives requested reassurance and guidance on the scope of application, and some suggested that some of the Principles should not apply, for a variety of reasons.

2.13 Some respondents emphasised the importance of clarifying the scope of application because the FCA may cite breaches of the Principles alone as a sufficient basis for enforcement action. Several requested assurances that the FCA will apply the Principles in a way which is appropriate and proportionate to these firms, taking into account the size, resources and inherent characteristics of their business. They also requested guidance on what ongoing steps we expect such firms to take to evidence that the Principles are being applied.

2.14 Some non-FSMA respondents argued that if we:

a. do not expect more under the Principles than is already required under the PSRs 2017 / EMRs 2011 regimes, the extension of the Principles would be duplicative and unnecessary
b. expect a higher standard under the Principles, then (while creating a level playing field within the UK) it would disadvantage UK PIs, EMIs and RAISPs relative to EU firms by raising their costs relative to inward-passporting EEA firms.

2.15 One respondent suggested that the FCA objectives could be met by a lighter touch approach, eg industry guidance that is approved and recommended by trade associations and then approved by FCA. Another respondent expressed agreement with principles-based supervision but wanted further collaboration with industry on the development of best practice examples.

2.16 Most respondents that expressed concerns about the application of the Principles as a collective set of standards, agreed that Principles 4 (Financial prudence), 6 (Customers' interests), 7 (Communications with clients) and 11 (Relations with regulators) should apply.

2.17 Some respondents highlighted similarities between the requirements of Principles 6 and 7 and existing language in the CPRs and PSD2 recital 54. It was also argued that different language used in Principle 7 (clear, fair and not misleading) and PSD2 recital 54 (necessary, sufficient and comprehensible information) could create confusion as to which standard to apply.

2.18 Some respondents argued that Principles 1 (Integrity), 2 (Skill, care and diligence), 3 (Management and control) and 10 (Clients' assets) are unnecessary because they duplicate the PSRs 2017 / EMRs 2011. One respondent suggested that Principles 8 (Conflicts of interest) and 9 (Customers: relationships of trust) need further guidance covering how conflicts and suitability are to be operationalised for PIs and EMIs. Another respondent suggested that Principle 9 (Customers: relationships of trust) should only apply to firms with permission to give advice, to avoid confusion.

2.19 One respondent suggested that Principle 5 (Market conduct) is not relevant. Another felt that applying it could introduce uncertainty by importing immature and fluid industry guidance.

Our response

We welcome the widespread support for applying some or all of the Principles to the sector, and also the constructive engagement of providers and trade associations in identifying areas where they seek further clarification about the general application of the Principles to non-FSMA firms and activities.

We consider our objectives are best met by applying the Principles as a collective set of standards. The Principles are a general statement of the fundamental obligations of businesses under the regulatory system.

Firms must take steps to understand the Principles and to ensure they comply with them. We agree that the Principles should be applied in a way which is appropriate and proportionate to firms, taking into account the size, resources and inherent characteristics of their business. We expect providers to evidence their compliance through having systems and controls in place and record keeping, in line with the PSRs 2017 / EMRs 2011.

We disagree with the suggestion that we should not extend Principles which overlap with the PSRs 2017 / EMRs 2011. We consider that it is important to create consistency in the fundamental standards we expect. Additionally, the Principles are high-level standards. It would be difficult to explain every overlap between the Principles and PSRs 2017 / EMRs 2011 and doing so is unnecessary since PRIN 3.1.6 is clear that the Principles give way where there are conflicts with obligations in the PSRs 2017 / EMRs 2011.

We do not agree that Principles which apply only to a small number of firms with the relevant permission (such as providing advice) should be excluded to avoid confusion for customers. The Principles currently apply as a collective set of standards to FSMA firms without causing such confusion, and firms themselves are responsible for acting within the scope of their permissions.

We do not consider that complying with the Principles imposes a significant burden, or creates a significant competitive disadvantage as compared with inwardly passporting firms. All of the Principles (except principle 4) will apply to EEA authorised PIs, EMIs and RAISPS that provide payment services or issue e-money in the UK - unless responsibility for the matter in question is reserved to the home state regulator under PSD2, the revised E-Money Directive (2EMD) or any other EU instrument.

We note requests for further clarification of how the Principles will apply in practice. We acknowledge that further development by industry of good practice examples may be helpful, and we are willing to engage with this.

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

2.20 In CP 18/21, we proposed to extend the application of certain communications (including marketing communications) rules in BCOBS 2 to credit institutions, PIs, EMIs and RAISPs when providing payment services and connected activities. We also proposed to apply these rules to credit institutions and EMIs in connection to issuance of e-money and connected activities.

2.21 These rules already apply to payment services or issuance of e-money where these are connected to the activity of accepting deposits from banking customers. Extending them will help us ensure that we not only address individual cases of a firm's misleading promotions in this market, but set wider standards for providers to follow.

We asked:

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

2.22 Some respondents agreed that the application of certain communications rules in BCOBS 2 appeared sensible and proportionate.

2.23 Others did not consider it necessary, and highlighted the risk that extending the rules in BCOBS 2 would overlap with existing consumer protection legislation in an unhelpful way.

2.24 It was, for example, argued that different terminology is used in recital 54 of PSD2 ('necessary, sufficient and comprehensible information') and BCOBS 2 / Principle 7 ('clear, fair and not misleading'), and that this could lead to confusion as to the requirements that must be met for communications.

2.25 Some respondents requested further clarity on how they should interpret 'misleading communications'. There were also requests for the size and activity of the relevant PI, EMI or RAISP to be taken into consideration, and suggestions that warnings or notices on promotional communications or consideration of product suitability in marketing procedures may be disproportionate requirements for most PIs and EMIs on the grounds that most payment services and e-money are low-risk products.

2.26 One respondent highlighted that the rules should consider the media used for advertising as EMIs and PIs frequently use social media advertising.

Our response

We have made the rules as set out in the consultation paper. We recognise that there are already consumer protections in place. However, we consider that any instances of customers being treated unfairly would be more efficiently considered through applying the same set of communication standards across the market. We want to be able to ensure fair treatment of customers when dealing with complaints about misleading marketing and advertising practices about the same regulated activities and using the same supervisory tools.

We note requests for further clarification of how firms should interpret different terminology used between BCOBS and PSD2. We also note requests for guidance on the interpretation of misleading communication. We do not believe that further FCA guidance needs to be provided. The BCOBs rules themselves have been in place for almost a decade without the need for further guidance.

We do not agree that there is any conflict between the terminology used in BCOBS 2 and recital 54 of PSD2. While recital 54 of PSD2 describes specific mandatory information requirements in PSD2, BCOBS 1.1.4(3) makes clear that the requirements in BCOBS 2 could not cut across these EU rules.

These concepts stem from the Unfair Commercial Practices Directive (Directive 2005/29/EC) which allows minimum harmonisation in relation to financial services. It is also clear that the mandatory information requirements in PSD2 only apply in certain areas, and that Member States are therefore free to introduce different rules in other areas.

3 Misleading communication of currency transfer services

3.1 In this chapter, we summarise and respond to the feedback we received to our proposed new rules and guidance for communications and promotions of currency transfer services issued by credit institutions, PIs and EMIs when providing payment services or issuing e-money involving a currency conversion.

Introducing new rules and guidance for communicating currency transfer services provided as part of a payment or e-money service

3.2 The proposals we consulted on in CP18/21 sought to address the harm we have seen where currency transfer service providers have issued potentially misleading communications to consumers. They were designed to enable consumers to make more informed choices about which services to use, without being misled about the rates they can achieve, the cost of those services or about alternative providers' fees.

3.3 The new rules and guidance enable the FCA to take more direct and efficient action in relation to such practices. They prevent providers from misleading consumers by stopping them:

- promoting unachievable exchange rates to consumers
- making claims about the cost of a service provided by another provider unless the comparison is fair and balanced and the firm can prove that the claims made are true.

We asked:

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

3.4 Most respondents agreed in principle with our approach. Some highlighted concerns about the interaction of new rules and guidance with the CPRs; currency conversion provisions in PSD2 and CBPR2; existing e-commerce and distance marketing regulations and how the new rules and guidance sit with BCOBS 2 communication rules.

3.5 Respondents also asked for clarification on the impact of new rules and guidance on 'hybrid' firms providing both regulated currency transfer services under the PSRs 2017 / EMRs 2011 and unregulated foreign exchange services. They queried how they should interpret 'connected activities'.

3.6 One respondent mentioned that because the rules will not apply to firms offering foreign exchange services that are not carried out as part of a payment or e-money service, firms may separate their foreign exchange services from their payment services to circumvent our rules. The respondent's view was that there was a risk of regulated firms losing out on business to unregulated firms that do not offer currency transfer services.

3.7 Another respondent queried whether displaying the exchange rate alone is enough to quantify the cost to a consumer and highlighted that there are instances where all of the charges advertised as free actually appear in the exchange rate mark-up. They also mentioned that alignment of our rules and guidance with CBPR2 provisions would be necessary to address misleading practices of communicating currency transfer services, including by credit institutions. They argued that requiring firms to disclose the total cost of the transaction to the customer would prohibit such practices.

3.8 One respondent was concerned that some firms have removed information concerning not only interbank rates, but exchange rates overall, from their websites affecting the customer's ability to make an informed choice. It was argued that the proposed rules and guidance (for example BCOBS 2.2.1R which requires that providers must take reasonable steps to ensure that a payment service or electronic money promotion is clear, fair and not misleading) did not go far enough to address the issue of disclosing total cost of currency transfer services in advertising and promotions ahead of a customer choosing the service provider. And that they do not require firms to explain the cost calculation. One respondent's view was that the CPRs require accurate price information be given to consumers at an earlier stage in the transaction.

Our response

We welcome feedback about the clarity of interaction of our rules and guidance with the CPRs. We have made the rules as set out in the consultation paper.

It is important to be clear that the CPRs and the requirements in BCOBS are separate legal regimes. While there is considerable common ground between the two regimes, there are also specific provisions in each regime that aren't reflected in the other.

Equally though, it is important to be clear that the requirements in BCOBS 2 provisions will sit alongside the CPRs, and do not therefore circumscribe our powers to enforce the CPRs under the Enterprise Act 2002, if necessary. The two regimes apply cumulatively, as is already the case for other financial services we regulate.

The aim in extending provisions of BCOBS 2 to the payment services and e-money sectors, and introducing specific new rules and guidance concerning currency exchange transfer services is not therefore to mirror provisions in the CPRs, but to address the specific harms we have identified in this sector in a consistent way.

Respondents asked us to explain how new communication rules for currency transfer services interacted with the existing communication rules in BCOBS 2. New rules and guidance on communications for

currency transfer services form part of BCOBS 2 and apply to credit institutions, PIs and EMIs providing payment services or issuing e-money that involve a currency conversion.

We consider there is no need for additional FCA guidance around the impact that the new rules and guidance on communication of currency transfer services will have on 'hybrid' service providers. We respond to feedback regarding the interpretation of 'connected activities' in Chapter 2. Relevant industry bodies have already expressed their willingness to develop guidance/good practice in this area. Given the complexity and novelty of the sector, we consider this to be the right approach to set good practices and clarify how various business models, including those of hybrid firms, should comply with our requirements consistently. Industry is also able to agree guidance for services outside of the scope of our rule-making powers, ie services unconnected to regulated activities, payment services or e-money issuance.

We recognise that it can be difficult for customers to compare currency transfer service providers, particularly where firms have removed information about exchange rates altogether. Our rules and guidance require that if providers make claims to customers about their services they must do so in a meaningful, fair and balanced way, and also that if they make comparison with the cost of service of other providers, these claims can also be substantiated.

We provide guidance that if a communication or a promotion compares the cost of a currency transfer service with any other provider, the cost of the service must include any charges payable in relation to the currency conversion and to a connected payment service or e-money issuance. It should also include the margin between the exchange rate and a currently applicable interbank exchange rate.

We are keen to ensure good, consistent, up-front cost disclosure and more competition based on price. We did not propose more prescriptive, standardised cost disclosure requirements because of ongoing negotiation of related measures, such as CBPR2, to include consistent communication standards regarding transaction costs.

Now that political agreement on CBPR2 has been reached, providers will have to comply with these transparency requirements before initiating a transaction for credit transfers. We therefore expect industry to work together to improve and standardise cost disclosure, eg through the development of good practice. As a minimum, we expect this to be consistent with current requirements of CBPR2 and the CPRs.

We will engage with this work and if we do not see improvements in cost disclosure to customers, we will consider consulting on additional rules and guidance in 2020.

Communication of unachievable exchange rates

3.9 Potentially misleading practices of communicating currency transfer services to customers include the presentation and promotion of unachievable rates, such as an 'interbank' rate. This occurs either through currency converter tools on firms' websites or mobile applications or in other promotional or communications material issued by firms.

3.10 We have previously expressed our concern with these potentially misleading advertising practices in the market, such as providers advertising an unachievable 'interbank rate' in online currency converter tools.

3.11 We have also seen instances where customers have been attracted to a currency exchange service by the promotion of an unachievable rate but have not become fully aware of the achievable rate until an advanced stage in the consumer journey. This usually occurs after registration or an account opening process.

3.12 This is not a positive outcome for consumers who may not notice the difference in rate or be willing to look for another provider at this late stage.

3.13 Our proposed rules and guidance make clear that it is misleading to give the impression that a rate of exchange is available to consumers if it is not likely to be available to those consumers for a typical transaction.

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

We asked:

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

3.15 While all respondents agreed in principle with our proposals, some said it is important that firms can provide information about interbank or market rates. They said that this information is useful for customers tracking the market if currency converters explicitly state that rates shown are not available. It can help customers to compare rates offered by different firms and help inform decisions to make a payment involving a currency conversion.

3.16 Respondents asked for further clarification of whether the FCA expects firms to remove all references to the interbank or market rates from all communications, as this would not be to the customers advantage.

3.17 One respondent mentioned the need for additional guidance to clarify that financial communications must quantify the whole cost for comparison (referencing guidance 2.3.7C G in our instrument). They recommended we align our approach with CBPR2 mandating total cost disclosure, including exchange rate mark-up and total fees.

Our response

We have noted respondents' feedback and considered the points raised. In our consultation, we made it clear that it is misleading to give the impression that a rate of exchange is available to consumers if it is not likely to be available to those consumers for a typical transaction. We are making the rules and guidance we consulted on to address this harm.

As mentioned in our response to Q6 in this PS, we recognise that it can be difficult for customers to compare currency transfer service providers. We also acknowledge that CBPR2 (now agreed at political level) will impact on cost disclosure requirements, particularly in relation to credit transfers. We expect providers to work together to improve and standardise cost disclosure (eg through the development of good practice). As a minimum, we expect any agreement to be consistent with current requirements of CBPR2 and the CPRs.

We believe an industry initiative can improve the communication of costs in a consistent way across various business models operating in these sectors and we will engage with this industry work.

Fair and meaningful comparison of costs

3.18 Complaints about instances of misleading advertising in this market have been upheld by the Advertising Standards Authority (ASA). These include firms communicating unsubstantiated claims about the costs of currency transfer services or the promotion of unachievable rates in their communications.

3.19 We have seen firms make claims that they offer the 'best' or 'most competitive' rate, seemingly without evidence, or by making comparisons based on exchange rate or fees alone, and not taking into account the overall cost to the customer.

3.20 If customers are misled about the comparative prices of services, they may miss out on services which better suit their needs, with better quality, prices or overall value. This can distort competition in favour of providers with services that are presented in a misleading way to customers.

3.21 We want to ensure that providers can compete effectively with one another, and that consumers are not misled by claims about the costs involved.

3.22 The rules and guidance will require that, where providers compare the costs of their service with other providers, they do so in ways which are meaningful, fair and balanced, and can be substantiated. We believe that this will encourage providers to ensure that they only make appropriate claims and do not mislead customers.

3.23 Where they compare to the costs of a service, the costs should include:

- any charges payable for the currency conversion
- any charges payable for a connected payment service or e-money issuance

- the margin between the exchange rate that is offered to a majority of customers to whom the promotion is directed and an independently published interbank spot rate.

We asked:

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

3.24 Most respondents agreed with our approach. Some mentioned that customers are already provided with protection under the CPRs and UK advertising codes against misleading claims from firms regarding comparisons of costs. Respondents asked for additional guidance on the level of detail expected from firms when evidencing cost comparisons with other providers.

3.25 One respondent disagreed with our approach, as they considered it burdensome to identify the class of persons to whom a promotion is directed when such services are not communicated to specific market segments (referencing guidance 2.3.7C G in our instrument). They suggested rewording our guidance to reflect 'the margin between the exchange rate that is to be offered and a currently applicable interbank exchange rate, calculated using an independently published interbank spot rate'.

3.26 While agreeing to our proposals, one respondent highlighted that the use of independently published exchange rates in implementing PSD1 brought confusion to the industry. They suggested additional guidance would be helpful to clarify this reference as basis for margin calculation (referencing guidance 2.3.7C G in our instrument).

Our response

We welcome the responses received. We are making the rules and guidance as consulted on in CP18/21.

As set out in our response to Q6, while there is significant overlap between the CPRs and the requirements in BCOBS 2, they are separate regimes and contain specific provisions that differ. They are also enforced in different ways. The same is true of relevant provisions in UK advertising codes. We don't therefore consider that these existing requirements provide a convincing reason not to make the proposed changes to BCOBS 2.

We are not providing additional guidance on how we expect firms to evidence cost comparisons. Our rules and guidance enable providers to compare the cost of a currency transfer service with the cost of a service provided by any other provider or providers. But the comparison must be meaningful and presented in a fair and balanced way and the firm or other provider must be able to substantiate the claims made. We will supervise this conduct on a case by case basis, as we currently do for financial promotions or communication of activities carried out under FSMA. We do not consider additional guidance on the level of detail expected from firms is needed, as we do not provide similar guidance for communication of activities carried out under FSMA.

We believe that an independently published interbank spot rate is the most efficient and accessible reference to be used in calculating components of the cost of a currency transfer service. We also consider that it is reasonable to require businesses to consider the customer segment to which a particular financial promotion is directed. This reflects the EBA Guidelines on product oversight and governance arrangements for retail banking products (EBA/GL/2015/18). We will nevertheless engage with any industry-led efforts to develop good practice examples.

Currency transfer services not carried out as part of a payment or e-money service

3.27 The rules proposed in CP18/21 define 'currency transfer services' as a 'payment service' or issuance of 'electronic money' that involves a 'currency conversion'. In CP 18/21 we explained that this includes where the 'payment service' or issuance of e-money is carried out for funds that have been subject to a currency conversion (including where e-money is issued in a currency different to that used for its purchase).

3.28 We proposed to apply new rules and guidance to communications to customers by businesses providing payment or e-money services involving a currency conversion, as well as related activities. We did not include in the scope of our proposals other currency exchange services that are not carried out as part of a payment or e-money service (eg cash to cash 'bureaux de change' activities), as these are generally outside the scope of FCA regulation.

We asked:

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

3.29 Respondents considered all customers should receive fair treatment. Including customers using currency transfer services not carried out as part of a payment or e-money service (eg bureaux de change 'cash to cash' activities).

3.30 Respondents mentioned that customers using bureaux de change or similar businesses outside of the scope of the current proposals should not be disadvantaged compared customers of currency transfer services delivered by PIs, EMIs and RAISPs. They argued that our proposed exclusion would provide an incentive for firms to structure their businesses in ways that circumvent the intended regulations leading to unfair competition from unregulated firms. From a customer perspective, this would eventually result in an inconsistent approach if standards were not applied should a foreign exchange payment be executed by cash.

Our response

We welcome the feedback provided. We are making the rules and guidance as consulted on in CP18/21.

As mentioned in our responses to Q3 and Q6 in this PS, our rules and guidance on the communication and marketing of currency transfer services apply to payment services and issuance of e-money involving a currency conversion. We are only able to make rules for activities that fall within our regulatory remit, as provided by Parliament. We have the power to make rules for unregulated activities if they are carried out by an authorised person. We can extend these rules to PIs or EMIs only where the unregulated activities are connected to payment services or e-money issuance. Given this, our rules do not apply to currency exchange services that are not carried out as part of a payment or e-money service and are provided as an independent service.

Where 'hybrid' firms provide both regulated and unregulated currency transfer services, our new rules and guidance will apply to their unregulated activity (eg bureaux de change/'cash to cash' activities) if it is sufficiently closely connected to a payment or e-money service involving a currency conversion. Our response to feedback requesting clarity on the definition of 'connected activity' and the application of our rules to hybrid business models can be found in response to Q6 earlier in this chapter and in Chapter 2.

4 Implementing our new rules and guidance

4.1 In this chapter, we summarise and respond to the feedback we received regarding the implementation **period for the rules we consulted on in CP18/21.**

Implementation period

4.2 In CP18/21 we said we did not currently consider that there was a need for an implementation period following the publication of our PS.

We asked:

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

4.3 Most respondents to our consultation suggested that firms already aim to or comply with the Principles. They said however that they will need time and resources (as well as further guidance either from the regulator or developed by industry) to assess and ensure themselves of their compliance, to build procedure manuals and familiarise staff with the new regulations. They will also need time to audit their communications about payment services or e-money involving a currency conversion and potentially make changes to their marketing and websites.

4.4 Respondents said that smaller firms may struggle to obtain necessary skilled resource to ensure compliance at a proportionate cost in time.

4.5 Concerns were raised that the rules would come into force close to the date the UK is due to exit the European Union, and at a time of significant industry work to ensure compliance with new requirements under the PSRs 2017.

4.6 Respondents argued that it would be reasonable to allow an implementation period. Implementation periods suggested ranged from 3-18 months after publication of this PS. It was also suggested that the rules should come into force after the UK's withdrawal from the European Union.

Our response

In light of responses, we will allow providers until 1 August 2019 to comply with our new rules and guidance.

We consider this approach to be proportionate. It does not significantly delay the introduction of the rules and will allow firms time to put systems in place to ensure compliance with our requirements.

Allowing an implementation period does not affect our ability to address harm through enforcing the CPRs.

5 Other feedback

5.1 In this section, we respond to feedback on our cost benefit analysis and equality impact assessment. We also respond to other feedback we received that is not discussed elsewhere in this PS.

Feedback received to our cost benefit analysis and equality impact assessment

We asked:

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

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

5.2 Those respondents who commented on our equality impact assessment agreed that the rules we are making would not have any negative impact on groups who share protected characteristics. One respondent noted that some smaller PIs service minority communities and those operating the PIs may not have English as their first language. They may require time to understand and implement required changes.

5.3 Some affected PSPs, e-money issuers and their representatives questioned the proportionality of our proposals and requested further information about how we calculated the cost benefit analysis (CBA). They questioned whether we may have underestimated the cost of providers being able to demonstrate that they are compliant with Principles and communication rules. Respondents also highlighted that recruitment of qualified people can be hard and may increase costs for smaller firms potentially affecting their viability. One respondent argued it was unreasonable to add additional costs to an industry that has consistently provided value for money.

5.4 One respondent queried why there were significant differences in one-off incremental costs for EMIs (£2.4m - £9.3m) and APIs (£50,000 -£200,000). They agreed that the overall cost to Small EMIs (SEMIs) and Small PIs (SPIs) may be small, but said the impact on individual firms would not be insignificant. They believed that a short implementation timeframe would result in increased costs particularly if implementation coincided with firms preparing for the UK to exit the European Union and for smaller firms.

Our response

Our CBA and equality impact assessment are unchanged.

While some respondents have queried our assessment of costs, alternative cost estimates have not been provided. The cost estimates included in our CBA reflect responses to a cost survey from a range

of PSPs and e-money issuers. We received significant cost estimates from some EMIs. This caused our overall estimate for all EMIs to be significantly higher than for APIs.

We recognise concerns from providers about their ability to demonstrate that they are compliant with the Principles and communication rules. We expect providers to evidence their compliance through having systems and controls in place and record keeping, in line with relevant requirements of the PSRs 2017.

We plan to engage with industry efforts to help providers develop a consistent view of how the Principles and communications rules apply to different business models. As discussed earlier in this chapter, we have introduced an implementation period to give providers time take any action necessary to ensure they comply.

Other feedback

5.5 A few respondents provided general feedback.

5.6 One suggested that we should perform an impact assessment of our proposals at a later stage (2019/2020), after the UK exits the European Union.

5.7 Another respondent, although in agreement with our overall approach, raised the potential need to enforce other sections of the FCA Handbook across the payment services and e-money sectors (eg Senior Managers Regime, Systems and Controls – SYSC). They suggested a less complex version of SYSC would work with market characteristics.

5.8 One respondent also suggested that the proposed FCA Handbook definition for 'currency transfer service' should be changed to include the redemption of e-money.

Our response

We welcome the feedback provided. We have made the rules and guidance proposed in CP18/21.

Our rules and guidance will enter into force on 1 August 2019. We are willing to engage with industry on their efforts to develop good practice examples or guidance in the upcoming period. We believe this would be the most effective and efficient approach to providing clarity and assessing the impact of rules and guidance in the sector.

We appreciate respondents' input with regards to other sections of the FCA Handbook. We recognise that standards applied to FSMA firms are more prescriptive in certain areas than for non-FSMA firms.

RAISP	Registered Account Information Service Provider
SYSC	Senior Management Arrangements, Systems and Controls
UK	United Kingdom

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

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Appendix 1
Made rules (legal instrument)

PAYMENT SERVICES AND ELECTRONIC MONEY (PRINCIPLES FOR BUSINESSES AND CONDUCT OF BUSINESS) INSTRUMENT 2019

Powers exercised

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

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"), including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) ("the PSRs") and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) ("the EMRs"):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 138C (Evidential provisions); and
(d) section 139A (Power of the FCA to give guidance);

(2) regulation 120 (Guidance) of the PSRs;

(3) regulation 60 (Guidance) of the EMRs; and

(4) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 August 2019.

Amendments to the Handbook

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

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

Citation

E. This instrument may be cited as the Payment Services and Electronic Money (Principles for Businesses and Conduct of Business) Instrument 2019.

By order of the Board
24 January 2019

Annex A

Amendments to the Glossary of definitions

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

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

currency transfer service	a *payment service* or the issuance of *electronic money* that involves a currency conversion. For the purpose of this definition 'currency conversion' has the same meaning as it has in the *Payment Services Regulations*.
electronic money customer	(in *BCOBS*): (a) a *consumer*; (b) a *micro-enterprise*; or (c) a *charity* which has an annual income of less than £1 million.
payment service customer	(in *BCOBS*): (a) a *consumer*; (b) a *micro-enterprise*; or (c) a *charity* which has an annual income of less than £1 million.
payment service or electronic money promotion	an invitation or inducement to: (a) enter into an agreement for the provision of a *payment service*; (b) initiate a *payment order*; or (c) acquire *electronic money*, that is communicated in the course of a regular occupation or business activity.

Amend the following definitions as shown.

client …

(B) in the *FCA Handbook*:

…

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

(a) a *payment service*;

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

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

customer …

(B) in the *FCA Handbook*:

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

…

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

(a) a *consumer*;

(b) a *micro-enterprise*; or

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

firm …

(11) (in *PRIN* 2) includes an *electronic money institution*, an *EEA electronic money institution*, a *payment institution*, a *registered account information service provider* and an *EEA registered account information service provider*.

Home State regulator

…

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

(8) in relation to an *EEA authorised electronic money institution*, the competent authority designated in accordance with article 3 of the *Electronic Money Directive* as being responsible for the authorisation and prudential supervision of that *EEA authorised electronic money institution*.

private person

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

…

(2) in relation to a *rule* made under section 137A of the *Act* as applied by Schedule 3 to the *Electronic Money Regulations*, as defined in regulation 72(3) of those regulations:

(a) any individual, except where the individual suffers the loss in question in the course of issuing *electronic money* or providing *payment services*; and

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

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

(3) in relation to a *rule* made under section 137A of the *Act* as applied by Schedule 6 to the *Payment Services Regulations* as defined in regulation 148(3) of those regulations:

(a) any individual, except where the individual suffers the loss in question in the course of providing *payment services*; and

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

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

regulatory system

(1) …

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

…

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

(a) a *Principle*; and

(b) an *evidential provision*.

Annex B

Amendments to the Principles for Businesses (PRIN)

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

1 Introduction

1.1 Application and purpose

Application

…

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

Purpose

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

…

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

…

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

Taking group activities into account

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

on a *group* basis) will be relevant in determining the adequacy of the *firm's* risk management systems or resources respectively.

Standards in markets outside the United Kingdom

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

…

Consequences of breaching the Principles

1.1.7 G Breaching a *Principle* makes a *firm* or other *person* to whom the *Principles* apply liable to disciplinary sanctions. In determining whether a *Principle* has been breached it is necessary to look to the standard of conduct required by the *Principle* in question. Under each of the *Principles* the onus will be on the *FCA* to show that a *firm* or other *person* has been at fault in some way. What constitutes "fault" varies between different *Principles*. Under *Principle* 1 (Integrity), for example, the *FCA* would need to demonstrate a lack of integrity in the conduct of a *firm's* or other *person's* business. Under *Principle* 2 (Skill, care and diligence) a *firm* or other *person* would be in breach if it was shown to have failed to act with due skill, care and diligence in the conduct of its business. Similarly, under Principle 3 (Management and control) a *firm* or other *person* would not be in breach simply because it failed to control or prevent unforeseeable risks; but a breach would occur if the *firm* or other *person* had failed to take reasonable care to organise and control its affairs responsibly or effectively.

1.1.8 G The *Principles* are also relevant to the *FCA's* powers of information-gathering, to vary a *firm's Part 4A* permission or authorisation or registration under the *Payment Services Regulations* or *Electronic Money Regulations*, and of investigation and intervention, and provide a basis on which the *FCA* may apply to a court for an injunction or restitution order or require a *firm* or other *person* to make restitution. However, the *Principles* do not give rise to actions for damages by a *private person* (see *PRIN* 3.4.4R).

…

1.2 Clients and the Principles

…

Approach to client categorisation

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

…

3 Rules about application

3.1 Who?

…

3.1.1A R *PRIN* also applies:

(1) to an *electronic money institution*, an *authorised payment institution*, a *small payment institution* or a *registered account information service provider*; and

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

…

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

…

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

Payment Services Regulations and Part 5 of the *Electronic Money Regulations*) or applied by the *Consumer Credit Directive* (see, for example, the information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)).

3.2 What?

…

3.2.1B R Other than with respect to a *firm* that is a *credit union*, *PRIN* also applies with respect to:

(1) the provision of *payment services*;

(2) issuing of *electronic money* (where not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*); and

(3) activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*).

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

…

3.2.2-A G *PRIN* applies to the communication of promotions concerning *payment services* and *electronic money*.

3.2.2A R *PRIN* 1 Annex 1, *PRIN* 3.4.1R and *PRIN* 3.4.2R do not apply with respect to the carrying on of *credit-related regulated activities* or *regulated claims management activities*, or to the provision of *payment services* or the issuing of *electronic money* (where not a *regulated activity*).

3.2.3 R Subject to *PRIN* 3.2.4R, *Principles* 3, 4 and (in so far as it relates to disclosing to the *FCA*) 11 (and this chapter) also:

(1) apply to *firms* with respect to the carrying on of *unregulated activities* (for *Principle* 3 this is only in a *prudential context*); and

(2) for *firms* and other *persons* that are subject to the *Principles*, take into account any activity of other members of a *group* of which the *firm* or other *person* is a member.

…

3.3 Where?

Territorial application of the Principles

…

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

3.4 General

Clients and the Principles

…

3.4.3 G …

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

…

References to "regulators" in Principle 11

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

promotion or *payment service or electronic money promotion* in the sales process.

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

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

…

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

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

(1) the comparison must be meaningful and presented in a fair and balanced way; and

(2) the *firm* or other provider must be able to substantiate the claims made.

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

(1) any charges payable in relation to the currency conversion;

(2) any charges payable in relation to a connected *payment service* or *electronic money* issuance; and

(3) the margin between the exchange rate that would be offered to a majority of *persons* of the class at whom the promotion is directed and a currently applicable interbank exchange rate, calculated using an independently published interbank spot rate.

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