

Consultation Paper

CP17/11\*\*

# Implementation of the revised Payment Services Directive (PSD2): draft Approach Document and draft Handbook changes



April 2017



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We are asking for comments on this Consultation Paper by 8 June 2017.

You can send them to us using the form on our website at:  
<https://www.fca.org.uk/cp17-11-response-form>.

**Or in writing to:**

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Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

**Email:** [PSD2@fca.org.uk](mailto:PSD2@fca.org.uk)

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

The FCA will share all responses received through the CP mailbox, and the online response form, with the Payment Systems Regulator, unless you have clearly indicated that you do not wish us to share your response with the Payment Systems Regulator.

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

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

You can download this Consultation Paper from our website: [www.fca.org.uk](http://www.fca.org.uk).

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## Abbreviations used in this paper

<b>1EMD</b>	Electronic Money Directive
<b>2EMD</b>	Second Electronic Money Directive
<b>Authorised EMI</b>	Authorised electronic money institution
<b>AIS</b>	Account information service
<b>AISP</b>	Account information service provider
<b>Authorised PI</b>	Authorised payment institution
<b>ASPSP</b>	Account servicing payment service provider
<b>ATM</b>	Automated Teller Machine
<b>Bacs</b>	Bacs Payment Schemes Limited
<b>BCOBS</b>	Banking Conduct of Business Sourcebook
<b>Call for Input</b>	February 2016 Call for Input: the FCA's approach to the current payment services regime
<b>CHAPS</b>	Clearing House Automated Payment System
<b>CP</b>	Consultation paper
<b>CONC</b>	Consumer Credit Sourcebook
<b>DEPP</b>	Decision Procedure and Penalties manual
<b>DISP</b>	Dispute Resolution: Complaints
<b>EBA</b>	European Banking Authority
<b>ECN</b>	Electronic Communications Network
<b>EEA</b>	European Economic Area
<b>EG</b>	Enforcement Guide

<b>EMI</b>	Authorised EMIs and small EMIs
<b>EMRs</b>	Electronic Money Regulations 2011
<b>EU</b>	European Union
<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	The Financial Services and Markets Act 2000
<b>FPS</b>	Faster Payments Service
<b>IAP</b>	Indirect Access Provider
<b>LNE</b>	Limited Network Exclusion
<b>MLRs 2007</b>	Money Laundering Regulations 2007
<b>MLRs 2017</b>	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
<b>PERG</b>	Perimeter Guidance Manual
<b>PI</b>	Authorised PIs and small PIs
<b>PIS</b>	Payment initiation services
<b>PISP</b>	Payment initiation services provider
<b>PSD</b>	Payment Services Directive
<b>PSD2</b>	The revised Payment Services Directive
<b>PSP</b>	Payment services provider
<b>PSRs 2009</b>	Payment Services Regulations 2009
<b>PSRs 2017</b>	Payment Services Regulations 2017
<b>RAISP</b>	Registered account information service provider
<b>RTS</b>	Regulatory Technical Standard
<b>SCA</b>	Strong Customer Authentication

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**Small EMI**                      Small electronic money institution

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**Small PI**                        Small payment institution

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**SUP**                              Supervision Manual

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**Treasury**                        HM Treasury

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## Terms used in this document which have a meaning given under the Payment Services Regulations 2017

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<b>“account servicing payment service provider”</b>	means a payment service provider providing and maintaining a payment account for a payer
<b>“account information service provider”</b>	means a payment service provider which provides account information services
<b>“authorised payment institution”</b>	means <ul style="list-style-type: none"><li>a. a person included by the Authority in the register as an authorised payment institution pursuant to regulation 4(1)(a); or</li><li>b. a person included by the Authority in the register pursuant to regulation 153 (transitional provisions)</li></ul>
<b>“credit institution”</b>	in summary, this means a business that takes deposits from the public and grants credit for its own account. For a full legal definition please refer to the respective definitions in the PSRs 2017 or EMRs (as appropriate) and Article 4(1) of the Capital Requirements Regulations (EU) 575/2013
<b>“electronic communications network”</b>	means a network means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed; (as defined in Article 2(a) of Directive 2002/21/EC)
<b>“electronic communications service”</b>	means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks; (as defined in Article 2(c) of Directive 2002/21/EC)
<b>“electronic money institution”</b>	means a legal person that has been granted authorisation under Title II to issue electronic money (Article 2(1) of the electronic money directive)

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**“payment initiation service provider”**

means a payment service provider which provides payment initiation services

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**“payment service provider”**

means any of the following persons when they carry out payment services—

- a. authorised payment institutions;
  - b. small payment institutions;
  - c. registered account information service providers;
  - d. EEA authorised payment institutions;
  - e. EEA registered account information service providers;
  - f. electronic money institutions;
  - g. credit institutions;
  - h. the Post Office Limited;
  - i. the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
  - j. government departments and local authorities, other than when carrying out functions of a public nature
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**“registered account information service provider”**

means an account information service provider included by the Authority on the register pursuant to regulation 4(1)(c);

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**“small payment institution”**

means a person included by the Authority in the register pursuant to regulation 4(1)(b)

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# 1. Overview

## Background

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- 1.1** Directive (EU) 2015/2366 (PSD2) was published in the EU's Official Journal on 13 January 2016. PSD2 updates and replaces the original Payment Services Directive (PSD). PSD2 was introduced to bring regulation up to date with developments in the market for payment services and promote further innovation. It also aims to improve consumer protection, make payments safer and more secure, and drive down the cost of services.
- 1.2** The majority of the requirements introduced under PSD2 must be implemented by 13 January 2018. As PSD2 is maximum harmonising European legislation, there is limited discretion for member states (and competent authorities such as the FCA) to depart from or add to the provisions of the Directive in areas within its scope.
- 1.3** The Treasury has proposed that PSD2, like PSD, be implemented largely through regulations. In February 2017 the Treasury consulted on the draft Payment Services Regulations 2017 (PSRs 2017),<sup>1</sup> which will replace the Payment Services Regulations 2009 (PSRs 2009). It is important for respondents to note that most of the PSD2 requirements are implemented through the PSRs 2017. As such, much of the guidance on which we are consulting focuses on our approach to interpreting and applying these regulations.
- 1.4** The Treasury has proposed that the FCA will continue as the competent authority responsible for supervising payment service providers (PSPs) under PSD2. The Payment Systems Regulator will also be responsible for certain aspects which relate to payment systems.
- 1.5** The PSRs 2017 will also amend the Electronic Money Regulations 2011 (EMRs) to reflect changes made to the e-money regulatory regime by PSD2. Certain requirements on businesses under PSD2 will be imposed by Regulatory Technical Standards (RTS) drafted by the European Banking Authority (EBA). The EBA is also mandated to develop guidelines in a number of areas. The EBA has yet to finalise a number of these measures.

## Introduction

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### The current framework

- 1.6** In many areas, the conduct standards for banks, building societies, payment institutions (Pis) and e-money institutions (EMIs) in relation to the provision of payment services currently come from PSD, which was introduced by the EU in 2007. This directive also sets the prudential standards for payment institutions. PSD provides a passporting regime under which businesses

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<sup>1</sup> HM Treasury, Implementation of the revised EU Payment Services Directive (PSDII), February 2017, <https://www.gov.uk/government/consultations/implementation-of-the-revised-eu-payment-services-directive-psdii>

authorised in one European Economic Area (EEA) Member State are permitted to provide such services in another Member State, having successfully completed the passporting process.

- 1.7** PSD was implemented largely through the PSRs 2009 by the Treasury. There are some limited aspects of PSD which are implemented through the FCA Handbook, such as those on complaints handling for eligible complainants. We published an Approach Document to help businesses navigate their obligations under this regime.
- 1.8** The second Electronic Money Directive (2EMD) sets the standards in relation to the issuance of e-money. It replaced an earlier e-money directive (1EMD). 2EMD was largely implemented through the EMRs by the Treasury. Some limited parts were implemented through the FCA Handbook. We published a separate Approach Document to help e-money issuers understand their regulatory obligations.

### **Our approach to implementation**

- 1.9** Our proposals are designed to ensure that the aims of PSD2 are realised in the UK, and that we can effectively monitor and enforce compliance with the PSRs 2017. We seek to advance, where relevant, our statutory objectives, in particular promoting effective competition in the interests of consumers, and securing an appropriate degree of protection for consumers. We have also taken account of the regulatory principles set out in regulation 106 of the draft PSRs 2017.
- 1.10** While the legislative framework is still in the process of being finalised, we are consulting now on the basis of the Treasury's draft legislation and, where sufficiently developed, draft RTS and Guidelines, in order to give industry as much time as possible to prepare. If changes are made to the draft legislation that affect our proposals we will reflect these in our final rules, directions and guidance. We will consult on any further changes where it is appropriate to do so.

### **Summary of our proposals**

- 1.11** This consultation paper (CP) proposes a revised Approach Document which will set out the FCA's approach to interpreting and applying the PSRs 2017 and the amended EMRs in a single document replacing the existing Payment Services and E-Money Approach Documents.<sup>2</sup> As well as the changes necessary as a result of PSD2, the revised Approach Document includes some proposed clarifications of existing guidance and some new guidance, largely in response to our February 2016 Call for Input on the FCA's approach to the current payment services regime.<sup>3</sup>
- 1.12** We are combining the Payment Services Approach Document with the E-Money Approach Document into a single guidance document because many of the authorisation requirements are similar for PIs and EMIs. Consolidating the two Approach documents will avoid duplication, an issue which stakeholders acknowledged in response to our Call for Input. It will also give e-money issuers one point of reference to understand their capital and conduct obligations where they also provide payment services.
- 1.13** We are naming this new combined document: **Payment Services and Electronic Money – Our Approach (The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011)**, and referring to it in this paper as "the revised

<sup>2</sup> The FCA's role under the Payment Services Regulations 2009, <https://www.fca.org.uk/publication/archive/payment-services-approach.pdf>; the FCA's role under the Electronic Money Regulations 2011, <https://www.fca.org.uk/publication/archive/emoney-approach.pdf>

<sup>3</sup> The Call for Input can be found here: <https://www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime> The Feedback Statement (FS16/12) was published in November 2016 and can be found here: <https://www.fca.org.uk/publication/feedback/fs16-12.pdf>

Approach Document". The draft of the revised Approach Document is published alongside this CP.<sup>4</sup>

**1.14** Given the number of changes brought about by PSD2, reflected in Treasury's regulations, we do not detail every change to the Approach Document in this CP. Respondents should read this CP in conjunction with the draft of the revised Approach Document.

**1.15** This CP also explains proposed changes to the FCA Handbook. This includes changes to the rules, guidance and directions that apply to PSPs and e-money issuers and to other providers of retail banking services. We also propose changes to our Perimeter Guidance Manual (PERG) and new directions that will apply to providers of excluded services. The draft Handbook text can be found in Appendix 1 and draft non-Handbook directions for excluded providers can be found in Appendix 2.

### **Effective competition**

**1.16** PSD2 requires all providers of online payment accounts to allow third parties providing account information services (AIS) or payment initiation services (PIS) to have access to customers' online payment accounts, with the customers' consent. It creates new categories of payment services, so that businesses wishing to provide AIS or PIS will need to be authorised or registered by the FCA. We are consulting on the guidance and rule changes that are required to regulate these new services.

**1.17** PSD2 is being implemented at the same time as nine retail banks have been required by the UK Competition and Markets Authority<sup>5</sup> to develop application programming interface standards which facilitate access to customers' current account data by third parties (including providers of AIS and PIS).

**1.18** Open Banking has the potential to help industry deliver the requirements of PSD2. In March 2017, the banks in question delivered, through the work of the Open Banking Implementation Entity, a platform to provide standardised data on banking products, branches and ATM location.<sup>6</sup> The functionality that will facilitate AIS and PIS is expected to be live in early 2018. The FCA participates as an observer on the Implementation Entity's Steering Group.

**1.19** As a result of these regulatory initiatives, coupled with technological and market developments, we expect to see better informed and engaged customers that find it easier to shop around and have an enhanced banking experience.

**1.20** In addition, PSD2 introduces measures to address de-risking, where PSPs, such as money remittance businesses, have their access to bank account services withdrawn or refused because of the perceived risk or cost that they pose to the account provider. It increases transparency around account provision and ensures that decisions regarding access are made on a proportionate, objective and non-discriminatory basis. This should help ensure the fairness of decisions about access for PSPs and therefore enhance competition.

**1.21** In Chapter 6 of this CP we consult jointly with the Payment Systems Regulator on our approach to supervising these new account access requirements and on the responsibilities of the businesses these requirements apply to. In Chapter 10 of this CP the Payment Systems Regulator is consulting on aspects of the PSRs 2017 for which it is solely responsible, including

4 The revised Approach Document can be found here: <https://www.fca.org.uk/publication/consultation/cp17-11-draft-approach-document.pdf> To help businesses understand what changes we have made we have also published a version showing tracked changes: <https://www.fca.org.uk/publication/consultation/cp17-11-draft-approach-document-tracked.pdf>

5 <https://www.gov.uk/government/news/open-banking-revolution-moves-closer>

6 <https://www.openbanking.org.uk/2017/03/13/platform-distributing-bank-product-branch-atm-data-available/>

access to payment systems, and information to be provided by independent ATM deployers. The Payment Systems Regulator asks questions on a new Approach Document that it has published in draft form.<sup>7</sup>

- 1.22** Through these measures and others in PSD2, there is the potential to accelerate the rate of innovation in payment services, which could in turn lead to greater choice for consumers. Competition pressures could also mean that consumers pay lower prices for the payment services they access.

### Consumer protection

- 1.23** PSD2 brings about a number of important changes to the ways that all payment services businesses will have to treat their customers, and the protections they should be afforded. This should ensure consumers are better protected and increase their trust in the payment services market. We provide guidance in the draft revised Approach Document on the changes to the conduct of business requirements for businesses. In Chapter 4 of this CP, we jointly consult with the Financial Ombudsman Service on changes to our Dispute Resolution sourcebook (DISP) which affect both the compulsory and voluntary jurisdictions of the Financial Ombudsman Service.

- 1.24** PSD2 also seeks to enhance payment security, and seeks to ensure risks to consumers that can arise as a result of new technology are mitigated. It introduces Strong Customer Authentication (also known as two-factor authentication). This will protect consumers accessing their payment accounts from the risk of fraud or abuse. Where consumers do suffer losses, PSD2 has reduced their exposure to the liability they incur.

- 1.25** PSD2 brings more activities within the regulatory perimeter by bringing AIS and PIS within regulation, and narrowing some of the exclusions which existed under PSD. As a result, consumers will be better protected as more of the businesses they purchase services from will be subject to regulation. The table below summarises the areas where we are proposing to consult:

#### *Summary of stakeholders affected by our proposals*

CP chapter	Proposals	Who should read this chapter
2 – Changes to the perimeter	<p><b>Changes to scope:</b> proposed changes to our perimeter guidance (PERG) to reflect the extended scope of PSD2, and changes to exclusions available to businesses. We also address some other issues, including those that arose in response to our Call for Input.</p> <p><b>Notifications for excluded providers:</b> proposed new notifications that businesses will need to follow if they wish to rely on certain exclusions.</p>	Businesses offering or wishing to offer payment-related activities

<sup>7</sup> The Payment Systems Regulator's draft Approach Document can be found here: <https://www.psr.org.uk/sites/default/files/media/PDF/Payment-Services-Regs-2017-draft-approach.pdf>

CP chapter	Proposals	Who should read this chapter
3 – Our approach to authorisation and passporting	<p><b>Authorisation:</b> our proposed approach to authorisation under PSD2, including the new requirements for businesses seeking to become authorised or registered, and requirements for existing PIs and EMIs.</p> <p><b>Change in qualifying holdings and passporting:</b> our proposed approach to changes in qualifying holdings of authorised PIs, and the new requirements for businesses passporting under PSD2.</p>	PIs and EMIs, and those looking to acquire control in an authorised PI.
4 – Conduct of business including complaints handling	<p><b>Conduct of business:</b> proposed changes to guidance and our Handbook rules related to the conduct of business of PSPs and other providers of retail banking services.</p> <p><b>Complaints handling:</b> proposed changes to our complaints handling rules to implement PSD2. This is in part a joint consultation with the Financial Ombudsman Service.</p>	All PSPs and e-money issuers, and providers of retail banking services.
5 – Regulatory reporting	<p><b>Complaints reporting:</b> proposed changes to our Handbook to introduce new complaints reporting requirements for PSPs.</p> <p><b>Fraud reporting:</b> our proposed approach to collecting data on payment services fraud, as required under PSD2.</p> <p><b>Changes to existing reporting:</b> proposed revisions to the reporting required from PIs and EMIs in order to allow us to supervise these businesses effectively.</p> <p><b>Controllers and close links report:</b> our proposal that authorised PIs submit the annual controllers report and close links reports.</p>	All PSPs and e-money issuers
6 – Payment service providers' access to payment account services	<p><b>Access to payment account services:</b> proposed new guidance on our expectations on access to payment account services for PIs, EMIs, and registered account information service providers (RAISPs) being provided by credit institutions; we are consulting on this together with the Payment Systems Regulator as we are jointly competent for this aspect of PSD2.</p>	PIs, EMIs, RAISPs and credit institutions
7 – Account information services and payment initiations services and confirmation of availability of funds	<p><b>Provision of account information services (AIS) and payment initiation services (PIS):</b> our proposed approach to regulating providers of payment services business newly brought under regulation, AIS and PIS.</p> <p><b>Obligations for account servicing payment service providers (ASPSPs):</b> our expectations of how should ASPSPs meet their obligations in respect of providers of AIS and PIS (AISPs and PISPs) and to card based payment instrument issuers (CBPIIs), including the notification required when access is denied.</p>	Providers of payment accounts, AISPs, PISPs and CBPIIs

CP chapter	Proposals	Who should read this chapter
8 – Our approach to supervising the Payment Services Regulations 2017 and Electronic Money Regulations	<b>Supervision:</b> proposed changes to our approach to supervision under the PSRs 2017 and EMRs.	All PSPs and e-money issuers.
9 – Consequential changes and other revisions to the Approach Document	<b>Consequential changes:</b> proposed minor changes to the Handbook necessary to implement PSD2. <b>Wider revisions to the Approach Document:</b> our proposed wider revisions to the Payment Services and E-money Approach Documents.	All PSPs and e-money issuers
10 – The Payment Systems Regulator's approach	<b>Access to payment systems:</b> The Payment Systems Regulator's expectations on direct and indirect access to payment systems for PSPs. <b>ATM withdrawal charges:</b> proposed guidance on the Payment Systems Regulator's expectations about information on ATM withdrawal charges to be provided by Independent ATM providers. <b>Powers and procedures:</b> The Payment Systems Regulator's proposed approach to enforcing the requirements of the PSRs 2017 for which it is responsible.	Independent ATM deployers, operators of payment systems, and direct participants in SFD designated payment systems which provide indirect access to those payment systems for other PSPs

**1.26** We are giving respondents eight weeks to provide us with feedback on this consultation. We consider this consultation window appropriate as we have limited discretion in implementing the PSRs 2017 and we believe providing confirmed guidance, rules and directions sooner (once the consultation is concluded) will assist businesses as they prepare for the implementation of PSD2. As we have stated above, the majority of the requirements introduced under PSD2 must be implemented by 13 January 2018. The changes that we propose would take effect from 13 January 2018, unless we state otherwise in this CP.

**1.27** There are other aspects of our procedures, rules and guidance on which we are not currently in a position to consult. Placeholders are marked in the draft revised Approach Document and we will consult, if appropriate, when we are in a position to do so.

### Who does this consultation affect?

**1.28** This consultation affects existing PSPs, who will be subject to the PSRs 2017, e-money issuers that will be subject to the amended EMRs, and their customers. It also affects businesses not currently authorised or registered with the FCA that carry on (or intend to carry on) payment-related activities. Business that will be affected include:

- banks, building societies and credit unions
- e-money issuers
- non-bank card issuers

- money remitters
- merchant acquirers
- businesses that provide services that aggregate customers' bank account data, or otherwise access these data in order to make use of it (AIS)
- businesses that provide services that can initiate payments online between a customer's bank and the merchants bank (PIS)
- businesses providing services such as issuing limited network gift cards or travel cards
- businesses that provide payment transactions ancillary to their electronic communication networks or services, such as mobile and fixed line network operators

**1.29** The consultation also affects businesses that are subject to regulation by the Payment Systems Regulator:

- operators of payment systems
- direct participants in Bacs, Faster Payments Service, and CHAPS, who provide other PSPs with indirect access to those payment systems
- independent ATM deployers

### **Is this of interest to consumers?**

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**1.30** This paper will be of interest to consumers who use payment services or e-money. This includes those who make use of payment services that are newly being brought within the scope of regulation. Under PSD2 consumers will have greater access to innovative services to help them manage their payments and payment accounts.

### **Equality and diversity considerations**

**1.31** The FCA has conducted an initial equality impact assessment of the FCA proposals, as required under the Equality Act 2010, to ensure that equality and diversity implications are considered. This includes an assessment of potential impacts arising from each of our policy proposals.

**1.32** The main outcomes of our initial assessment are:

- the impact is expected to be neutral or positive for all consumers
- no potential negative impact has been identified for any of the groups with protected characteristics

**1.33** The Payment Systems Regulator has also conducted an initial equality impact assessment of its proposals and made the same conclusions in its assessment.

**1.34** The FCA and Payment Systems Regulator would welcome feedback on their respective equality impact assessments.

### Related ongoing work

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- 1.35** We will be consulting separately on regulatory fees for PSPs, including changes resulting from PSD2, in our spring 2017 fees CP.
- 1.36** Also, the second Markets in Financial Instruments Directive (MiFID II), which will affect some PSPs, will take effect from 3 January 2018. MiFID II increases the scope of foreign exchange instruments that will be regarded as derivatives (see Article 10 of Commission Delegated Regulation 571/2017).<sup>8</sup> PSPs carrying out activities in relation to foreign exchange forwards should review whether they need to be authorised as an investment firm under MiFID II. If applicable, firms should submit an application to us as soon as possible in order to have the correct permissions in place from 3 January 2018. Further information is available in our “MiFID II – Application and notification user guide”.<sup>9</sup>

### Next steps

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#### What do you need to do next?

- 1.37** We welcome comments on our proposed changes to our Handbook and on the revised Approach Document. Please respond to the consultation questions by 8 June 2017.

#### How?

- 1.38** Use the online response form on our website or write to us at the address on page 2.

#### What will we do?

- 1.39** Following this consultation, we will consider feedback and finalise our rules, directions, Perimeter Guidance, and revised Approach Document, after the Treasury finalises the PSRs 2017. We will take into account any other relevant legislative developments when finalising our policy approach. We expect to publish our Policy Statement (PS) in Q3 2017.
- 1.40** The Payment Systems Regulator will consider feedback and finalise its Approach Document and powers and procedures guidance after the Treasury finalises the PSRs 2017. The Payment Systems Regulator expects to publish these final documents alongside the FCA PS in Q3 2017.
- 1.41** As set out above, we have covered the majority of the changes being brought about by PSD2 in this consultation. We will also issue a further consultation, when the EBA finalises certain guidelines and the Commission publishes Regulatory Technical Standards in the Official Journal of the EU. This further consultation will include proposed forms such as those for authorisation of small payment institutions (small PIs), incident reporting, and operational risk. It will also include other matters related to the EBA mandates such as EBA Guidelines on professional indemnity insurance for PISPs and AISPs. We intend to issue this consultation in mid-2017, before confirming our proposals in autumn 2017. This consultation may be affected by the timings of the various EBA work streams, which are subject to change.

<sup>8</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN>

<sup>9</sup> FCA, MiFID II – Application and notification user guide, <https://www.fca.org.uk/publication/documents/mifid-ii-application-notification-guide.pdf>

## 2. Changes to the perimeter and our guidance in PERG

### Who should read this chapter

Businesses carrying out payment-related activities, including exempted and unregulated businesses, but also authorised or registered businesses, which may need to consider whether the PSRs 2017 apply to unregulated parts of their business.

- 2.1** PSD2 sets the perimeter for payment related activities and this determines which businesses need to seek an authorisation or registration from us. PSD2 aims to broaden the scope of payment services within regulation by bringing two new activities under regulation for the first time, and by narrowing the conditions which determine the types of businesses excluded from regulation. There has also been significant market change and innovation in payment services in recent years, which means that some types of business may no longer meet the conditions for using exclusions.
- 2.2** In this chapter we summarise our proposed changes to chapter 15 of the Perimeter Guidance Manual (PERG) and the revised Approach Document (Chapter 3 in particular) in light of the perimeter changes in PSD2 and recent developments in payment services. Our guidance seeks to help businesses understand whether they will now be brought within regulation, and therefore may need to be authorised in order to continue this activity from 13 January 2018.
- 2.3** We also address some areas where we believe the current perimeter is not fully understood by businesses. We additionally set out how we will implement notification requirements for businesses operating under two of the exclusions from regulation.
- 2.4** Appendix 1 of this CP outlines specific drafting amendments we propose to make to chapter 15 of PERG. Where these changes read across to e-money issuers we will also update chapter 3A of PERG.
- 2.5** The PERG text and revised Approach Document are based on the Treasury's draft legislation. The legislative framework is still being finalised, and we may need to make some amendments to reflect the final version of the PSRs 2017.

### Existing guidance

- 2.6** For businesses carrying out payment-related activities in the UK, chapter 15 of PERG currently provides guidance on the scope of the PSRs 2009. It is aimed at helping these businesses determine whether any activity they carry out is a payment service in the scope of the PSRs 2009 and certain rules and guidance in our Handbook and to consider whether they need to be authorised or registered to provide payment services in the UK.

- 2.7** PERG 3A provides the equivalent guidance for businesses that may be issuing e-money.

### **Summary of perimeter and PERG changes**

- 2.8** There are a number of changes we propose to make to address changes introduced by PSD2, and provide clarity in areas where the perimeter is not well understood. In summary, we propose amendments to PERG covering the following areas:

- the regular occupation or business activity test
- exclusions and notifications for excluded businesses
- definitions
- changes to the perimeter – newly regulated activities under PSD2

### **Clarification of how the perimeter applies to businesses**

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- 2.9** In addition to considering changes to the perimeter brought about by PSD2, we are making clarifications to help businesses better understand whether their activities constitute regulated payment services business, as set out in PSD2 and the Treasury's implementing regulations.

#### **Regular occupation or business activity test**

- 2.10** If a business provides payment services in the UK as a regular occupation or business activity it will be subject to the PSRs 2017, unless an exclusion applies.

- 2.11** We are not substantially changing our guidance on the regular occupation or business activity test (Q9 in PERG 15). However, we are aware that questions have arisen about the precise application of this test, particularly for businesses that carry on activities other than payment services. We are providing some more information in order to help businesses determine whether or not they fall within the perimeter of the PSRs 2017, and so require authorisation or registration.

### **Exclusions from regulation as a payment service and notifications for excluded businesses**

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- 2.12** PSD2 makes changes to some of the excluded activities, and these are listed in Part 2 of schedule 1 to the draft PSRs 2017. Some of these changes mean that some businesses undertaking activities previously excluded from regulation may need to be authorised in order to continue this activity from 13 January 2018. We are making clarifications to help businesses better understand whether their activities constitute regulated payment services business. There are also new notification requirements for businesses operating under certain exclusions.

#### **Commercial agent exclusion**

- 2.13** Under PSD, payment transactions made via commercial agents could be exempt under certain conditions. The exclusion applied where payment transactions between a payer and payee were made through a commercial agent with permission to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or payee.

- 2.14** Under PSD2 this exclusion has been amended. The amended exclusion will not apply where a commercial agent acts on behalf of both parties in a transaction (payer and payee). Also, permission to act on behalf of either party must now be given via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee but not both the payer and the payee.

***Application to online fundraising and other e-commerce platforms and other businesses***

- 2.15** PSD2 is clear that some e-commerce platforms are intended to be within the perimeter, and we are adding a new question on the commercial agent exclusion (Q33A in PERG 15), to help these businesses understand whether they fall under the exclusion.
- 2.16** We have added a new question to help persons collecting cash on behalf of a charity and then transferring the cash to the charity electronically understand the circumstances in which they will fall within the scope of the PSRs 2017. This is particularly relevant for fundraising platforms.

***Implications for businesses***

- 2.17** Businesses that are currently operating under the commercial agent exclusion should refer to the proposed perimeter guidance (for instance Q33A and Q34A in PERG 15) in order to consider whether they need to obtain authorisation from the FCA.

***Limited network exclusion***

- 2.18** Under the PSRs 2009, a business that offers a payment service may be excluded from regulation if its service is based on instruments that can be used only in a limited way to acquire goods or services in certain limited circumstances (often called the “limited network exclusion”) e.g. some gift or store cards.
- 2.19** PSD2 aims to standardise the application of the limited network exclusion across the EU, and makes changes to the exclusion which mean it now applies less widely. One limb of the exclusion’s application is narrowed so that it relates to instruments used to acquire a “very” limited range of goods and services (rather than “limited range” set out previously in PSD). A new limb excludes certain instruments provided for social or tax purposes from regulation under the PSRs 2017. Our proposed amendments to Q40 and Q41 in PERG 15 give guidance on the scope of the amended exclusion.

***Implications for businesses***

- 2.20** In light of the narrowing of the exclusion, more businesses will need to become authorised from 13 January 2018. Businesses should consider our guidance which sets out business models we believe could make use of the exclusion. Businesses should also consider the requirement to notify if they do use the exclusion (see below in this chapter).

***Electronic communication network exclusion***

- 2.21** PSD2 introduces changes to the existing exclusion for telecommunications, digital or IT operators under PSD (commonly known as the “digital download” exemption).
- 2.22** Under PSD2 the digital download exemption has been removed and replaced by the electronic communication network (ECN) exclusion. The ECN exclusion now refers specifically to the purchase of digital content and voice-based services which are charged to the related bill, regardless of the method of consumption. It also refers to charitable giving and the purchase of tickets (e.g. for transport, entertainment, car parking or entry to venue) via electronic devices.
- 2.23** In addition, PSD2 introduces value limits for this excluded activity. Businesses can only benefit from the exclusion if the payment transactions they provide do not exceed limits of €50 per

single payment transaction or €300 cumulative value of payment transactions for an individual subscriber per month.

- 2.24** Based on the draft PSRs 2017, we have proposed guidance on the ECN exclusion in PERG 15 (Q41A). We are aware that the Treasury is consulting on the whether the exclusion should apply to intermediaries, and we may need to amend this guidance once the PSRs 2017 are finalised.

#### ***Implications for businesses***

- 2.25** Electronic communication network operators, providers of electronic communication services and all intermediaries (such as those operating under the PSA PayForIT scheme) should review the revised PERG and determine whether or not they benefit from the revised exclusion.

#### **Notifications for businesses operating under the limited network exclusion or electronic communication network exclusion**

- 2.26** PSD2 introduces a notification requirement for businesses that are providing, or intend to provide services that benefit from the limited network exclusion. These businesses must notify the FCA where the payment transactions executed through these services exceeds €1 million in the previous 12 months.

- 2.27** PSD2 also introduces a new notification requirement for businesses providing payment transactions that they consider to benefit from the ECN exclusion.

#### ***Form and content of the notifications***

- 2.28** We propose to direct the form, timing and content of these two notifications (the draft notification forms and the directions are provided at Appendix 2 of this CP).

- 2.29** Beyond the information mandated by PSD2 we propose to direct businesses to provide additional information that is necessary for us to process these notifications. We will also require an explanation by the businesses of how the notified product or service falls under the exclusion. We would expect businesses to be able to provide this information if they are operating under either of these exclusions.

#### ***Audit opinion – ECN notification***

- 2.30** Under the new requirements introduced by PSD2, businesses relying on the electronic communication network exclusion must also provide the FCA, on an annual basis, an audit opinion that the transactions to which the service relates are within the PSD2 transaction limits. We propose this be submitted alongside the electronic communication network exclusion notification.

#### ***Timing of the notifications***

- 2.31** For information on timing of the notifications (including for business that are already operating under the exclusion prior to 13 January 2018), please refer to the draft direction in Appendix 2.

### **Definitions in the PSRs 2017**

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#### **Payment Instrument**

- 2.32** PSD2 and the PSRs 2017 introduce a new definition of the payment service of ‘issuing a payment instrument’. We are proposing guidance in Q21 in PERG 15 on this new definition.

- 2.33** Additionally, we are aware that there is some misunderstanding in the market about the breadth of the definition of “payment instrument”, and some stakeholders raised this in response to our

February 2016 Call for Input on the FCA's approach to the current payment services regime. We are clarifying, in Q21 in PERG 15, that in our view, mobile applications – 'apps' – can be payment instruments.

### **Merchant acquiring**

- 2.34** 'Acquiring of payment instruments' was specified as a payment service in PSD, although 'acquiring' was not defined. PSD2 introduces a new definition of acquiring that is designed to include a potentially broader set of different business models, as well as traditional merchant acquiring of card transactions. We have updated Q21 of PERG 15 to reflect changes to the definition of merchant acquiring. This guidance will be relevant to, for example, businesses that acquire transactions but are not an 'acquirer of record' with a card scheme.

### **Newly regulated activities: Account Information Services (AIS) and Payment Initiation Services (PIS)**

- 2.35** PSD2 aims to bring regulation up to date with developments in the market, and to capture new types of payment services. Under PSD2, AIS and PIS come under regulation for the first time. Any business intending to provide these services from 13 January 2018 must be authorised or registered unless they are exempt from regulation under the PSRs 2017.
- 2.36** Given these activities are new to regulation, we have sought to ensure that our interpretation of the provisions of PSD2 and the draft regulations is broad enough to be relevant to new business models that may emerge, while also providing guidance on the businesses we would view as being in and out of scope. PSD2 provides that those authorised or registered to carry out AIS or PIS enjoy certain statutory rights to access a customer's payment account. As such, we consider it important to provide some examples of the business models that might fall within the scope of the legislation (e.g. how an AISP might provide consolidated information to a customer).
- 2.37** We have proposed new questions in PERG 15 (Q25A and Q25B), to provide guidance on the types of business activity that constitute AIS and PIS. Other changes relevant to providers of AIS and PIS, as well as account servicing payment services providers are discussed in Chapter 7 of the CP.
- 2.38** Businesses should refer to our new PERG questions and the revised Approach Document when they are considering whether PSD2 requires them to seek registration or authorisation as a provider of AIS or PIS.

**Q1: Do you agree with our interpretation of the commercial agent exclusion and its application to the business models as set out in the draft PERG text (Appendix 1)? If not, please explain why not and suggest an alternative approach.**

**Q2: Do you have any comments on our proposed limited network exclusion guidance in the draft PERG text (Appendix 1)? Do you have any comments on the proposed limited network exclusion notification (draft direction and draft template in Appendix 2)?**

- Q3:** Do you have any comments on our proposed electronic communication network exclusion guidance in the draft PERG text (Appendix 1)? Do you have any comments on the proposed electronic communication network exclusion notification (draft direction and draft template in Appendix 2)?
- Q4:** Do you agree with the proposed guidance related to the definition of AIS and PIS in PERG 15.3? Are there any business models which you believe could be inappropriately viewed as in or out of scope in light of our guidance? If so, please provide us with details of these business models.
- Q5:** Do you have any other comments on the perimeter guidance we propose? If you disagree with any of the guidance we have proposed, please explain why.

## 3. Our approach to authorisation and passporting

### Who should read this chapter

Businesses looking to obtain authorisation or registration from the FCA in order to conduct payment services business or issue e-money, as well as payment institutions (PIs) and e-money institutions (EMIs) seeking to retain their current authorisation or registration. This chapter is also relevant to businesses wishing to passport, and to persons looking to acquire control in an authorised PI.

- 3.1** PSD2 makes changes that mean new businesses will need to provide additional information and meet new conditions when seeking authorisation or registration to become a PI or EMI. Existing PIs and EMIs will need to provide additional information by deadlines set out in the PSRs 2017 and must meet the conditions for authorisation or registration (including the new conditions) if they wish to continue to provide payments services or to issue e-money after the transitional period has ended.
- 3.2** PSD2 also introduces a registration scheme for businesses that will only provide payment services that are account information services (registered account information services – RAISPs) regulated under the PSRs 2017.
- 3.3** This chapter provides an overview of the new authorisation requirements for businesses as well as the re-authorisation and re-registration requirements for existing PIs and EMIs. The detailed requirements are included in Chapter 3 of the revised Approach Document (Authorisations and Registration), which should be read alongside this chapter. In addition, Chapter 3 of the revised Approach Document signposts to EBA guidelines which, when final, will set out the detail of the information and documentation requirements for authorisation as a PI or EMI. The EBA's consultation on these guidelines closed on 3 February 2017.<sup>10</sup> The guidelines will be published on the EBA's website once approved by the EBA's Board of Supervisors.
- 3.4** Under the PSRs 2017 we are also able to determine the information that must be provided by prospective small PIs and small EMIs and we set out how we propose to make use of this discretion.
- 3.5** This chapter also sets out our proposed approach to the change of control regime for authorised payment institutions (authorised PIs), as well as summarising for information changes to the passporting regime for authorised PIs, authorised EMIs and RAISPs.

<sup>10</sup> The EBA's consultation on Guidelines on authorisation and registration under PSD2 can be found here: <https://www.eba.europa.eu/-/eba-consults-on-guidelines-on-authorisation-and-registration-under-psd2>

### Authorisation and registration under the PSRs 2017

- 3.6** In order to provide payment services as a regular occupation or business activity, a business must get authorisation or registration from the FCA as a PI or EMI unless it is a credit institution (such as a bank or building society), falls into a special category of provider (such as a credit union) or falls within an exclusion, for example, the limited network exclusion. Businesses can apply for registration or authorisation depending on the nature and scale of the payment services activity they conduct.

### New requirements for businesses seeking to become authorised payment institutions (authorised PIs), authorised e-money institutions (authorised EMIs) or registered account information service providers (RAISPs)

- 3.7** The draft PSRs 2017 introduces new authorisations conditions for payment institutions. Applicants must carry on at least part of their business in the UK. If they intend to provide payment initiation services (PIS) or account information services (AIS) they must have professional indemnity insurance or a comparable guarantee that covers these activities. The EBA is issuing Guidelines addressed to competent authorities on the minimum professional indemnity insurance or comparable guarantee required for applicants wishing to provide AIS or PIS.<sup>11</sup> When these guidelines are finalised we will update our Approach Document (Chapter 3) to direct businesses as to the cover required.
- 3.8** Prospective authorised PIs and authorised EMIs will also need to provide us with additional information when they apply for authorisation. This includes a description of procedures in place to monitor security incidents, processes to monitor access to sensitive payments data, and business continuity arrangements (see Schedule two to the PSRs 2017 and the amendments to the EMRs set out in Schedule eight).
- 3.9** Businesses which only provide AIS will be able to seek registration by the FCA as a RAISP. The conditions for registration are less extensive than for authorisation, and less information will be required for registration. Prospective RAISPs are not, for example, required to provide information relating to statistical data collection or qualifying holdings in the RAISP. The EBA Guidelines will also set out the detail of the information and documentation requirements for registration as a RAISP.
- 3.10** We have updated Chapter 3 of the revised Approach Document to set out our proposed procedures for authorisation of PIs and EMIs and RAISP registration. We are obliged to make every effort to comply with the EBA Guidelines, and we intend to do so by requiring applicants for authorisation as an authorised PI, authorised EMI or RAISP to provide the information set out in the EBA Guidelines in support of their application. We will develop the application forms to reflect the EBA Guidelines, and publish them once the Guidelines are finalised (but we do not propose to consult on the application forms for new authorised PIs, authorised EMIs or RAISPs).

**Q6: Do you agree with the proposed approach to implementing the new authorisation requirements for authorised PIs, and authorised EMIs, and the registration requirements for RAISPs? If not, please explain why not and suggest an alternative approach?**

<sup>11</sup> The EBA consultation on minimum professional indemnity insurance or comparable guarantee can be found here: <https://www.eba.europa.eu/-/eba-consults-on-guidelines-on-professional-indemnity-insurance-or-comparable-guarantee-for-payment-initiation-and-account-information-services-provide>

### **New requirements for businesses seeking to become small payment institutions (small PIs) and small e-money institutions (small EMIs)**

- 3.11** Under the draft PSRs 2017 and amended E-money Regulations – as under the existing regulations – the FCA can decide what information an application for registration as a small PI or a small EMI must contain.
- 3.12** In addition to the information we currently require, we propose to ask applicants for the following information:
- a description of the applicant’s procedure for monitoring, handling and following up security incidents and security related customer complaints, including an incidents reporting mechanism which takes account of the notification obligations
  - a description of the applicant’s process for filing, monitoring, tracking and restricting access to sensitive payments data
  - a description of the principles and definitions used by the applicant in collecting statistical data on performance, transactions and fraud
  - a statement of the applicant’s security policy including
    - a detailed risk assessment in relation to the payment services to be provided, including risks of fraud and illegal use of sensitive and personal information, and
    - a description of;
      - how such measures ensure a high level of technical security and data protection, including such security and protection for the software and IT systems used by the applicant and any undertakings to which the applicant outsources any part of its operations; and
      - the applicant’s measures to comply with regulation 98(1) of the PSRs 2017, taking into account any guidelines issued by the European Banking Authority under Article 95(3) of the PSD2.
- 3.13** We think it is appropriate for applicants as small PIs and small EMIs to provide this information because under the PSRs 2017 they will be required to comply with requirements to establish a framework for management of operational and security risk and submit annual assessments, report incidents and provide statistical information on fraud.

**Q7: Do you agree with our proposal to require prospective small PIs and small EMIs to provide us with information relating to security, fraud and sensitive payments data?**

- 3.14** **Application of the EBA Guidelines to small PIs and small EMIs**  
The information we currently require from small PIs and small EMI applicants is the same as that from applicants for authorisation, where the relevant requirement applies (for example the information we ask for on directors and managers). If we keep this approach for applications under the PSRs 2017 or amended EMRs, this would mean requiring applicants to provide all the information in the relevant EBA Guidelines.

- 3.15** We are currently considering whether application of the EBA Guidelines to small PIs and small EMI applicants in this way is appropriate. As the Guidelines are not yet finalised, we are not yet able to reach a view, but are inviting initial views on the extent to which the EBA Guidelines (as currently drafted)<sup>12</sup> should be applied to small PIs and small EMIs.
- 3.16** The draft revised Approach Document does not currently include any guidance on the registration requirements. We will consult on this part of the revised Approach Document chapter, along with the small PI and small EMI application forms in mid-2017.

**Q8: Which parts of the EBA Guidelines on authorisation and registration (currently in draft form) do you believe should be applied to applicants to become small PIs or small EMIs? Is there anything else we should consider?**

### **Re-authorisation and re-registration requirements for existing payment institutions (PIs) and e-money institutions (EMIs)**

- 3.17** In order to continue providing payment services or issuing e-money, PSD2 requires existing PIs and EMIs to provide additional information.
- 3.18** Under the proposals in the draft PSRs 2017:
- Authorised PIs, authorised EMIs and small EMIs will need to provide this new information to the FCA before 13 April 2018 in order to continue operating on or after 13 July 2018.
  - Small PIs will need to provide this new information to the FCA before 13 October 2018 in order to continue operating on or after 13 January 2019.
- 3.19** We set out guidance on the transitional arrangements in part V of Chapter 3 of the revised Approach Document. Authorised PIs and authorised EMIs must provide the FCA with any information specified in the PSRs 2017 and the Guidelines that they have not previously provided and will need to confirm whether there has been any significant change in the information previously provided that is relevant to meeting the authorisation conditions.
- 3.20** Existing small PIs and small EMIs will also be required to seek re-registration under the PSRs 2017. We propose to require applicants currently registered under the PSRs 2009 or EMRs only to provide information not previously provided at registration – information specified in paragraphs six, seven, nine and ten of Schedule 2 to the draft PSRs 2017, as well as any information required by any application of the EBA Guidelines.
- 3.21** We propose to provide bespoke forms for businesses seeking re-authorisation or re-registration and we will consult on these forms in mid-2017. During the transitional period, and if they successfully obtain re-authorisation or re-registration, PIs and EMIs will not need to re-register agents.
- 3.22** The FCA is required to treat applications under the transitional arrangements in the same way as any other application for authorisation or registration. Therefore we will assess such

<sup>12</sup> The EBA's consultation on Guidelines on authorisation and registration under PSD2 can be found here: <https://www.eba.europa.eu/-/eba-consults-on-guidelines-on-authorisation-and-registration-under-psd2>

applications against all the relevant authorisation or registration conditions, even where these have not changed.

- 3.23** As with applications from new businesses, the FCA can consider applications for registration and authorisation under the PSRs 2017 from 13 October 2017. We would encourage applications to be made as early as possible to avoid the risk of having to cease trading. Existing businesses that have not successfully been re-authorised or re-registered before the end of the transitional timeframes will be automatically removed from the Financial Services Register. Under the PSRs 2017, there is no right of appeal should an existing PI or EMI fail to provide the information required to determine their application for re-authorisation or re-registration in time, and so they would have to stop carrying on payment services or issuing e-money at the end of the transitional period.

### PSD applications in progress

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- 3.24** We expect there will be a small number of businesses who apply for authorisation or registration under the PSRs 2009 whose applications will not have been determined before the PSRs 2017 come into force on 13 January 2018. These applications will be automatically treated as applications under the PSRs 2017 and we will notify such businesses of any additional information that is required to determine their application.
- 3.25** Businesses that receive an authorisation from the FCA under the PSRs 2009 between 13 October 2017 and 13 January 2018, and commence the provision of services, will need to provide the new information required for authorisation under the PSRs 2017 by 13 April 2018.

### Changes in qualifying holdings

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- 3.26** PSD2 introduced new requirements for changes in qualifying holdings in an authorised PI. To implement these changes, and to align the position for authorised PIs with that for EMIs, the Treasury proposes to apply (with modification) Part 12 of FSMA.
- 3.27** To reflect these changes, we intend to take the same approach for authorised PIs as we currently take for EMIs, as set out in Chapter 4 of our revised Approach Document and Chapter 11 of the Supervision manual in the FCA Handbook (in particular, SUP 11.3 and SUP 11 Annex 6G).
- 3.28** Where a person<sup>13</sup> wishes to acquire, increase or reduce control, or to cease to have control over a payment institution and this causes them to pass a “qualifying holding” threshold (significant influence, 10%, 20%, 30%, or 50% control), the person will now need to notify the FCA.
- 3.29** Our revised Approach Document sets out our proposed approach to dealing with change of control applications for authorised PIs and EMIs. We will amend the current change in control forms used by EMIs and FSMA firms to also apply it to authorised PIs.<sup>14</sup>
- 3.30** We separately set out proposals to require authorised PIs to submit the annual controllers report and annual close links report in Chapter 5 of this CP.

<sup>13</sup> ‘Person’ is defined in the FSMA glossary as: ‘(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership).’

<sup>14</sup> The current forms for EMIs can be found here: <https://www.fca.org.uk/firms/authorisation-registration-electronic-money-institutions/change-qualifying-holdings>

- 3.31** There are no new changes in qualifying holding requirements for small PIs in the draft PSRs 2017. Small PIs will need to continue to notify us of change in qualifying holding in accordance with the current requirements.

**Q9: Do you agree with our proposed approach to change in qualifying holdings for authorised PIs including that authorised PIs use the change in control forms already used by EMIs and FSMA firms? If not, please explain why not and suggest an alternative approach.**

### Passporting

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- 3.32** Passporting is the means by which a business authorised in one EEA Member State is permitted to provide services in another EEA Member state without requiring additional authorisation.
- 3.33** There are a number of changes to the passporting regime under PSD2, which we are summarising here for information. Authorised PIs and authorised EMIs that currently exercise their passporting right or intend to do so under the PSRs 2017 should review Chapter 6 of our revised Approach Document. In particular, there are significant changes to:
- the information to be provided by the applicant to the Home State competent authority in the application to exercise passporting rights;
  - the passporting notification process between regulators that may impact the timeframes in which authorised PIs, authorised EMIs and RAISPs can begin their passporting activities; and
  - the powers of Host State competent authorities and reporting requirements on those exercising their right to establishment.

## 4. Conduct of business including complaints handling

### Who should read this chapter

Payment service providers (PSPs) including card-based payment instrument issuers ("CBPIIs"), e-money issuers, and credit institutions subject to BCOBS including credit unions.

- 4.1** The FCA is the conduct regulator for credit institutions (including credit unions), payment institutions (PIs), e-money institutions (EMIs) and registered account information service providers (RAISPs), including those that are EEA registered or authorised, when providing services from an establishment in the UK.
- 4.2** This chapter addresses changes we are making to guidance on conduct of business requirements for PSPs in our revised Approach Document to: reflect changes made by PSD2; respond to feedback we received through our February 2016 Call for Input on the FCA's approach to the current payment services regime;<sup>15</sup> and reflect market developments.
- 4.3** We also consult on changes to rules and guidance in our Dispute Resolution: Complaints Sourcebook (DISP) on how PSPs and e-money issuers must handle complaints, in order to implement the requirements of PSD2. This includes changes which we are consulting on jointly with the Financial Ombudsman Service. Reporting on complaints is dealt with separately in Chapter 5 of the CP.
- 4.4** We are consulting on changes to our conduct of business rules and guidance in our Banking: Conduct of Business Sourcebook (BCOBS) to extend some of the new requirements introduced by PSD2 to retail banking services and service providers outside the scope of the PSRs 2017. These changes apply to credit unions in respect of the payment services they provide, as well as all other deposit takers in relation to conduct of business matters that are outside the scope of the PSRs 2017 (for example when providing fixed term savings accounts).
- 4.5** This chapter does not cover proposals which are specific to AIS and PIS, as these are addressed in Chapter 7 of the CP.

<sup>15</sup> The Call for Input can be found here: <https://www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime> The Feedback Statement (FS16/12) was published in November 2016 and can be found here: <https://www.fca.org.uk/publication/feedback/fs16-12.pdf>

## Changes to guidance in Chapter 8 of the Approach Document

**4.6** PSD2 brings about a number of changes to conduct of business rules. While these are reflected in Treasury regulations, they require a number of consequential amendments to the Approach Document. We have also sought to update it in light of responses to our Call for input, which asked for further illustration in a number of areas. Chapter 8 of the revised Approach Document should be read alongside this CP chapter. We set out the most significant changes being made to the guidance in this chapter.

### Interactions with other legislation

**4.7** In Chapter 8 of the revised Approach Document we include some brief information about other legislation which applies to PSPs, to make them aware of their wider obligations. Responses to our Call for Input suggested updates to this section would be useful given developments in the regulatory landscape since 2009. We have provided updates covering:

- Consumer Credit Act – as a result of changes made under the PSRs 2017 relating to how the PSRs 2017 and consumer credit regime interact. We have also provided guidance on the interaction between the two regimes as a result of feedback from the Call for Input. We have provided some examples of where information would not need to be provided under the PSRs 2017 as a result of it already being provided under the Consumer Credit Act. We have also included a table clarifying when PSPs are required to apply the PSRs 2017 regime and when they are required to apply the consumer credit regime in relation to overdrafts and credit cards.
- Consumer Protection from Unfair Trading Regulations – we have provided a non-exhaustive list of practices that we consider to be potentially misleading. We have also confirmed the role of the FCA in enforcing these regulations.
- BCOBS – in particular to provide guidance for credit institutions on when they should apply the PSRs 2017 and the BCOBS regimes

**4.8** We have included other updates (for example, on the EC Wire Transfer Regulation and the Consumer Rights Act 2015 and the directive on security of network and information systems) because of changes in the law since the Approach Document was last updated and due to feedback from the Call for Input.

### Information requirements

**4.9** Part I of Chapter 8 of the revised Approach Document covers the information PSPs are required to provide customers. We have updated this part of the Approach Document to reflect changes in the PSRs 2017. We set out the main changes below. We are also making a number of other changes to Chapter 8 of the revised Approach Document relating to information requirements which we list in annex 4 and invite comment on.

### Monthly statements (Regulations 53 and 54 of the PSRs 2017)

**4.10** Most PSPs currently meet the requirements on the provision of information on individual transactions by issuing monthly statements. Changes in PSD2 (reflected in regulations 53 and 54 of the draft PSRs 2017) mean that payers would now need to 'opt in' to receiving monthly statements. Where a payer did not opt in, the default requirement would be for a PSP to provide information as soon as reasonably practicable after each transaction.

**4.11** We are aware that Treasury has consulted on whether to exercise a member state option in PSD2 to require PSPs to provide a monthly statement. This would remove the possibility that

PSPs would be required to provide information after every transaction where a payer had not opted in to receiving monthly statements.

- 4.12** We understand the Treasury may exercise this option, given the potential burden on PSPs of not doing so. We have included two alternative versions of draft guidance on regulations 53 and 54 of the PSRs 2017 in the draft revised Approach Document and propose to take forward the appropriate version once a decision has been taken by the Treasury on whether to exercise the member state option. We are seeking consultation respondents' views on both sets of the proposed guidance.

#### ***Durable medium***

- 4.13** We have updated our guidance in the Approach Document clarifying the differences between "provision" of information and "making available" information, and the meaning of "durable medium", taking into account recent judgments of the Court of Justice of the European Union. This clarification is particularly important for PSPs when considering, for example, the application of the information requirements of the PSRs 2017 to communications via online banking portals.

#### ***Rights and obligations in relation to the provision of payment services***

- 4.14** Part II of Chapter 8 of the revised Approach Document includes guidance on requirements on charging, authorisation and execution of payment transactions and liability. We set out the main changes below. We are also making a number of other changes to Chapter 8 of the revised Approach Document relating to rights and obligations which we list in annex 4 and invite comment on.

#### ***Execution time and value dating***

- 4.15** We received requests in our Call for Input for further clarification on value dating for incoming payments (Regulation 86 to 89 of the PSRs 2017). We have added additional guidance in Chapter 8 of our revised Approach Document on the application of the value dating requirements for incoming payments, including reminding businesses of the definition of 'business day' in the legislation; clarifying when funds are received on a payee's PSP's account; and making it clear that a cut off time cannot be set for the receipt of funds.

#### ***Unauthorised transactions***

- 4.16** Customers are entitled to refunds from their PSP in the event of an unauthorised or fraudulent transaction on their account in certain circumstances. We have updated our guidance (Chapter 8 of the revised Approach Document) to reflect changes in the draft PSRs 2017 that relate to the situation where a customer is entitled to compensation for an unauthorised payment transaction. Regulation 77 of the PSRs 2017 reduces to £35 the maximum amount that a customer can be made liable for in the event of an unauthorised transaction arising from the use of a lost or stolen payment instrument, or from the misappropriation of a payment instrument. The Regulations also specify examples of the situations where the customer is not liable for any amount (such as where the loss or theft of the payment instrument was not detectable by the payer prior to the payment).

#### ***Confirmation of availability of funds (Regulation 68 of the PSRs 2017)***

- 4.17** PSD2 introduces the concept of card-based payment instrument issuers ("CBPIIs"). These are PIs that issue payment instruments that are linked to an account held with a different account servicing payment service provider (ASPSP). These businesses can get confirmation of the availability of funds on the account held with the ASPSP, enabling CBPIIs to manage their credit risk. PSD2 creates the potential for CBPIIs to compete with ASPSPs when issuing payment instruments.

- 4.18** To assist both ASPSPs and CBPIIs we propose guidance on Regulation 68 of the PSRs 2017 on confirmation of availability of funds in Chapter 8 of our revised Approach Document.

***Payment transactions where the transaction amount is not known in advance (Regulation 78 of the PSRs 2017)***

- 4.19** The PSRs 2017 introduce new requirements on when and for how long funds can be blocked on an account where the transaction amount is not known in advance. Examples of this are credit or debit card pre-authorisations for hire of a car or hotel rooms when the amount of the authorisation is blocked on the account to ensure that there are funds available to pay the car rental or hotel bill. The new requirements have been introduced to enhance consumer protection and mitigate consumer detriment. Slow release of the block prevents the consumer from being able to make further purchases or access their funds despite availability of funds on the account.
- 4.20** Having engaged with relevant stakeholders we provide draft guidance on our expectations in relation to these new requirements (Chapter 8 of the revised Approach Document), including on blocking and expected release of funds. We have also provided guidance on our expectations when a different means of payment is used to pay than the card on which the funds are blocked.

**Q10: Do you agree with the guidance we propose in Chapter 8 of the revised Approach Document in relation to changes to information requirements, rights and obligations and other changes? If not, please explain why not and suggest an alternative approach. Please provide the paragraph number when commenting on specific wording.**

**Q11: Do you agree with the two versions of the guidance we propose in Chapter 8 of the revised Approach Document relating to monthly statements, including the guidance which assumes the Treasury exercises the member state option? If not, please explain why not and suggest an alternative approach**

### **Changes to complaints handling**

- 4.21** The FCA is responsible for setting the scope of the Financial Ombudsman Service's compulsory jurisdiction and the Financial Ombudsman Service is responsible for setting its complaint handling rules and the standard terms for the voluntary jurisdiction. Below we propose changes to the compulsory jurisdiction and the Financial Ombudsman Service proposes to mirror these changes in its voluntary jurisdiction and complaint handling rules; we are consulting jointly with the Financial Ombudsman Service on these changes.
- 4.22** PSD introduced measures to make sure there are adequate out-of-court complaint and redress procedures for the resolution of disputes between payment service users and PSPs. When implementing the original PSD we decided to extend our existing rules in DISP to PSPs authorised or registered under the PSRs 2009. The same approach was taken when implementing the EMD.

**4.23** Our DISP rules currently require that all regulated businesses, including PSPs, respond to all complaints from eligible complainants within eight weeks. We also introduced rules effective from June 2016, as part of our complaints handling review,<sup>16</sup> that dis-apply the complaint time limit rules for complaints resolved by the close of the third business day. Complaints resolved in this way must be accompanied by a summary resolution communication (SRC).

**4.24** PSD2 includes new requirements for dispute resolution which are different from the requirements of our current DISP rules. The most significant difference is the time limits for PSPs' handling of payment services complaints. PSPs will be required to respond to these complaints within 15 business days<sup>17</sup> (and 35 business days in exceptional circumstances, in which case a holding reply must be provided first). These requirements are intended to introduce a common approach to complaints handling across the EU and we have little discretion around their implementation.

### **Proposals**

**4.25** We propose to implement the requirements of PSD2 in relation to complaints handling by amending DISP in terms of its application to PSPs. We set out the draft DISP instrument in Appendix 1.

### **Complaints handling time limits**

**4.26** We propose new rules which will apply the new PSD2 complaint handling time limits to complaints concerning rights and obligations under Parts six and seven of the PSRs 2017. We define these in the Handbook glossary as "PSD complaints". We also propose applying these time limits to complaints concerning rights and obligations under part five of the EMRs. We define these in the glossary as "EMD complaints".

**4.27** We are applying these time limits to EMD complaints as well as PSD complaints because we consider the issuance of e-money to be closely linked to payment services, and we believe consumers would benefit from a consistent approach to complaints handling across both of these types of services. In practice we also believe most e-money businesses will find it more practical to maintain a single process for complaint handling.

**4.28** If they want to, PSPs can apply the PSD2 time limits to all of their complaints.

**4.29** Our DISP requirements will apply to complaints from eligible complainants;<sup>18</sup> however PSPs should note that the PSRs 2017 contain requirements for handling complaints from payment service users that are not eligible complainants (such as larger businesses).

**4.30** PSPs should also be aware that we intend to separately consult on expanding the definition of eligible complainant, so that more businesses, charities and trusts will be able to refer complaints to the Financial Ombudsman Service.

### **Complaints resolved by close of the third business day and the SRC**

**4.31** PSD2 introduces a requirement for PSPs to reply to PSD complaints 'addressing all points raised'. We have considered whether this PSD2 requirement means that we should change DISP 1.5 (complaints resolved by close of the third business day) for PSD complaints. However, article 101 (2) of PSD2 gives member states discretion to introduce or maintain rules on dispute resolution which are more favourable or advantageous to the payment services user. We consider DISP 1.5 to be more favourable because it allows for the complaints to be dealt with quickly by incentivising businesses to resolve them within three business days to reduce the cost

<sup>16</sup> FCA, CP14/30, Improving complaints handling, December 2014, <https://www.fca.org.uk/publication/consultation/cp14-30.pdf>

<sup>17</sup> Business day for the purpose of complaints handling (DISP 2.8) is defined in the glossary – see Appendix 1

<sup>18</sup> Under DISP 2.7.3 an eligible complainant is a consumer, micro-enterprise or charity or trustee with income under £1 million

of responding to complaints. We therefore propose that DISP 1.5 will apply to PSD and EMD complaints, and that SRCs should continue to be provided for these complaints.

#### ***Identifying PSD and EMD complaints***

- 4.32** Having engaged with stakeholders, we acknowledge that staff in some businesses may have difficulty in determining whether a complaint falls strictly within the criteria which would make them PSD or EMD complaints. In these circumstances, PSPs may consider handling all complaints, or all complaints about payment services (those that do not fall within part six and seven of the PSRs 2017 but do relate to the provision of a payment service), within PSD2 time limits. However, as we discuss in Chapter 5 on complaints reporting, we will expect PSPs to maintain arrangements so they can determine for reporting purposes, which PSD and EMD complaints have not been handled within PSD2 time limits.

#### ***Voluntary jurisdiction of the Financial Ombudsman Service***

- 4.33** The Financial Ombudsman Service proposes to change the voluntary jurisdiction rules so they can match the FCA's proposed changes to the compulsory jurisdiction, as set out above. It will not make changes to reflect new complaints reporting proposals (DISP 1.10B).

**Q12: Do you agree with our proposed Handbook changes to implement the PSD2 complaints handling requirements? If not, please explain why not and suggest an alternative approach.**

#### ***Referrals to the Financial Ombudsman Service***

- 4.34** Currently, under our rules in DISP, customers who are eligible complainants have the right to refer complaints to the Financial Ombudsman Service, once they receive a response from the PSP they have complained to, or if eight weeks have passed (and the time period for referring complaints has not passed). The Financial Ombudsman Service can also consider complaints earlier than eight weeks with the consent of the parties involved.
- 4.35** We are changing our rules to align with the new complaint handling timelines under PSD2. Eligible complainants will now have the right to refer their complaint (where it is a PSD or EMD complaint) to the Financial Ombudsman Service 35 business days after a PSP has received their complaint, or after 15 business days, if no holding response has been sent. Consumers will still be able to refer such complaints as soon as a final response has been received (even if this final response is received within 15 business days).
- 4.36** The Financial Ombudsman Service proposes to make a minor consequential amendment to its procedural rules to take account of the above proposed jurisdiction changes and ensure consistency across the rules.

**Q13: Do you agree with our proposed changes to the timeline for referrals to the Financial Ombudsman Service? If not, please explain why not and suggest an alternative approach.**

#### **Amendments to BCOBS**

- 4.37** The Banking Conduct of Business Sourcebook (BCOBS) sets out conduct of business rules for retail banking services. BCOBS complements the PSRs – where a conduct matter is regulated under the PSRs BCOBS does not apply.

- 4.38** In this section, we propose changes to BCOBS on the security of electronic payments, unauthorised transactions and defective payments. These changes reflect some of the changes introduced by PSD2. We believe that there is merit in extending these PSD2 provisions to increase consumer protection. This section also outlines other amendments to BCOBS that are unrelated to PSD2 but which we propose to make, having reviewed aspects of BCOBS, to clarify our expectations for businesses.
- 4.39** The draft BCOBS instrument is set out at Appendix 1.
- 4.40** These changes will impact deposit takers which are exempt from the PSRs 2017, but are subject to BCOBS, such as credit unions and all other deposit takers when conducting business that is not regulated by the PSRs 2017 (for example when providing certain savings accounts).
- Security of electronic payments***
- 4.41** Payment transactions are increasingly being carried out online, leading to increased concern about the security of such transactions, and PSD2 seeks to address this through requirements on the security of electronic payments. However, there are some circumstances in which payment transactions through online banking services will not be subject to the PSRs 2017.
- 4.42** Authorised persons under FSMA are already subject to our rules on systems and controls (SYSC), for example, the obligation to maintain policies and procedures to counter the risk that a firm might be used to counter financial crime (SYSC 6.1.1). However, we propose to make a new rule and guidance in BCOBS 5 which would require firms to consider explicitly the risk of fraud involved in allowing customers to make electronic payments. Firms would be required to have appropriate procedures and safeguards in place to ensure payments can be carried out in a safe and secure manner.
- 4.43** We also propose guidance in BCOBS stating that such procedures should include authentication procedures for the verification of the identity of the banking customer or the validity of the use of a particular payment instrument, proportionate to the risks involved. The draft guidance also indicates that (where regulation 100 (Authentication) of the PSRs 2017 does not apply) firms may nonetheless wish to consider the adoption of “strong customer authentication”, as set out in the Strong Customer Authentication and Common and Secure Communication Regulatory Technical Standard (SCA RTS). The SCA RTS (which we discuss further in Chapter 7 of this CP) has been published by the EBA but is still to be adopted by the Commission. This guidance would not apply until the SCA RTS takes effect.
- Unauthorised transactions***
- 4.44** The PSRs 2009 include provisions for the allocation of losses in respect of payments that the customer has not authorised (an ‘unauthorised payment’). We introduced rules in BCOBS for transactions outside of the scope of the PSRs 2009 to ensure customers had similar protections. We are now proposing changes to BCOBS to align with the PSRs 2017.
- 4.45** Under BCOBS 5.1.12R a banking customer currently may be made liable for a maximum of £50 in respect of an unauthorised transaction. The PSRs 2017 are reducing this maximum limit to £35. We propose to align BCOBS with this £35 limit as well as applying the exemptions to customer liability under regulations 77(2) of the PSRs 2017.
- 4.46** We are making these changes related to unauthorised transactions so that consumers have consistent levels of protection across different providers and products, even if they are exempt from the PSRs 2017. As well as improving consumer protection, we believe this consistency will increase certainty for businesses and also increase confidence in the market. We are not, however, mirroring the PSRs 2017 exactly. The draft regulations provide that a payer is not liable

for any losses where their PSP does not require strong customer authentication. We are not replicating this requirement in BCOBS because we consider it would impose disproportionate regulatory burden on firms, such as credit unions, which are outside the scope of the PSRs 2017.

#### ***Incorrect payment routing information***

**4.47** BCOBS 5.1.15R(2) currently states that where a payment is made to the wrong recipient because the customer provided the incorrect payment routing information (for example sort code and account number) the firm must make reasonable efforts to recover the sums involved. This was based on a requirement in the PSRs 2009.

**4.48** Under the PSRs 2017, the requirements for dealing with such situations have been extended:

- the payee's PSP must co-operate with the payer's PSP in its efforts to recover funds, in particular by providing to the payer's PSP all relevant information for the collection of funds
- if the payer's PSP is unable to recover the funds it must, on written request, provide the payer with all relevant information for the payer to claim repayment of the funds.

**4.49** We believe these changes, introduced through the PSRs 2017, provide consumers with appropriate protections by ensuring that customers can get information to help them to recover sums lost through misdirected payments which could not be recovered by the reasonable efforts of their provider. We therefore propose to extend these provisions to circumstances where the PSRs 2017 do not apply, by adding rules and accompanying guidance in BCOBS.

#### ***Other changes***

**4.50** We also propose to make minor amendments to BCOBS which do not relate to PSD2. We are removing unnecessary guidance on the FSCS, as this is covered by the Deposit Guarantee Schemes Directive, and is provided for in the PRA Handbook<sup>19</sup> We also propose to remove a reference to an out of date trade body publication in BCOBS.

**Q14: Do you agree with our proposed changes to BCOBS? If not, please explain why not and suggest an alternative approach.**

<sup>19</sup> See PRA rule 16.2

## 5. Regulatory reporting

### Who should read this chapter

Payment Service Providers (PSPs) and e-money issuers.

We indicate under each proposal the category of PSP or e-money issuer that will be affected by each change.

- 5.1** One of the tools that helps us to supervise authorised or registered businesses is the regular reporting we require that they provide us. PSD2 and the PSRs 2017 introduce new reporting requirements for PSPs. This chapter outlines our proposed changes as a result of these new requirements.
- 5.2** We also set out some changes to our general reporting requirements for payment institutions (PIs) and e-money institutions (EMIs) in order to support our revised supervisory approach, including reporting for registered account information service providers (RAISPs).
- 5.3** The reporting requirements for PSPs are set out in Chapter 13 of the revised Approach Document, and the new reporting templates and guidance notes for completion are set out in Appendix 1 of this CP.
- 5.4** The European Banking Authority (EBA) is currently finalising various Guidelines and Regulatory Technical Standards (RTS) which will cover requirements on reporting related to operational and security risk assessments, incident reporting, and information exchange between member states. We may need to consult on changes to our Handbook to introduce further reporting and notification requirements once the guidelines and RTS have been published in final form.

### Complaints reporting

- 5.5** The proposals below relating to complaints reporting are relevant to all PSPs and e-money issuers.
- 5.6** Our Dispute Resolution (DISP) rules already require FSMA-authorised firms, including those that also have an authorisation under the PSRs 2009 or Electronic Money Regulations (EMRs), to report on all complaints from eligible complainants.<sup>20</sup> Businesses which are subject to the DISP complaints reporting rule are required to submit data on how many complaints have been closed within three days and within eight weeks and provide data on the products or services complained about and the redress paid.

<sup>20</sup> Under DISP 2.7.3 an eligible complainant is a consumer, micro-enterprise or charity or trustee with income under £1 million

- 5.7** When PSD was implemented we did not extend the reporting rule to payment and e-money businesses solely regulated under the PSRs 2009 or EMRs, although we gave guidance to these businesses recommending they record complaints in order to assist the Financial Ombudsman Service if necessary.

### **Proposals**

- 5.8** We now propose to extend the reporting rule to payment institutions and e-money institutions to monitor compliance with the new complaints time limit requirements of PSD2, and to monitor complaints across the payment service and electronic money market for supervision purposes. Collecting complaints data will allow us to identify issues with certain sectors, product types, and individual businesses.
- 5.9** We will also consider publishing aggregated and anonymised data on complaints about payment services on the FCA website in the future (as is the case with other complaints we currently collect data on).<sup>21</sup> Doing so would enable businesses to compare their performance against their peers. We will also consider publishing respondent level data; these data would only be published where consent for publication is given.
- 5.10** To collect complaints information about payment services and e-money, we propose a new reporting form called “The Payment Services Complaints Return” (see Appendix 1). We will require this to be completed by all PSPs (including banks and building societies) and e-money issuers.
- 5.11** To make sure that PIs and EMIs have the complaints data they need for reporting purposes, we will extend the complaints record rule in DISP which states that businesses must keep a record of each complaint received and the measures taken in order to resolve it.

### ***PSD and EMD complaints***

- 5.12** As set out in Chapter 4 of the CP, to minimise the impact on businesses, we are proposing the new time limits should apply only for complaints that relate to the rights and obligations under parts six and seven of the PSRs 2017 and part five of the EMRs (PSD and EMD complaints). Not all complaints made to PSPs and e-money issuers will fall into this narrower definition. For example, a complaint about advertising of a money transfer service will not be captured, because it is not something regulated by parts six or seven of the PSRs 2017.
- 5.13** We have had extensive engagement about the complaints handling proposals with PSPs and e-money issuers and their trade bodies. We were told by trade bodies representing banks and building societies – which already report to the FCA on complaints under DISP reporting rules – that new reporting requirements could be costly. Cost would come from differentiating PSD complaints and EMD complaints from other complaints about payment services and e-money.
- 5.14** We believe these differentiation costs will already be incurred as a result of the changes to complaint resolution times introduced under PSD2 (which we discuss in Chapter 4). The only exception would be where a business decides to handle all complaints within PSD2 timeframes, which we do not expect to be common, and would be a choice rather than in response to a requirement we have set. However, we recognise that because of these difficulties, reporting PSD and EMD complaints could be complex.
- 5.15** We believe it is important for us to receive reporting on PSD and EMD complaints so we can identify compliance with the new complaint handling requirements. To have a more complete

<sup>21</sup> FCA, Complaints data, <https://www.fca.org.uk/firms/complaints-data>

view of the payment services market, we need this reporting to be consistent across all PSPs, including banks, building societies and e-money issuers.

**5.16** We have though tried to design the reporting requirements in a way which would reduce the burden on businesses. We propose that PSD or EMD complaints only be reported separately where they are not resolved within 15 business days. We were told by a trade association for banks that around 90% of payments-related complaints are resolved within 15 business days. This indicates that the PSD or EMD analysis will only need to be undertaken for the purposes of reporting on the minority of complaints.

**5.17** We set out more on our analysis of the costs and benefits of this proposal in our cost benefit analysis (Annex 2 of this CP).

***The 'payment services complaints' return***

**5.18** PSPs and e-money issuers will be required to report the total number of complaints about any payment services they provide and e-money they issue, broken down by the number of complaints for each type of payment service provided. We have proposed the categories in the reporting form because these are either payment services which are included in the Financial Ombudsman Service data, or newly regulated payment services – account information services (AIS) and payment initiation services (PIS). We intend to monitor trends in data about complaints relating to these newly regulated services closely.

**5.19** As set out above, we propose reporting requirements on how many PSD or EMD complaints have exceeded the new time limits, so that we can monitor compliance with the DISP time limits which apply only to the narrower subset of complaints.

**5.20** We also propose asking for transaction numbers in the reporting period, or for number of unique users, in the case of AIS. These data will allow us to put the number of complaints received by an individual business into context.

**5.21** The detailed requirements are set out in the proposed changes to DISP and in the draft reporting form and notes for completion (see Appendix 1 of the CP).

***Businesses that also complete DISP 1 Annex 1 complaints return form***

**5.22** Some FSMA-authorized firms that will have to complete the proposed new payment service complaints return already complete DISP 1 Annex 1<sup>22</sup> and will continue to be required to do so. This existing return asks for data on complaints under the category “banking and credit cards” which includes sub categories, such as credit cards. To the extent that the new proposed form asks FSMA-authorized firms to report on complaints about payment services, there will be a degree of overlap in reporting by these businesses. For example, complaints about credit cards will need to be reported in both forms.

**5.23** We considered implementing reporting on compliance with PSD2 complaint handling rules by amending the existing DISP 1 Annex 1 but considered that this would result in an overly complex form which would be difficult, and potentially more costly, for businesses to complete. Collecting data from across the payment services market with a single uniform return will help us to compare the performance of businesses in the payment services and e-money markets.

**5.24** If we decide to publish respondent level data on payment services complaints in future, we will ensure this does not duplicate other complaints data we publish.

<sup>22</sup> DISP 1 Annex 1 can be found here: [https://www.handbook.fca.org.uk/form/disp/DISP\\_01\\_ann\\_01\\_20160630.pdf](https://www.handbook.fca.org.uk/form/disp/DISP_01_ann_01_20160630.pdf)

**Submission deadline and reporting period**

- 5.25** We propose these data should be submitted annually and within 30 days of a PSP's accounting reference date (ARD)<sup>23</sup> (or, if it does not have an accounting reference date, 31 December). We have proposed that this report is annual, rather than bi-annual as with other complaints reports. Requiring annual reporting aligns our proposal with the annual reporting requirements for Pls and EMLs, and makes our proposals more proportionate.

**Q15: Do you agree with our proposal to extend complaints reporting to payment institutions and e-money businesses and to introduce a new reporting form for all PSPs? If not please explain why not and suggest an alternative approach.**

**Fraud reporting**

- 5.26** The proposals below relating to fraud reporting are relevant to all PSPs.
- 5.27** PSD2 requires PSPs to provide, on at least an annual basis, statistical data on fraud relating to different means of payments to their competent authorities. Competent authorities are required to provide these data in aggregated form to the EBA and European Central Bank (ECB).
- 5.28** The directive does not specify what these statistical data should include or how it should be reported, however the ECB and EBA are currently considering whether in the context of the data reporting requirements under Article 96(6) of PSD2 it would be beneficial to standardise such reporting across the different Member States.

**Proposals**

- 5.29** As discussions at EU level are not likely to be concluded by January 2018, we have developed an interim set of statistical data which we propose to direct that PSPs collect and provide to the FCA in the first reporting period. We have designed the fraud return to capture these data in a form that we consider is not unduly burdensome for PSPs to complete. We will keep fraud reporting under review and consult on any further changes that may be necessary should the ECB and EBA standardise reporting across Member States.

**The 'statistical data on fraud relating to payments' return**

- 5.30** The proposed fraud return form is set out in Appendix 1 including guidance notes for completing the return, along with the proposed SUP 15 direction. We propose that PSPs provide data using the form on each of the three payment types they provide – for example credit card, debit card, faster payments – that are subject to the most fraud (by value of the fraudulent transactions of each payment type). These will be ranked according to fraudulent transaction value.
- 5.31** Table 1 of the form will request data on the number and value of fraudulent transactions for each payment type. So that we can determine the scale of fraud affecting particular payment methods, we are requiring that data be provided on the total number and value of transactions (including non-fraudulent transactions) for each payment type. This will give context to the payment fraud data. We have designed the form so that data can be provided on the number of transactions for each payment type that were initiated by payment initiation services providers (PISPs).

<sup>23</sup> See the FCA's Handbook Glossary for the definition of ARD, <https://www.handbook.fca.org.uk/handbook/glossary/G5.html>.

- 5.32** For each payment type listed, we also propose PSPs tell us the top three ways in which the fraud was executed from a list of fraud types provided in the form. The chosen fraud execution types must be ranked by PSPs according to which type of fraud caused the highest value of fraudulent transaction for the payment type. The value of fraudulent transactions relating to each chosen fraud type must also be provided.
- 5.33** Table 2 must be completed by providers of account information services (AIS). This asks for information on the number of incidents of fraud relating to AIS and the total value of fraud (or an estimation of the loss to persons affected) across all incidents. Additionally, we ask for descriptions of the top three most common fraud types affecting AIS. While AIS are not payments, we consider it important to understand whether AIS are being affected by fraud.
- 5.34** We understand from engagement with industry that many PSPs already collect detailed data relating to payments fraud, as these are collated by industry bodies and required by card schemes. We therefore do not expect our interim proposal will be burdensome for industry.
- 5.35** Although we understand that businesses currently collect data mainly on fraud relating to unauthorised transactions, we also propose to collect data on types of fraud which relate to authorised push payments.<sup>24</sup> This is intended to capture data on the type of fraud highlighted by Which? in its Super Complaint which was made to the Payment Systems Regulator in September 2016. See the draft notes for completion in Appendix 1 for a list of proposed payment types and fraud execution categories that will be included in the form.

***Submission deadline and reporting period***

- 5.36** PSPs will need to start collecting data on fraud relating to different means of payment from 13 January 2018.
- 5.37** Having assessed the benefits of more frequent payments fraud data reporting, we propose that PSPs report these data on an annual basis. This is in line with the frequency for the majority of reporting PSPs already complete.
- 5.38** We propose an initial reporting period of 13 January – 30 November 2018. PSPs will need to complete the form, providing data covering this period by 31 December 2018. Subsequent reporting periods for these data will run from 1 December to 30 November each year to be submitted by 31 December.

***Insights from the fraud data we propose to collect***

- 5.39** The data we propose to collect will improve our ability to supervise PSPs in relation to fraud prevention. They will also provide some indication of trends in certain types of fraud.

**Q16: Do you agree with our proposals for reporting of statistics on fraud relating to different means of payment? If not, please explain why not and suggest an alternative approach.**

<sup>24</sup> Payment Systems Regulator, Which? authorised push payments super-complaint, December 2016, <https://www.psr.org.uk/sites/default/files/media/PDF/PSR-Which-super-complaint-response-December-2016.pdf>

### Changes to reporting to monitor compliance of PIs, RAISPs and EMIs

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- 5.40** In light of the proposed changes to our supervisory approach (set out in Chapter 8 of this CP) and PSD2, we have undertaken a review of the data we collect from PIs and EMIs through regulatory returns FSA056 – FSA065.
- 5.41** The data we collect from PIs and EMIs, which are comparatively less than those collected from other regulated financial services businesses, are no longer sufficient for supervisory purposes or to enable us to implement our proposal to supervise PIs and EMIs in line with other sectors.
- 5.42** To support our revised supervisory approach, we propose collecting additional information through regulatory reporting, to enable us to assess the risk that different businesses pose to the FCA's objectives. This will include information relevant to new requirements under the PSRs 2017. We also propose to apply the return for authorised payment institutions (authorised PIs) to RAISPs.
- 5.43** We propose to add new questions to the returns that authorised payment institutions and small payment institutions complete:
- The existing authorised PI return, FSA056, will be modified, and applied to RAISPs. We are adding further questions, resulting in an increase of 19 questions. The revised questions cover the authorised PI's income, safeguarding arrangements, the value and volume of payment services activity, access to payment systems, and AIS or PIS (11 of the new questions relate to AIS or PIS).
  - The existing small PI return, FSA057, will be modified, with a net increase of 14 questions. The additional questions will cover the group structure of the small PI, income, the value and volume of payment services activity (including the monthly average value for payment transactions executed over the reporting period), and access to payment systems. We will also include within this some additional questions on safeguarding, which will apply to small PIs that have voluntarily adopted safeguarding arrangements.
- 5.44** We also propose to replace existing returns for authorised EMIs (FSA059-FSA062) and small EMIs (FSA064) with one new consolidated return which all EMIs will complete (different questions will be relevant for authorised EMIs and small EMIs):
- For authorised EMIs, the new return contains questions that will additionally cover the group structure, the authorised EMI's income (split between e-money issuance and unrelated payment services), the scale of the e-money issuance activity (including number of accounts), the value and volume of payment transactions executed, access to payment systems, safeguarding arrangements, and AIS/PIS. As a result of consolidating the existing returns, the new return represents a decrease of 20 questions.
  - For small EMIs the return represents an increase of two questions. The revised return includes questions covering the group structure, income, the scale of the e-money issuance activity, the value and volume of payment transactions executed, safeguarding arrangements, continued compliance with the conditions for registration as a small EMI, and access to payment systems.
- 5.45** We have included these draft return templates and guidance notes for completion in Appendix 1.

- 5.46** We have not included capital resources questions relating to the items that make up the “own funds” for authorised PIs and EMIs in these draft returns. We will consult on changes to the reporting questions on the items that make up the “own funds” in mid-2017.
- 5.47** We plan to reduce the frequency of some regular reporting we receive from EMIs so that the return only needs to be submitted yearly, rather than twice yearly. This will reduce the burden for EMIs and bring these businesses in line with payment institutions. Please refer to the proposed amendments to SUP 16.15 for further information on the frequency of the returns.

**Q17: Do you agree with our proposed changes to the reporting we collect from PIs and EMIs? Do you also agree to the reduction of reporting frequency for EMIs from twice yearly to annually? If not, please explain why not and suggest an alternative approach.**

#### **Close links and annual controller reports**

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- 5.48** We propose to require authorised PIs to submit the annual controllers report (REP002) and annual close links report (REP001) that EMIs and FSMA-authorized firms currently provide to us. These are included for reference in Appendix 1. This is reflected in proposed changes to SUP in Appendix 1. Aligning reporting for authorised PIs with reporting for other firms we regulate supports our revised supervisory approach (set out in Chapter 8 of this CP).
- 5.49** As a condition for authorisation under the PSRs 2017, small PIs and authorised PIs must satisfy us that any close links they have with another person are not likely to prevent our effective supervision. The PSRs 2017 also require authorised PIs to notify us if there are any changes likely to affect these conditions. The close links report will support the requirements under the PSRs 2017 as it will allow us to identify whether there may be close links that prevent us from effectively supervising authorised PIs. Our view is that it would be disproportionate to require small PIs to provide the annual controllers report and close links report.
- 5.50** The controllers report will help us to understand who is controlling authorised PIs. This is in line with our proposals in Chapter 3 of the CP to ensure our change in control approach for authorised payment institutions is consistent with the approach currently taken to EMIs.

**Q18: Do you agree with our proposal to require authorised PIs to submit the annual controllers report (REP002) and annual close links report (REP001)? If not, please explain why not and suggest an alternative approach.**

## 6. Payment service providers' access to payment account services

### Who should read this chapter

PSPs including credit institutions that provide payment account services and "PSPs" as defined in regulation 105 of the PSRs 2017<sup>25</sup> (including prospective PSPs) that are seeking access to payment account services.

- 6.1** PSD2 aims to improve PSPs' access to payment account services so that they can provide their own payment services in an unhindered and efficient manner. For credit institutions, under Regulation 105 of the PSRs 2017, this means providing access on a proportionate, objective and non-discriminatory basis and notifying the FCA whenever access is refused or withdrawn.
- 6.2** This chapter covers our proposed guidance on the requirements under Regulation 105 of the PSRs 2017 and proposals to direct the form, content and timing of the notification.
- 6.3** As access to payment account services facilitates PSPs having access to payment systems (such as FPS, BACS and CHAPS), Treasury has given both the FCA and the Payment Systems Regulator responsibility for monitoring and enforcing this regulation. This part of the CP is therefore a joint consultation by the FCA and the Payment Systems Regulator. Any reference to 'we' or 'us' means the FCA and Payment Systems Regulator together, unless we state otherwise.
- 6.4** Our proposals are intended to ensure the aims of PSD2 are realised, in particular that PSPs have access to the account services they need to carry out their business on a proportionate, objective and non-discriminatory basis. In developing these proposals we have engaged extensively with relevant stakeholders, in particular representatives of PSPs which seek access to payment account services and credit institutions that provide those services.

### Proposed guidance for credit institutions (and PSPs seeking access)

- 6.5** We propose guidance intended to help promote a more consistent understanding of the requirements under regulation 105 and our expectations of credit institutions. We set out our guidance in Chapter 16 of the Approach Document which should be read alongside this chapter of the CP. This guidance covers:

<sup>25</sup> This includes authorised payment institutions, small payment institutions, registered account information service providers, EEA authorised payment institutions (including providers of PIS), EEA registered account information service providers and electronic money institutions in respect of payment services

- our view on the effect of regulation 105 and the extent of the obligations imposed on credit institutions. To clarify our expectations, we provide a non-exhaustive list of factors we may consider in our assessment of whether a credit institution has granted access on a proportionate, objective and non-discriminatory basis;
- our expectations in relation to the requirement that credit institutions must provide criteria to a PSP (or prospective PSP seeking authorisation) that enquires about access to payment account services;
- examples of the types of arrangements credit institutions might put in place in order to meet the requirement to maintain arrangements to ensure that the criteria are applied in a manner which ensures compliance with regulation 105. We have included these non-exhaustive examples following engagement with industry but we will keep them under review;
- what we will consider when assessing whether credit institutions are granting 'sufficiently extensive access'. This includes our view on what services we consider to be essential to the business activities of PSPs;
- what we consider to be withdrawals or refusals for the purposes of notifications and what credit institutions are required to do in the event of a withdrawal or refusal;
- how the FCA and Payment Systems Regulator will co-ordinate to consider notifications received in relation to refusal of access to payment account services, including whether action should be taken as a result.

### **Proposals on credit institutions' requirement to report**

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- 6.6** The PSRs 2017 require credit institutions to provide to the FCA duly motivated reasons for refusal or withdrawal of access to payment account services.
- 6.7** We propose some changes to the Supervision Manual of our Handbook (SUP 15.14) to direct the form, content and timing of this notification. These proposed changes to SUP and the draft notification form can be found in Appendix 1.

#### ***Form and content of the notification***

- 6.8** The proposed form asks credit institutions to set out duly motivated reasons for the refusal of access, as required by PSD2.
- 6.9** Beyond questions covering the duly motivated reasons, we have asked for information which will assist in our assessment of whether credit institutions have complied in their obligations to grant access on a proportionate, objective and non-discriminatory basis, or otherwise assist us to process the notification. For example, we have asked for details of the person that was subject to refusal or withdrawal, what products they were seeking access to, when the decision was made to refuse access, what process was used to make the decision and whether the reasons for refusal were communicated to the PSP seeking access. The provision of this information through the notification will enable us to more effectively assess compliance with Regulation 105 of the PSRs 2017.

***Timing of the notification***

- 6.10** Timely access to payment account services can be critical to the ability of a payment service business to operate. It is important that the FCA receives information about refusals or withdrawals in good time in order to determine whether decisions have been made appropriately and to take action if we consider that they have not.
- 6.11** We set out the proposed updates to SUP 15.14 at Appendix 1, which contains the detail about when notifications should be submitted in different circumstances. We consider that the credit institution will be in possession of the information required to be provided in the notification form at the time the decision to withdraw or refuse access is made. Therefore we propose that notifications must be made at the same time as the credit institution notifies the PSP of its decision to withdraw or refuse access, or, where the credit institution does not notify the PSP, immediately following the decision by the credit institution to refuse access.

**Q19: Do you agree with our proposed guidance on PSPs' access to payment account services, as set out in chapter 16 of the revised Approach Document? If not, please explain why not and suggest an alternative approach. Is there anything additional that it would be useful for us to provide in our guidance?**

**Q20: Do you agree with how we propose to implement the requirement to provide duly motivated reasons when refusing or withdrawing access, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach.**

## 7. Account information services, payment initiation services and confirmation of availability of funds

### Who should read this chapter

Account servicing payment service providers (ASPSPs) – such as banks, building societies, e-money institutions (EMIs), payment institutions (Pis) and credit card providers

Card-based payment instrument issuers (CBPIIs)

Account information service providers (AISPs) – such as financial data aggregators

Payment initiation service providers (PISPs)

- 7.1** The PSRs 2017 will bring account information services (AIS) and payment initiation services (PIS) within the scope of FCA regulation for the first time, and introduce requirements for the confirmation of availability of funds for card-based payment transactions.
- 7.2** PSD2 gives customers the right to make use of these services, for example, when shopping online to make payments, or using apps to keep track of their finances. It aims to increase competition, and improve choice for consumers. Bringing these services under regulation will ensure consumers have adequate protection when using AIS and PIS, and will also ensure a framework is in place between ASPSPs and the providers of these services.
- 7.3** In this chapter we discuss our proposed approach to these services and ASPSPs' related obligations. This approach includes providing guidance for affected businesses which is aimed at helping them to navigate the relevant requirements.
- 7.4** Our proposals for this guidance are in Chapter 17 of the revised Approach Document which should be read alongside this chapter of the CP. We only set out elements of our guidance in our CP where we have provided views on or interpretations of the PSRs 2017. We set out the proposed form of notification for ASPSPs to provide to us when there is denial of access. We also propose below in this CP chapter that credit institutions notify us prior to providing AIS or PIS and that e-money institutions (EMIs) have a restriction placed on their permission which they must apply to vary before conducting these services.
- 7.5** We also discuss what will happen in advance the application of the relevant Regulatory Technical Standards on Strong Customer Authentication and Common and Secure Communication (SCA RTS). The SCA RTS will govern certain aspects of how CBPIIs, AISPs, PISPs and ASPSPs operate,

especially the security requirements and communication processes that they must follow. The final draft of the SCA RTS has been published by the European Banking Authority (EBA).<sup>26</sup>

### Proposed guidance on requirements for ASPSPs

**7.6** As part of establishing a clear legal framework under which providers of AIS and PIS can provide their services with the consent of the customer, the PSRs 2017 set out requirements covering the interaction between ASPSPs and providers of AIS and PIS. We seek views on our proposed guidance (in Chapter 17 of the Approach Document) covering a number of these requirements where we have provided interpretation.

#### Scope of AIS and PIS requirements

**7.7** ASPSPs are required to permit their customers to use AIS and PIS only in relation to their payment accounts that are accessible online.<sup>27</sup> This limits the scope of the requirements on ASPSPs to provide access to AIS and PIS, as the access requirements do not apply to payment accounts that are not “accessible online”.

**7.8** No definition of “accessible online” is provided in PSD2 so we propose guidance on which accounts should be considered “accessible online” and this may vary depending on the service being provided. We have set out that accounts “accessible online” include those which consumers can access through the internet or mobile applications.

#### Treatment of payment orders and data requests

**7.9** Under the PSRs 2017, ASPSPs must treat data requests and payment orders from AISPs and PISPs no differently from those that come directly from the payer, except where the ASPSP has objective reasons for treating the payment order or request differently.

**7.10** To assist ASPSPs in understanding this requirement, we propose guidance in Chapter 17 of the revised Approach Document which gives examples of practices that would be inconsistent with this requirement for equality of service. This guidance also covers what ASPSPs should consider to be ‘objective reasons’.

#### Contracts between ASPSPs and AISPs or PISPs

**7.11** Under the PSRs 2017, ASPSPs must not require AISPs and PISPs to enter into a contract in order to gain access to consumers’ payment accounts. In our revised Approach Document, we note that we consider this to mean that an AISP or PISP should not be required to agree any specific arrangements with the ASPSP, such as for liability. However, this would not prevent parties from putting contractual arrangements in place if they both wish to do so (provided this is not a pre-condition of access set by the ASPSP).

#### Arrangements before parts of the PSRs 2017 dependent on the SCA RTS apply

**7.12** Some of the PSRs 2017 requirements do not apply until 18 months after the SCA RTS comes into force. This creates some potential uncertainty for businesses. In Chapter 17 of the revised Approach Document we set out our expectations of how ASPSPs, PISPs and AISPs may meet the requirements of the PSRs 2017 during this period.

<sup>26</sup> EBA, Final Report – Draft Regulatory Technical Standards on Strong Customer Authentication and common and secure communication under Article 98 of Directive 2015/2366 (PSD2), February 2017, <https://www.eba.europa.eu/documents/10180/1761863/Final+draft+RTS+on+SCA+and+CSC+under+PSD2+%28EBA-RTS-2017-02%29.pdf>

<sup>27</sup> We provide guidance on the definition of payment accounts in chapter 15 of PERG.

**Q21: Do you agree with the guidance we set out in Chapter 17 of the revised Approach Document, including the proposals for guidance set out above? If not, please explain why not and suggest an alternative approach?**

### **Proposed notification by ASPSPs of incidents leading to denial of access**

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- 7.13** Under the PSRs 2017, an ASPSP may only deny an AISP or a PISP access to a payment service user's payment account on the basis of reasonably justified and duly evidenced reasons. These reasons must relate to unauthorised or fraudulent access to the payment account by that AISP or PISP. This includes the unauthorised or fraudulent initiation of a payment transaction. In such cases an ASPSP must immediately report the incident relating to the AIS or the PIS to the FCA. The report must include the details of the case and the reasons for taking action.
- 7.14** We have proposed some changes to the Supervision Manual in our Handbook (SUP) to direct the form, content and timing of the notification. These proposed changes, along with the draft notification form, can be found in Appendix 1. The draft form can also be found in Appendix 1.
- 7.15** Beyond the information required by PSD2, we are asking for a minimal amount of additional information from ASPSPs on the steps that the AISP or PISP would need to take in order for access to be restored. This information will help us to understand why access has been denied and whether we need to investigate further or take any other action. We consider that ASPSPs should have this information ready to hand where they have denied access.
- 7.16** We propose guidance in the Supervision Manual of the Handbook (SUP 15) to clarify our expectation that ASPSPs should complete and submit the notification required under regulation 71(8)(c) of the PSRs 2017 as quickly as possible.
- 7.17** As ASPSPs may receive multiple requests for access, we do not propose to require additional notifications where access to the same payment account is requested repeatedly by the same AISP or PISP. Similarly, where an ASPSP blocks access to more than one of its customers' payment accounts for the same reasons relating to the same AISP or PISP, we propose that only a single incident notification is required. In all instances we propose to direct that an ASPSP provides a follow-up notification if and when access is restored to that AISP or PISP.

**Q22: Do you agree with our proposals to direct the form, content and timing of notifications that must be provided where access has been denied to providers of AIS and PIS, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach?**

### **Requirements on credit institutions and e-money institutions (EMIs) prior to conducting AIS or PIS**

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- 7.18** Credit institutions will not need to apply to the FCA for permission to provide AIS or PIS. However, in order to understand whether the competition aims of PSD2 are being met and to understand the emerging market for AIS or PIS, we propose amendments to SUP 15.8 (see Appendix 1) which will require credit institutions to notify the FCA if they are currently

providing these services (before 13 Jan 2018) or before they commence providing these services (after 13 Jan 2018). We propose that credit institutions use the existing generic notification form at SUP 15 Ann 4, as per SUP 15.7.1, to notify us.

- 7.19** EMIs will have a restriction imposed on their regulatory permissions, and will need to apply to vary their permission before they are able to conduct AIS or PIS. This approach is required by the PSRs 2017, and it is necessary for us to make sure that they hold mandatory professional indemnity insurance (PII) cover before commencing the provision of these services.
- 7.20** Payment institutions or unauthorised businesses that wish to provide AIS or PIS must apply to the FCA for permission to undertake these services.

**Q23: Do you agree with our proposed requirements for FSMA firms seeking to provide AIS or PIS? If not, please explain why not and suggest an alternative approach.**

## 8.

# Our approach to supervising the Payment Services Regulations 2017 and Electronic Money Regulations

### Who should read this chapter

All Payment Service Providers (PSPs) and e-money issuers as well as others that may be subject to regulation or notification under the PSRs 2017 or the Electronic Money Regulations 2011 (EMRs).

- 8.1** In this chapter we set out the proposed changes to our approach to supervising PSPs and e-money issuers to bring our approach in line with how we supervise other sectors.

### Changes to our supervisory approach

- 8.2** We have updated the guidance on our approach to supervision in the revised Approach Document. We have removed references to complaints-led supervision, as we will no longer be following this supervisory approach. We set out that our approach will be aligned with our already publicised general supervisory approach for businesses which we regulate.
- 8.3** In summary, the specific supervisory measures that we decide to use will depend on the risk posed by an individual business; a category of business or by the sector as a whole. Amongst other things, we set out that our supervision will be informed by periodic reporting, events driven notifications, and complaints to the FCA. This reflects the new reporting and notification requirements introduced by PSD2 as well as arrangements we will have in place for dealing with complaints about alleged breaches of the PSRs 2017 in line with new EBA Guidelines.<sup>28</sup>
- 8.4** This new approach will support us meeting our obligation under the draft PSRs 2017 to maintain arrangements that will allow us to determine compliance of businesses on all aspects of the requirements in the PSRs 2017. It also brings the sector in line with other sectors that fall within the FCA's jurisdiction and reflects the increased complexity of products and services on offer and the growth in consumer engagement with these.
- 8.5** We have also noted some of the steps we might take to obtain information about PSPs and electronic money issuers to discharge our supervisory functions in the revised Approach Document.

<sup>28</sup> Guidelines on Procedures for Complaints of Alleged Infringements of Directive (EU) 2015/2366 due to be issued by the EBA under Article 100(6) PSD2.

**Q24:** Do you agree with our proposed approach to supervising the PSRs 2017? If not, please explain why not and suggest an alternative approach?

## 9. Consequential changes and other revisions to the Approach Document

### Who should read this chapter

All payment services providers (PSPs) and e-money issuers.

- 9.1** This chapter sets out small consequential changes we are making to the FCA Handbook, and other revisions we are making to the Approach Document.

### Consequential changes to the Handbook

- 9.2** We propose a number of consequential changes to the Handbook, including to the Consumer Credit sourcebook (CONC). We are also making a number of glossary changes, including adding registered account information service providers (RAISPs) to the definition of “payment services provider”.
- 9.3** We make some minor changes to the Dispute Resolution: Complaints Sourcebook (DISP) to clarify how this sourcebook applies to FSMA-authorised firms that are also PSPs.
- 9.4** We also make consequential changes to our Decision Procedure and Penalties manual (DEPP)<sup>29</sup> and Enforcement Guide (EG)<sup>30</sup> to reflect changes to our enforcement powers under the PSRs 2017.

**Q25: Do you agree with our proposed consequential changes to the Handbook? If not, please explain why not and suggest an alternative approach.**

### Other revisions to the Approach Document

- 9.5** PSD2 is a maximum harmonising directive and we have limited discretion to depart from its provisions. The majority of the changes we have made to the Approach Document merely

<sup>29</sup> DEPP contains the FCA's decision-making procedures and sanctions policies (including penalties) relevant to firms, approved persons and persons who are not approved by the FCA.

<sup>30</sup> This is the relevant Regulatory Guide which contains guidance for firms, approved persons and persons who are not approved by the FCA on the use of our enforcement powers. EG also includes statements of enforcement policy relating to various powers we have been given under legislation other than the Financial Services and Markets Act 2000 (FSMA); non-FSMA powers such as the PSRs 2017.

reflect changes under the PSRs 2017, or are clarifications made in response to feedback received through our February 2016 Call for Input on the FCA's approach to the current payment services regime.<sup>31</sup> We have, however, asked questions in this CP on the approach we are proposing in specific parts of the Approach Document, where we would welcome input.

- 9.6** We are also summarising below the wider revisions we are proposing to make to the Approach Document, which is provided in draft form here.<sup>32</sup> We are also providing a version of the Approach Document with revisions in tracked changes to illustrate where we have made changes.<sup>33</sup>
- 9.7** As well as setting out the key changes we propose to make, we indicate where we expect to make changes that we are not yet in a position to consult. This includes changes to reflect the final PSRs 2017, European Banking Authority (EBA) guidelines, Regulatory Technical Standards being made by the European Commission, and the FCA fees consultation.
- 9.8** Where we are not yet able to propose guidance we have inserted placeholders in the revised Approach Document, or have put square brackets around certain text.
- 9.9** Not all parts of the Approach Document are relevant to every type of business; Chapter 2 (Scope), Part III, in the revised Approach Document includes a table which indicates which sections are most relevant to different types of PSP.

### ***Proposed revisions to the Approach Document***

<b>Approach Document Chapter</b>	<b>Description of main changes we propose</b>
1 – Introduction	We propose changes to the introduction, mainly to update it in line with the PSRs 2017 and other legislative changes.
2 – Scope	We set out proposed changes to reflect the increased scope of PSD2, including the extension of scope of the conduct provisions to cover transactions where only one payment provider is located in the EEA (one leg transactions) and transactions in all currencies (rather than only EEA currencies).
3 – Authorisation and registration	We propose changes to: <ul style="list-style-type: none"> <li>• reflect the new category of payment service provider – RAISP</li> <li>• update the guidance on information requirements to accompany an application for authorisation in accordance with draft EBA Guidelines.</li> <li>• give guidance on the transitional arrangement for existing businesses</li> </ul> Further changes will be made once the EBA finalises the Guidelines. This will include guidance on the information requirements for registration as a small payment institution (small PI) or small e-money institution (small EMI).

<sup>31</sup> The Call for Input can be found here: <https://www.fca.org.uk/news/news-stories/call-input-fca%E2%80%99s-approach-current-payment-services-regime> The Feedback Statement (FS16/12) was published in November 2016 and can be found here: <https://www.fca.org.uk/publication/feedback/fs16-12.pdf>

<sup>32</sup> The revised Approach Document can be found here: <https://www.fca.org.uk/publication/consultation/cp17-11-draft-approach-document.pdf>

<sup>33</sup> The version of the revised Approach Document with tracked changes can be found here: <https://www.fca.org.uk/publication/consultation/cp17-11-draft-approach-document-tracked.pdf>

<b>Approach Document Chapter</b>	<b>Description of main changes we propose</b>
4 – Changes in circumstances of authorisation or registration	We propose changes to reflect new change in qualifying holding requirements under PSD2 for those changing their level of control in authorised payment institutions.
5 – Appointment of agents	We set out proposed changes to reflect the changes arising from PSD2, in particular around the information that is required in the event that a payment institution (PI) or e-money institution (EMI) proposes to register an agent.
6 – Passporting	We propose revisions to reflect changes introduced by PSD2, including changes to the activities that can be passported, additional information requirements, and new requirements around the information exchange between home and host competent authorities.  Further changes may need to be made once the EU Commission ratifies and publishes the Regulatory Technical Standard determining what information must accompany a passporting notification.
7 – Use of the FSA and FCA logos	We propose to make changes to remove references to the FSA, as the FSA/FCA transition stage has ended. We also reference our position on use of the FCA logo, as set out in GEN 5.
8 – Conduct of business requirements	We propose revisions to reflect changes brought in by PSD2, and to respond to feedback received through our Call for Input, as well as adding additional clarification and examples to help PSPs understand their obligations.
9 – Capital resources and requirements	We are proposing to update this Approach Document chapter to reflect changes introduced by PSD2, including requirements for account information service providers (AISPs) and payment initiation service providers (PISPs).  To reflect changes in PSD2 and the PSRs 2017 we have removed guidance on what constitutes qualifying items for own funds purposes; this is in line with the FCA's general approach to the Capital Requirements Regulation (CRR). We have provided information on where further guidance may be found.
10 – Safeguarding	We are proposing updates to reflect changes made by the PSRs 2017 and additional guidance on how safeguarding should be managed by PSPs.
11 – Complaints handling	We are making changes to reflect PSD2, including new timescales for handling payment services complaints.
12 – Supervision	We set out changes to reflect our proposed new supervisory approach for PSPs and e-money issuers.

Approach Document Chapter	Description of main changes we propose
13 – Reporting and notifications	<p>We propose changes to reflect our proposals on complaints and fraud reporting, changes to annual reporting for EMIs and PIs, and our proposal that authorised PIs submit annual close links and controllers reports.</p> <p>In addition to reporting, we also summarise notification requirements, including the following:</p> <ul style="list-style-type: none"> <li>• the notification for certain businesses operating under exclusions from regulation</li> <li>• the notification required when access to payment account services is refused or withdrawn</li> <li>• the notification required when an AISP or PISP is denied access to a payment account</li> <li>• the notification required by credit institutions when they plan to commence undertaking account information service (AIS) or payment initiation service (PIS)</li> </ul> <p>We have not yet updated this chapter to reflect PSD2 requirements to provide annual assessments of operational and security risks; regular reporting from inward passporting businesses; incident reporting; and the reporting requirements stemming from the Regulatory Technical Standard on Secure Communication but we will make changes to reflect these when the EBA finalises its approach.</p>
14 – Enforcement	We propose updates in line with our proposed approach to enforcing the new requirements under PSD2.
15 – Fees	We will update this chapter once we have concluded our annual fees consultation.
16 – Access to payment account services	We propose to create a new chapter in the Approach Document to reflect the new PSD2 requirements for credit institutions on access to payment account services. This chapter contains guidance which the FCA and Payment Systems Regulator are both responsible for.
17 – Payment initiation and account information services and confirmation of availability of funds	We propose to create a new chapter in the Approach Document to set out our approach to AIS, PIS and card-based payment instrument issuers (CBPIIs), which will come within the scope of our regulation.
18 – Operational and security Risks	We propose creating a new chapter in the Approach Document but are not consulting on the text of this at this stage. We will publish this chapter once the EBA progresses guidelines on the establishment, implementation and monitoring of security measures.
19 – Financial Crime	We propose to create a new chapter on financial crime, based on the existing chapter in the E-Money Approach Document, which will apply to PIs, RAISPs and EMIs.
Approach Document Annex 1 – 5	We have made some minor updates to the annexes of the Approach Document.

**9.10** We would welcome comments on the wider revisions we have made to the Approach Document.

**Q26:** Do you have any comments on the wider revisions to the Payment Services and E-money Approach Documents? Are there any omissions or aspects that are unclear in the revised Approach Document?

# 10.

## The Payment Systems Regulator's approach

### Who should read this chapter

Payment system operators, direct participants in the Bacs, FPS and CHAPS payment systems who provide indirect access to those systems, payment service providers (PSPs) who access payment systems indirectly (indirect PSPs), prospective indirect PSPs, and independent ATM deployers and their end users.

- 10.1** In this chapter the Payment Systems Regulator is consulting on the areas of the PSRs 2017 which it is solely responsible for. References to 'we' or 'our' in this chapter mean the Payment Systems Regulator, and not the FCA.
- 10.2** We have proposed guidance on the areas of the PSRs 2017 we are responsible for in a new Approach Document, which we are publishing in draft form alongside this CP.<sup>34</sup> That document describes our proposed approach to monitoring compliance with Regulations 103 and 104 (access to payment systems), and monitoring compliance with Regulation 61 (information that independent ATM deployers must provide to the users of their ATM services).
- 10.3** We are also consulting on our powers and procedures for enforcing the requirements of the PSRs 2017 for which we are responsible.

### Access to payment systems (Regulations 103 and 104 of the PSRs 2017)

- 10.4** In this section, we are consulting on our proposals for monitoring compliance with Regulations 103 and 104 of the PSRs 2017, which we are the competent authority for. Regulation 103 is about the rules and conditions that payment system operators have in place governing access to, or participation in, their payment system. Regulation 104 sets rules about the way indirect access providers (IAPs) treat requests from other PSPs for access to Settlement Finality Directive (SFD)-designated payment systems (indirect access).
- 10.5** This section is most relevant to payment system operators, direct participants in SFD-designated payment systems (currently Bacs, FPS and CHAPS) who provide indirect access to those payment systems and to PSPs or prospective PSPs seeking access to payment systems.

### Background

- 10.6** PSD2 aims to ensure that existing and new PSPs can access payment systems in a proportionate, objective and non-discriminatory way. PSD2 preserves the existing PSD requirements on direct

<sup>34</sup> The Payment Systems Regulator's draft Approach Document can be found here: <https://www.psr.org.uk/sites/default/files/media/PDF/Payment-Services-Regs-2017-draft-approach.pdf>

access to certain payment systems and includes additional requirements regarding indirect access. Regulations 103 and 104 of the PSRs 2017 transpose into UK law the PSD2 provisions on access to payment systems.

- 10.7** Regulation 103 of the PSRs 2017 contains four essential requirements on relevant systems' access rules or conditions:
- they must be proportionate, objective and non-discriminatory (POND)
  - they must not prevent, restrict or inhibit access more than is necessary to safeguard against specific risks or protect the stability of the payment system
  - they must not restrict effective participation in other payment systems or discriminate between different authorised or different registered PSPs in relation to their rights, obligations or entitlements of participants
  - they must not impose restrictions on the basis of the institutional status of a PSP
- 10.8** Regulation 104 of the PSRs 2017 places similar requirements on the way in which IAPs treat requests for indirect access. Requests for access include new applications and decisions on service provision – i.e. variation and withdrawal of access.
- 10.9** It requires IAPs which are direct participants in Bacs, CHAPS, or Faster Payments to treat all requests they receive from PSPs for indirect access in a proportionate, objective and non-discriminatory (POND) manner. If an IAP decides not to grant access when requested, or to withdraw access from an indirect PSP customer, it must provide full reasons to the IPSP concerned.
- 10.10** IAPs which are direct participants must not:
- prevent, restrict or inhibit participation in the system more than is necessary to safeguard against specific risks or to protect the stability of the IAP or the payment system
  - discriminate directly or indirectly between different authorised PSPs or different registered PSPs
  - impose any restrictions on the basis of the institutional status of a PSP
- 10.11** Regulations 103 and 104 covers the provision of indirect access for:
- authorised payment institutions
  - small payment institutions
  - registered account information service providers
  - EEA authorised payment institutions
  - EEA registered account information service providers
  - 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, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature
- government departments and local authorities, other than when carrying out functions of a public nature

### Proposals

- 10.12** The Payment Systems Regulator’s draft Approach Document explains the requirements in more detail. It also sets out our proposed approach to monitoring compliance.
- 10.13** We propose to monitor compliance with Regulation 103 of the PSRs 2017 by requiring relevant systems to provide us with a compliance report on an annual basis. This will include, for example, a self-assessment by the operator of its compliance with the requirements of regulation 103, details of all expressions of interest by PSPs in potentially securing access to its payment system and the outcome of these expressions of interest. Our General Direction 3 currently requires similar information from payment system operators regulated under the PSRs 2009. We propose to revoke General Direction 3 to avoid overlap or duplication of regulatory requirements. The new requirement would apply to those payment systems currently regulated under Regulation 103.<sup>35</sup>
- 10.14** We propose to monitor compliance with Regulation 104 of the PSRs 2017 by considering complaints we receive from PSPs.
- 10.15** We also propose to issue an initial direction (immediately after the PSRs 2017 come into effect) to all IAPs requesting information to help us understand their criteria and governance processes for assessing indirect access requests. We want to understand the standard governance process the IAP follows to make decisions about access for different types of PSP. We also want to understand any criteria or minimum requirements the IAP applies to requests for access, such as a certain regulatory status or a minimum revenue threshold.
- 10.16** We do not intend to provide any feedback on this information. However, the information will help us to assess whether individual IAPs have treated requests for access in a POND manner should we decide to undertake an investigation about compliance with regulation 104.
- 10.17** This will not be an annual reporting obligation. However, we will consider updating the information periodically or requesting further information if we think it is necessary or when we decide to investigate a complaint.

**Q27: Do you agree with the Payment Systems Regulator’s proposed approach to access to payment systems? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide in our guidance?**

<sup>35</sup> Our general directions can be found at <https://www.psr.org.uk/psr-general-directions>

- Q28:** Do you agree with the Payment Systems Regulator's proposal to replace our General Direction 3 with a new Direction under the PSRs 2017, requiring annual compliance reports from payment system operators about their compliance with regulation 103 of the PSRs 2017? If so, what should the compliance reports contain? If not, should we rely on complaints only for monitoring compliance with regulation 103?
- Q29:** Do you agree with the Payment Systems Regulator's proposal to require initial information from IAPs to help us understand the criteria and governance processes they have in place to comply with regulation 104 of the PSRs 2017? If not, please explain why not and suggest an alternative approach.

### Information on ATM withdrawal charges (Regulation 61 of the PSRs 2017)

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- 10.18** In this section, we are consulting on our proposals for monitoring compliance with Regulation 61 of the PSRs 2017. Regulation 61 sets out information that independent ATM deployers must provide to the users of their ATM services.
- 10.19** This section is relevant to independent ATM deployers. The guidance may also be of interest to people who use the ATM services provided by independent ATM deployers.
- Background**
- 10.20** PSD2 aims to maintain the provision of ATM services while ensuring clarity on withdrawal charges.<sup>36</sup> Independent ATM deployers were excluded from the scope of PSD. PSD2 maintains that general exclusion, but extends specific transparency requirements to all ATM deployers.
- 10.21** Regulation 61 of the PSRs 2017 requires providers of cash withdrawal services through ATMs to provide specific information to a customer before the withdrawal and on receipt of the cash. The specific information required is set out in the draft PSRs 2017, and reproduced in our draft Approach Document.
- Proposals**
- 10.22** Our draft Approach Document explains the requirements in more detail. It also summarises our proposed approach to monitoring compliance.
- 10.23** All independent ATM deployers are members of one or more of LINK, Visa and Mastercard, who operate the UK's cash machine network. These payment systems already have rules requiring all members (including independent ATM deployers) to ensure the information listed in regulation 61 of the PSRs 2017 is provided to customers when offering ATM withdrawal services.
- 10.24** We propose to monitor compliance by working together with LINK, Visa and MasterCard to ensure that all independent ATM deployers of these payment systems comply with the information requirements in the scheme rules (and therefore Regulation 61 of the PSRs 2017). We will also monitor complaints received.

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<sup>36</sup> See recital 18 of PSD2

**Q30: Do you agree with the Payment Systems Regulator’s proposed approach to monitoring compliance with Regulation 61 of the PSRs 2017? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide in our guidance?**

### **Payment Systems Regulator’s powers and procedures**

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**10.25** In this section, we are consulting on the Payment Systems Regulator’s powers and procedures for enforcing the requirements of the PSRs 2017 for which we are responsible.

**10.26** The draft powers and procedures guidance (PPG) sets out practical information on how we plan to exercise our powers to monitor and enforce compliance with regulations 61, 103, 104 and 105 of the PSRs 2017.

**10.27** The draft PPG covers:

- how we propose to handle complaints about compliance failures
- our information gathering and investigation powers and how we propose to use them
- our enforcement powers and how we propose to use them
- our powers to give directions and how we propose to use them
- how to contact us with a complaint about non-compliance, and for general purposes
- the principles we will apply in determining whether to impose a penalty and the amount of that penalty

### **Role of the Enforcement Decisions Committee**

**10.28** The Enforcement Decisions Committee (EDC) has been appointed by the Payment Systems Regulator’s Board to decide whether compliance failures have occurred and whether to impose a financial penalty and publish details of compliance failures under the Financial Services (Banking Reform) Act 2013, the Payment Card Interchange Fee Regulations 2015 and the Payment Accounts Regulations 2015.

**10.29** We propose to appoint the EDC to decide, in contested cases, whether compliance failures have occurred and whether to impose a financial penalty and publish details of compliance failures under the PSRs 2017.

**Q31: Do you agree with the Payment Systems Regulator’s proposals on how we will exercise our powers to enforce compliance with the PSRs 2017, as set out in our PSRs 2017 Powers and Procedures guidance? If not, please explain why not and suggest an alternative approach.**

**Q32:** Do you agree that the Payment Systems Regulator's Enforcement Decisions Committee should be appointed to decide, in contested cases, whether compliance failures have occurred and whether to impose a financial penalty and publish details of compliance failures under the PSRs 2017? If not, please explain why not and suggest an alternative approach.

# Annex 1

## List of questions

### FCA questions

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1. Below are questions relating to FCA proposals, including those which it is jointly consulting on with the Financial Ombudsman Service and the Payment Systems Regulator
  - Q1:** Do you agree with our interpretation of the commercial agent exclusion and its application to the business models as set out in the draft PERG text (Appendix 1)? If not, please explain why not and suggest an alternative approach.
  - Q2:** Do you have any comments on our proposed limited network exclusion guidance in the draft PERG text (Appendix 1)? Do you have any comments on the proposed limited network exclusion notification (draft direction and draft template in Appendix 2)?
  - Q3:** Do you have any comments on our proposed electronic communication network exclusion guidance in the draft PERG text (Appendix 1)? Do you have any comments on the proposed electronic communication network exclusion notification (draft direction and draft template in Appendix 2)?
  - Q4:** Do you agree with the proposed guidance related to the definition of AIS and PIS in PERG 15.3? Are there any business models which you believe could be inappropriately viewed as in or out of scope in light of our guidance? If so, please provide us with details of these business models.
  - Q5:** Do you have any other comments on the perimeter guidance we propose? If you disagree with any of the guidance we have proposed, please explain why.

- Q6:** Do you agree with the proposed approach to implementing the new authorisation requirements for authorised PIs, and authorised EMIs, and the registration requirements for RAISPs? If not, please explain why not and suggest an alternative approach?
- Q7:** Do you agree with our proposal to require prospective small PIs and small EMIs to provide us with information relating to security, fraud and sensitive payments data?
- Q8:** Which parts of the EBA Guidelines on authorisation and registration (currently in draft form) do you believe should be applied to applicants to become small PIs or small EMIs? Is there anything else we should consider?
- Q9:** Do you agree with our proposed approach to change in qualifying holdings for authorised PIs including that authorised PIs use the change in control forms already used by EMIs and FSMA firms? If not, please explain why not and suggest an alternative approach.
- Q10:** Do you agree with the guidance we propose in Chapter 8 of the revised Approach Document in relation to changes to information requirements, rights and obligations and other changes? If not, please explain why not and suggest an alternative approach. Please provide the paragraph number when commenting on specific wording.
- Q11:** Do you agree with the two versions of the guidance we propose in Chapter 8 of the revised Approach Document relating to monthly statements, including the guidance which assumes the Treasury exercises the member state option? If not, please explain why not and suggest an alternative approach.
- Q12:** Do you agree with our proposed Handbook changes to implement the PSD2 complaints handling requirements? If not, please explain why not and suggest an alternative approach.
- Q13:** Do you agree with our proposed changes to the timeline for referrals to the Financial Ombudsman Service? If not, please explain why not and suggest an alternative approach.
- Q14:** Do you agree with our proposed changes to BCOBS? If not, please explain why not and suggest an alternative approach.

- Q15:** Do you agree with our proposal to extend complaints reporting to payment institutions and e-money businesses and to introduce a new reporting form for all PSPs? If not please explain why not and suggest an alternative approach.
- Q16:** Do you agree with our proposals for reporting of statistics on fraud relating to different means of payment? If not, please explain why not and suggest an alternative approach.
- Q17:** Do you agree with our proposed changes to the reporting we collect from payment institutions and e-money institutions? Do you also agree to the reduction of reporting frequency for e-money institutions from twice yearly to annually? If not, please explain why not and suggest an alternative approach.
- Q18:** Do you agree with our proposal to require authorised payment institutions to submit the annual controllers report (REP002) and annual close links report (REP001)? If not, please explain why not and suggest an alternative approach.
- Q19:** Do you agree with our proposed guidance on PSPs' access to payment account services, as set out in chapter 16 of the revised Approach Document? If not, please explain why not and suggest an alternative approach. Is there anything additional that it would be useful for us to provide in our guidance?
- Q20:** Do you agree with how we propose to implement the requirement to provide duly motivated reasons when refusing or withdrawing access, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach.
- Q21:** Do you agree with the guidance we set out in Chapter 17 of the revised Approach Document, including the proposals for guidance set out above? If not, please explain why not and suggest an alternative approach?
- Q22:** Do you agree with our proposals to direct the form, content and timing of notifications that must be provided where access has been denied to providers of AIS and PIS, including the proposed notification form in Appendix 1? If not, please explain why not and suggest an alternative approach?
- Q23:** Do you agree with our proposed requirements for FSMA firms seeking to provide AIS or PIS? If not, please explain why not and suggest an alternative approach.

- Q24:** Do you agree with our proposed approach to supervising the PSRs 2017? If not, please explain why not and suggest an alternative approach?
- Q25:** Do you agree with our proposed consequential changes to the Handbook? If not, please explain why not and suggest an alternative approach.
- Q26:** Do you have any comments on the wider revisions to the Payment Services and E-money Approach Documents? Are there any omissions or aspects that are unclear in the revised Approach Document?

### Payment Systems Regulator questions

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2. Below are the consultation questions relating to aspects of the PSRs 2017 which the Payment Systems Regulator is solely responsible for.
- Q27:** Do you agree with the Payment Systems Regulator's proposed approach to access to payment systems? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide in our guidance?
- Q28:** Do you agree with the Payment Systems Regulator's proposal to replace our General Direction 3 with a new Direction under the PSRs 2017, requiring annual compliance reports from payment system operators about their compliance with regulation 103 of the PSRs 2017? If so, what should the compliance reports contain? If not, should we rely on complaints only for monitoring compliance with regulation 103?
- Q29:** Do you agree with the Payment Systems Regulator's proposal to require initial information from IAPs to help us understand the criteria and governance processes they have in place to comply with regulation 104 of the PSRs 2017? If not, please explain why not and suggest an alternative approach.
- Q30:** Do you agree with the Payment Systems Regulator's proposed approach to monitoring compliance with Regulation 61 of the PSRs 2017? If not, please explain why not and suggest amendments. Is there anything additional that it would be useful for us to provide in our guidance?

- Q31:** Do you agree with the Payment Systems Regulator's proposals on how we will exercise our powers to enforce compliance with the PSRs 2017, as set out in our PSRs 2017 Powers and Procedures guidance? If not, please explain why not and suggest an alternative approach.
- Q32:** Do you agree that the Payment Systems Regulator's Enforcement Decisions Committee should be appointed to decide, in contested cases, whether compliance failures have occurred and whether to impose a financial penalty and publish details of compliance failures under the PSRs 2017? If not, please explain why not and suggest an alternative approach.

## Annex 2

# Cost benefit analysis

### Legal requirements and our analysis

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1. Section 138I (2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) of any rules we propose under FSMA. A CBA is defined by FSMA as “an analysis of the costs, together with an analysis of the benefits” that will happen if the proposed rules are made. It also requires us to include estimates of the costs and benefits, unless they cannot reasonably be estimated or it is not reasonably practicable to produce an estimate. This requirement to produce a CBA for rules made under FSMA does not apply in specified instances, including where the proposed rules would result in no or only a minimal increase in costs for businesses.
2. Some of the changes we propose will be made under FSMA, such as proposed changes to the Dispute Resolution: Complaints sourcebook (DISP) on complaint handling, and changes to the Banking Conduct of Business Sourcebook (BCOBS) on conduct of business obligations. The changes made under FSMA will be subject to our FSMA CBA obligation unless an exemption applies.
3. However, the majority of changes in this CP will be made under powers given to us in the PSRs 2017:
  - our proposals for guidance in the revised Approach Document and PERG will be made under regulation 120 of the PSRs 2017.
  - the majority of our proposals for reporting and notifications will be made using our powers to impose reporting requirements under regulation 109, or various powers to specify the form and content of notifications.
4. We will not be required to publish a CBA in relation to the exercise of our powers under the PSRs 2017, as drafted. However, regulation 106 (3) of the draft PSRs 2017 states that we must have regard to (among other things) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits. To assist us in assessing the proportionality of our proposals, we have considered whether they impose costs on Payment Service Providers (PSPs) beyond those which are inherent in the PSRs 2017.

### Overall cost of PSD2 implementation

5. We recognise that businesses will incur material costs complying with PSD2. The broader costs have been considered by the EU Commission and the UK Government:

- The European Commission carried out an impact assessment,<sup>37</sup> which it published with its directive proposal in July 2013.
  - The Treasury has published its own draft impact assessment<sup>38</sup> in relation to its proposed implementation approach. The Treasury has stated that its approach is to copy-out PSD2's provisions where possible in creating the PSRs 2017, but to keep using of the Member State derogations exercised in the implementation of PSD, to ensure the payment services regime remains, as far as possible, tailored for the UK payments market.<sup>39</sup>
6. We have taken the EU Commission and the Treasury's respective impact assessments into account and do not propose to repeat the analysis presented therein.

### Context and policy approach

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7. PSD2 has the following high level aims:
- bring regulation up to date with developments in the market for payment services
  - increase innovation and improve market access for PSPs
  - drive down the cost of services
  - make payments safer and more secure
  - improve consumer protection

### Our implementation approach

8. The proposals in this paper are designed to make sure the aims of PSD2 are realised in the UK, and that we are able to effectively monitor and enforce compliance with the PSRs 2017. We also seek to advance our statutory objectives, where applicable, in particular ensuring an appropriate level of consumer protection and promoting effective competition in the interests of consumers.
9. The amendments to our rules (for example in the Supervision Manual, DISP, and BCOBS) are also intended to ensure the compatibility of our Handbook with the PSRs 2017.
10. We also put forward comprehensive non-Handbook guidance in the form of our revised Approach Document. The revised Approach Document is aimed at helping PSPs understand their regulatory obligations, and does not impose additional obligations.

### Summary of our analysis

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11. We provide a separate CBA for each proposal, but also provide a summary of the analysis below. We have not quantified costs where it is not practicable to do so, or where we only conduct a high-level CBA because we are not adding costs beyond what is required in PSD2.

<sup>37</sup> [http://ec.europa.eu/internal\\_market/payments/docs/framework/130724\\_impact-assessment-full-text\\_en.pdf](http://ec.europa.eu/internal_market/payments/docs/framework/130724_impact-assessment-full-text_en.pdf)

<sup>38</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598246/PSDII-consultation-Impact-Assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/598246/PSDII-consultation-Impact-Assessment.pdf)

<sup>39</sup> HM Treasury, Implementation of the revised EU Payment Services Directive II, February 2017, <https://www.gov.uk/government/consultations/implementation-of-the-revised-eu-payment-services-directive-psdii>

We do not provide a summary of the benefits in the table, as we have not quantified benefits; we provide a qualitative analysis of benefits within each respective CBA.

12. In estimating the number of businesses affected below for each proposal, we have generally used the total potential population, based on the regulatory permissions that businesses have. This is likely in many cases to overestimate the actual affected population. For example, we understand only a small proportion of credit institutions provide payment account services to PSPs.

**Summary of the CBA**

	<b>Proposal</b>	<b>Types of businesses affected</b>	<b>Estimated number of businesses affected</b>	<b>Estimated cost per business</b>	<b>Total costs</b>
1	Complaints handling	All PSPs and businesses solely issuing e-money	1552	Banks and building societies: between £105,000 and £9,000,000 initial and annual ongoing unknown Other PSPs: not reasonably practicable to quantify	Banks and building societies: £106,485,000 initial and annual ongoing unknown Other PSPs: not reasonably practicable to quantify
2	Complaints reporting	All PSPs and businesses solely issuing e-money	1552	PIs and EMIs: £552 initial and £432 annual ongoing Banks and building societies: between £3,500 and £500,000 initial and between £7,000 and £200,000 annual ongoing	PIs and EMIs: £668,007 initial and £523,243 annual ongoing Banks and building societies: £14,158,000, initial and £8,458,500 annual ongoing
3	Fraud reporting	All PSPs	1552	Not reasonably practicable to quantify	Not reasonably practicable to quantify
4	Additional reporting to monitor compliance – EMIs	EMIs	119	EMIs: £550 initial and £430 annual ongoing	EMIs: £670,800 initial and £525,400 annual ongoing

	<b>Proposal</b>	<b>Types of businesses affected</b>	<b>Estimated number of businesses affected</b>	<b>Estimated cost per business</b>	<b>Total costs</b>
5	Additional reporting to monitor compliance – Pls	Pls	1092	Authorised Pls: £6,187 initial and £3,718 annual ongoing Small Pls: £2,052 initial and £1,405 annual ongoing	Pls: £3,775,028 initial and £2,392,326 annual ongoing
6	Controllers and close links reporting	Authorised Pls	371	Negligible	Negligible
7	Limited network exclusion notification	Certain businesses including some giftcard (for example retailers)	Around 200	Not reasonably practicable to quantify	Not reasonably practicable to quantify
8	Electronic communications network notification	Certain electronic communications businesses	Around 10	Not reasonably practicable to quantify	Not reasonably practicable to quantify
9	Notification of denial of access to account information service provider (AISP) or payment initiation service provider (PISP)	ASPSPs	1092	Not reasonably practicable to quantify	Not reasonably practicable to quantify
10	Notification of refusal or withdrawal of payment account services by a credit institution and related guidance	Credit institutions	341	Not reasonably practicable to quantify	Not reasonably practicable to quantify
11	Notification by FSMA-authorized firms prior to conducting account information service (AIS) or payment initiation service (PIS) business	FSMA PSPs (banks and building societies)	341	Negligible	Negligible

	<b>Proposal</b>	<b>Types of businesses affected</b>	<b>Estimated number of businesses affected</b>	<b>Estimated cost per business</b>	<b>Total costs</b>
12	BCOBS – security of electronic payments	Credit unions and deposit takers in respect of business exempt from the PSRs 2017	491 credit unions; deposit takers in respect of business exempt from the PSRs 2017 N/A	Not reasonably practicable to quantify	Not reasonably practicable to quantify
13	BCOBS – unauthorised transactions	As above	As above	Not reasonably practicable to quantify	Not reasonably practicable to quantify
14	BCOBS – defective payments	As above	As above	Not reasonably practicable to quantify	Not reasonably practicable to quantify
15	BCOBS – other changes	As above	As above	No costs	No costs
16	Consequential changes to the Handbook	All PSPs	1552	Negligible	Negligible
17	Approach Document	All PSPs	As above	Negligible	Negligible

## Proposed Handbook changes and directions

### 1. Complaint handling time limits

#### *Proposals*

- 13.** PSD2 requires PSPs to respond to complaints about rights and obligations within 15 business days (and 35 business days in exceptional circumstances). The Handbook changes we propose to implement this requirement will apply only to PSPs in relation to complaints from eligible complainants, that is, persons eligible to have a complaint considered under the Financial Ombudsman Service.<sup>40</sup> Obligations for PSPs in relation to non-eligible complainants are being included by the Treasury in regulation 101 of the PSRs 2017.
- 14.** We are proposing changes to the rules in the Dispute Resolution: Complaints sourcebook (DISP). DISP currently requires businesses to respond to all complaints, including complaints about payment services, within eight weeks.
- 15.** PSD2 dispute resolution requirements (including the new time limits) relate to a narrower set of complaints than our current definition of complaints in DISP. They relate to complaints concerning the rights and obligations relating to part six and seven of the PSRs 2017 (we define these as “PSD” complaints). We are extending this to complaints concerning part five of the EMRs (we define these as “EMD” complaints) as complaints on e-money issuance are closely linked to payment services.

<sup>40</sup> As per DISP 2.7.3 including, for example a consumer, micro-enterprise, charity with income of less than £1 million

16. We consider that the current rules in place for complaints resolved by the close of the third business day are beneficial for eligible complainants. As such, we propose that for PSD and EMD complaints, summary resolution communications can continue to be provided for such complaints.
17. We are proposing to change our rules relating to referrals of complaints to the Financial Ombudsman Service, in order to align with the new complaint handling timelines under PSD2.
18. The complaint handling rules introduced by PSD2 are intended to introduce a common approach across the EU and we have little discretion around their implementation. Other than applying the requirements to EMD complaints, our changes to DISP will not add any additional obligations beyond what is required in PSD2. However, we estimate the costs and benefits of the changes below, given that we are making changes to our rules.

### **Costs**

19. Having engaged with businesses, we believe that the cost of implementing the new PSD2 time limits will vary depending on how many complaints the business receives and whether it receives both complaints which are subject to the PSRs 2017 and other types of complaints (and has to implement changes to separate these different complaints).
20. Businesses handling various types of financial services complaints may incur costs for staff training, creating new processes, and potentially systems changes; these costs would come from differentiating PSD2 complaints from other types of complaints. These may not materialise to the same extent if businesses decide to handle a broader set of complaints under the PSD2 timeframes instead; we believe that a minority of businesses will take this approach.
21. Regardless of the approach taken to handling complaints, all businesses will likely need to increase resources dedicated to complaint handling, in order to resolve complaints more quickly; this may result in additional staff costs. The cost of staff supervision by management, and compliance monitoring may also increase as businesses seek to monitor whether complaints are being dealt with quickly enough.
22. We believe additional costs associated with us applying the proposals to EMD complaints will not be significant because e-money issuance is closely linked to the provision of payment services. We believe that in practice e-money businesses may find it simpler to have a single complaints process for such complaints.
23. We also believe aligning the timeframes for referring complaints to the Financial Ombudsman Service will add no or minimal costs. As PSPs will have to resolve PSD and EMD complaints within 15 business days (35 business days in exceptional circumstances), they should have all the relevant information relating to a complaint by the time it has been referred.
24. We have engaged with trade bodies of banks and building societies on the costs of the PSD2 complaints handling changes.
25. We understand the impact of these new complaints handling time limits will be reduced because most complaints about payment services are already resolved within 15 days – PSD2 requirements will not result in a step change in how quickly complaints are dealt with. However, this would not necessarily negate IT and process changes.
26. We have proposed that businesses can continue to provide summary resolution communications for complaints resolved by the close of the third business day – no additional changes will need to be made to this process that businesses use.

27. We were told by a trade body that their members had not yet undertaken full project cost estimates for PSD2, and therefore we only have limited data on the expected costs to banks, as provided by this trade body:
- a small bank estimated initial set-up costs of £105,000 and ongoing annual costs of £30,000
  - a medium sized bank estimated costs of £1,600,000; this bank was unable to separate initial set-up and ongoing costs.
  - a large bank estimated initial set-up costs of £9,000,000. Estimates were not provided for ongoing costs. The estimate for initial set up costs included £5,000,000 of expected IT costs. It appears this estimate is based on this bank anticipating treating payment services complaints differently from other complaints, and therefore requiring systems to deal with two processes.
28. We would expect costs to be similar for building societies (of similar sizes).
29. To estimate the total costs to banks and building societies, we produce a weighted figure based on the assumption that there are 317 small banks and building societies, 18 medium banks and building societies, and six large banks and societies. We use the figures provided above for initial costs; as a composite figure (covering both initial and ongoing costs) was provided for the medium bank we estimate that two thirds of this composite figure (£1,066,667) accounts for initial cost. Using this method, we estimate that the total initial costs to banks and building societies of the proposed changes are £106,485,000. We are unable to estimate ongoing costs as we were not provided with enough data on ongoing costs for different sizes of banks.
30. As the sample provided by the trade body was very small, and is based on data for banks only, the reliability of this estimate is limited. We provide it as an indicative estimate to help inform responses to our consultation.
31. We have not estimated the costs to other PSPs. This would involve carrying out a survey of PSPs which would impose a burden on these businesses, as well as on the FCA, which would be disproportionate given our discretion around our approach is limited. Given we are largely implementing a requirement of PSD2, we consider, therefore that it would not be reasonably practicable to accurately estimate the costs to these businesses as a result of this proposal.

### ***Benefits***

32. It is not reasonably practicable to accurately estimate the size of the benefits this proposal, which implements PSD2 requirements, could bring. However, consumers will benefit where their complaints would have otherwise been resolved in over 15 business days. Under the new complaint handling timelines, harm to consumers caused by the ongoing issues their complaints relate to will be reduced by earlier resolution. Those consumers who are provided with compensation will also benefit from receiving this at an earlier stage.
33. There may also be indirect benefits as a result of incentives for businesses. To the extent that the new requirements make handling individual complaints more costly, businesses may treat their customers better in order to avoid complaints.

## **2. Complaints reporting**

### ***Proposals***

34. DISP rules currently require banks and building societies to report on all complaints. We are proposing the extension of the DISP complaints reporting to payment institutions (PIs) and e-money institutions (EMIs). To effectively collect complaints information about payment

services from all PSPs, we propose a new reporting form: “The Payment Services Complaints Return”.

35. FSMA firms which are already subject to the DISP complaints reporting rule are required to submit data on how many complaints have been closed within eight weeks and three days. Where these firms provide payment services or issue e-money, they will also be required to complete the Payment Services Complaints Return.
36. We propose that businesses should report all payment services and e-money complaints using this form. They will also be required to report any PSD or EMD complaints (as explained in the complaints handling section above) that have exceeded the new proposed time limits (15 and 35 business days). This is so that we can monitor compliance with the new time limits we are applying through DISP which apply only to the narrower subset of complaints.
37. We also propose a minimal requirement for PSPs to provide information on the volumes per payment service reported, to provide us with contextualisation metrics.

#### **Costs**

38. The wider costs of this proposal will be different for FSMA authorised firms currently subject to DISP reporting rules (banks and building societies, and non-bank credit card issuers) compared to PIs and EMIs that are not also FSMA authorised. These PIs and EMIs are not currently required to report to the FCA on complaints, though under DISP rules these businesses are already required to collect complaints management information and DISP guidance states that they should retain records of complaints so that these can be used to assist the Financial Ombudsman Service.
39. There may be some incremental initial costs associated with amending management information, changing processes and potentially changing systems and training staff. We have designed our proposals to minimise these incremental costs to the extent possible. These businesses will also incur additional on-going staff costs for completing and submitting our proposed complaints return, and there may also be small record keeping expenses for businesses that do not currently retain records.
40. We expect the costs of providing contextualisation metrics will be similar across all businesses (accounting for larger businesses incurring proportionately larger costs), and should be minimal. PIs and EMIs already report these data to the FCA on an annual basis. We also understand that retail banks report their payment volume to industry bodies and payment schemes.
41. As part of an ad hoc information request, we issued a survey to 375 authorised PIs, 729 small PIs, and 112 EMIs in December 2016, in order to inform our estimates of the costs to these businesses. 202 authorised PIs, 325 small PIs, and 72 EMIs responded to the survey. We have used these data to estimate costs per business and total costs to this population of businesses. We provide an average cost per business but anticipate that some businesses will have higher or lower costs.
42. There were seven incorrect responses (we considered the questions had been misinterpreted) and we have not included for the purpose of these calculations. To calculate the total cost to the population of businesses we have multiplied the average initial and ongoing costs respectively by the total number of payment institutions and e-money institutions (1291).
43. Below are the estimated costs for complying with our proposed complaints reporting for PIs and EMIs:

**Summary of estimated costs**

<b>Business type</b>	<b>Initial set up cost</b>	<b>Ongoing annual cost</b>
PIs and EMIs cost (per business)	£552	£432
Total cost to PIs and EMIs	£668,007	£523,243

- 44.** Banks and building societies, who already report to the FCA on complaints under DISP reporting rules, will need to make different changes to implement our proposed reporting requirements. We have sought estimates of the impact of the new reporting requirements on these businesses through engaging with trade associations.
- 45.** We were told that a large portion of the costs would result from differentiating PSD complaints and EMD complaints from other complaints. We were told this would require extensive training for staff and potentially systems changes. We recognise that businesses may have some difficulty in differentiating PSD and EMD complaints, and have designed our reporting so that this distinction will only need to be made for reporting purposes where complaints are not resolved within 15 business days. This will be a minority of complaints; we were told by a trade association for banks that around 90% of payments-related complaints are resolved within 15 business days, and by a building society that 85% of their payment services complaints were resolved within 3 days.
- 46.** We do not account for these differentiation costs under the complaints reporting CBA, as PSPs will already need to differentiate between different types of complaints under the new complaint handling timeframes introduced under DISP. Additional costs will only be incurred by the limited number of businesses we expect to comply with PSD2 time limits by closing all complaints within 15 or 35 business days, and who therefore would not otherwise be differentiating PSD or EMD complaints.
- 47.** We only have limited data on the expected costs of this proposal to banks, as provided by a trade body:
- a small bank estimated initial set-up costs of £35,000 and ongoing annual costs of £22,500
  - a medium sized bank estimated initial set-up costs of £3,500 and ongoing annual costs of £7,000
  - a large bank estimated initial set-up costs of £500,000 and ongoing annual costs of £200,000
- 48.** The estimates from the three banks who provided the trade body with data suggests that smaller banks might incur greater costs than medium sized banks. However, given the small sample size, we are unable to assess whether this might be representative across the wider population.
- 49.** We would expect costs for building societies to be similar to banks (of similar sizes), as both building societies and banks are subject to the current DISP reporting rule.
- 50.** To estimate the total costs to banks and building societies, we produce a weighted figure based on the assumption that there 317 small banks and building societies, 18 medium banks and building societies, and 6 large banks and societies. We use the figures provided above as representative figures for each category (small, medium, and large). Using this method,

we estimate that the total initial costs to banks and building societies of our proposal are £14,158,000, and total ongoing annual costs are £8,458,500.

51. As the sample provided by the trade body was very small, and is based on data for banks, the reliability of this estimate is limited. We provide it as an indicative estimate to help inform responses to our consultation.

### ***Benefits***

52. It is not reasonably practicable to accurately estimate the size of the benefits this proposal. However, extending complaints reporting to payment institutions will allow us to compare payment institutions with other PSPs already reporting on complaints, and have a more complete view of how the payment services sector handles complaints. The complaints data will greatly improve our ability to supervise the payment services sector, as will be able to identify areas of potential consumer detriment across a broader range of businesses.
53. As a result of collecting these data on different types of payment services complaints, we will be able to identify issues with certain sectors, product types, and individual PSPs. The importance of being able to identify problems with certain product types has been underlined with the recent emergence of “push payment” fraud.<sup>41</sup>
54. We may also publish the complaints data we collect on our website; this would allow businesses to compare their performance against the average in the payment services market.
55. Requiring PSPs to separately report PSD complaints only where they have not been resolved within 15 or 35 business days will allow us to monitor PSPs’ compliance with the new timeframes mandated by PSD2, and take necessary action to protect consumers.

### **3. Fraud reporting Proposals**

56. The PSRs 2017 require the FCA to collect data from PSPs on fraud relating to different means of payments, and provide these data in aggregated form to the European Banking Authority (EBA) and European Central Bank (ECB). Discussions at EU level about how to standardise fraud reporting across member states are likely to continue into 2018, and so we have developed an interim set of data for PSPs to collect and provide in the first reporting period.
57. We have proposed a fraud reporting form set out in Appendix 1. We propose that PSPs report data on the three payment types they provide that are subject to most fraud. For each payment type listed, we also propose PSPs provide the top three ways in which the fraud was executed from a list of fraud categories provided in the form.
58. Rather than asking for statistical data on fraud across all payment types and for all fraud methods, we are asking for data on the payment types and fraud methods which have the highest fraudulent transaction value. We consider this to be a proportionate approach that does not add significant incremental costs to PSPs relative to the counterfactual. Therefore we only conduct a high-level CBA on fraud reporting. We analyse the costs and benefits below but have determined that it would not be reasonably practicable to produce quantified estimates. This is because we are minimally implementing a requirement of PSD2, which is maximum harmonising legislation and therefore which we have limited to depart from. The cost of the FCA producing a survey, and asking PSPs to complete it would be disproportionate.

<sup>41</sup> See our “Updated statement on Which? Super-complaint on push payments”: <https://www.fca.org.uk/news/statements/update-which-super-complaint-push-payments>

**Costs**

59. The costs incurred by individual PSPs will vary depending on whether they currently collect and report on payments fraud data. We are aware that many PSPs already collect detailed payments fraud data and report them voluntarily to anti-fraud bodies, trade associations and schemes. Therefore, it is our understanding that the data we propose to collect are already held by many PSPs; the cost of reporting for these businesses will be limited to time spent by staff completing and submitting the reporting to the FCA. These costs will not be significant.
60. There will be some PSPs, including smaller businesses, which may not currently report detailed fraud data at an industry level. These businesses should however, already be maintaining organisational measures to comply with existing legal requirements to deter and detect financial crime including record keeping. Costs to these firms will come from reconciling the data they currently collect, with the exact information we will require. In addition to time spent by staff completing and submitting reporting, these PSPs may need to develop processes, and train staff in order to have the capability to record information about payment fraud. Additionally, staff time will be required for the collection and submission of fraud data.

**Benefits**

61. The data we propose to collect initially will improve our ability to supervise PSPs in relation to fraud prevention. It will allow us, at a high-level, to identify payment types across industry and at individual firm level that are subject to significant levels of fraud and the most significant frauds affecting those payment types. The FCA would then be able to seek further information where there is an indication of particular problems. This could lead to supervisory activity which could reduce the detriment suffered by consumers as a result of fraud, and more broadly reduce financial crime relating to payment services. The level of payments fraud in the UK was estimated by Financial Fraud Action UK (FFA UK) to be £2,551 billion in 2015.<sup>42</sup>

**4. Additional reporting to monitor compliance – e-money institutions (EMIs)****Proposals**

62. We are proposing to replace the existing returns for EMIs with one consolidated return containing the elements that are most relevant to our supervisory focus. We also propose to reduce the frequency of some regular reporting we collect from EMIs to yearly, rather than twice yearly. We will additionally be updating the small EMI return.
63. The returns will contain new questions, including group structure, income, and the scale of e-money issuance activity.

**Costs**

64. Currently, there are approximately 119 businesses in this sector that report data to us. The majority of the information we are requesting should already be held by EMIs, as they relate to their obligations under the EMRs, the PSRs 2009 (and PSRs 2017) and our Handbook rules. However, our requirements may result in an increase in compliance costs for EMIs, as they will need to collate the information we require and complete the additional questions in the new return.
65. There may be both initial set up costs and ongoing costs associated with the proposals. The initial costs could include changes to processes, staff training, and potentially systems changes. The ongoing costs may relate to staff time incurred in collating and submitting the return. The costs to businesses are likely to vary according to factors such as business size and the systems used.

<sup>42</sup> Financial fraud losses across payment cards, remote banking and cheques totalled £755 million in 2015. Prevented fraud totalled £1.76 billion in 2015. See FFA UK, Fraud the Facts 2016:  
<https://www.financialfraudaction.org.uk/wp-content/uploads/2016/07/Fraud-the-Facts-A5-final.pdf>

66. As part of an ad hoc information request, we issued a survey to 112 EMIs in December 2016 to inform our estimates of the costs to industry. Fifteen small EMIs and 57 authorised EMIs responded to the survey. We have used these data to estimate costs per business and total costs to authorised EMIs and small EMIs. We provide an average cost per business but anticipate that some businesses will have higher or lower costs.
67. We asked authorised EMIs and small EMIs six questions in our survey. There were some variations in the responses we received, which could impact on the reliability of the costs we have estimated. To improve the accuracy of our estimate, we have not included erroneous answers in our calculations, for example those which appeared to be based on a misunderstanding of the question. The number of erroneous answers from respondents varied per question. To calculate the total cost to the population of businesses we have multiplied the average initial and ongoing costs by the current population of EMIs (119). Below are the estimated costs for complying with our proposals:

**Summary of estimated costs**

<b>Business type</b>	<b>Initial set up cost</b>	<b>Ongoing cost</b>
All EMIs (per business)	£3,814	£2,402
Total costs to EMIs	£453,899	£285,800

68. As part of the proposals, the frequency of returns will be reduced from a semi-annual basis to an annual basis. This will result in a reduced cost and labour burden to businesses.

**Benefits**

69. Our proposals will result in benefits associated with more effective supervision of EMIs. The additional data we collect will allow us to undertake peer comparisons, to better understand the different business models and to identify which businesses are growing market share. We will ultimately be able to better assess the risks posed by different businesses, and take informed action as necessary based on analysis of these data. We expect that the data will greatly increase our capability, particularly in areas such as safeguarding and prudential risks. This should lead to improved compliance by EMIs, and potentially reduced detriment to consumers caused by misconduct.
70. It is not reasonably practicable to accurately estimate the size of the benefits this proposal could bring. However, effective supervision will allow us to reduce detriment to consumers and damage to the integrity of the market caused by misconduct, as we will be able to intervene to prevent and stop poor conduct.

**5. Additional reporting to monitor compliance – payment institutions (PIs)**

**Proposals**

71. We are proposing to modify the existing returns for authorised PIs and small PIs, and to ask some additional questions. These new questions will include income, the value and volume of payment services activity, and access to payment systems.

**Costs**

72. Currently, there are 1092 payment institutions that report data to us. The majority of the information we are proposing to request should already be held by PIs, as it relates to their obligations under the PSRs 2009 (and the PSRs 2017) and our Handbook rules. However, our requirements may result in an increase in compliance costs for PIs associated with reporting this information to us.

- 73.** There may be both initial set up costs and ongoing costs associated with the proposals. The initial costs could include changes to processes, staff training, and potentially systems changes. The ongoing costs may relate to staff time spent collating and submitting the return. The costs to businesses are likely to vary according to factors such as a business size and the type of systems used.
- 74.** As part of an ad hoc information request, we issued a survey to 375 authorised PIs and 729 small PIs in December 2016 in order to inform our estimates of the costs to industry. 202 authorised PIs and 325 small PIs responded to the survey.
- 75.** We have used these data to estimate costs per business and total costs to authorised PIs and small PIs. We provide an average cost per business but anticipate that some businesses will have higher or lower costs.
- 76.** We asked PIs six questions in our survey. There were some variations in the responses we received, which could impact the reliability of the costs we have estimated. To improve the accuracy of our estimate, we have discounted erroneous answers in our calculations. The number of erroneous answers varied per question. To calculate the total cost to the population of PIs we have multiplied the average initial and ongoing costs for authorised and small PIs by the respective populations (371 authorised PIs and 721 small PIs). Below are the estimated costs for complying with our proposals:

**Summary of estimated costs**

<b>Business type</b>	<b>Initial set up cost</b>	<b>Ongoing cost</b>
Authorised PIs (per business)	£6,187	£3,718
Small PIs (per business)	£2,052	£1,405
Cost to industry	£3,775,028	£2,392,326

**Benefits**

- 77.** The benefits will be analogous to those for the EMIs reporting changes, including more effective supervision because of better data intelligence. Effective supervision will allow us to reduce detriment to consumers and damage to the integrity of the market posed by misconduct, as we will be able to intervene to prevent and stop poor conduct.

**6. Annual controllers and close links reports**

- 78.** We are proposing to require authorised payment institutions (authorised PIs) to submit the annual controllers report (REP001) and annual close links report (REP001) that EMIs and FSMA-regulated firms currently provide to us. We have included these for reference in Appendix 1. This is reflected in proposed changes in Appendix 1.
- 79.** We are proposing this change to give us a better understanding of who is controlling authorised PIs, and whether there are close links which would prevent us from effectively supervising these businesses. This will ultimately support our revised supervisory approach.
- 80.** We expect that authorised PIs would already hold information about their controllers, and about their close links. An obligation to notify us if there are any significant changes likely to affect the conditions for authorisation, including that close links do not prevent effective supervision, exists under the PSRs 2017.

81. Given this information should already be held, the only costs as a result of our proposals will be completing the reports. As we expect the costs will be of minimal significance, we do not conduct a CBA.

## **7. Limited network exclusion notification**

### ***Proposals***

82. The PSRs 2017 will require businesses operating under the limited network exclusion to notify the FCA where the payment transactions executed through their payment instruments exceed €1 million in 12 months. This notification must include a description of the service offered and specify under which part of the exclusion the activity is considered to be carried out.
83. The FCA will have power to direct the form, timing and content of notifications under the PSRs 2017. The proposed notification form and the draft direction can be found in Appendix 2.
84. We have broken the description down into parts and provided options to choose from where relevant. This should make the form easier to complete and enable us to collect the information in a standardised manner across all notifying businesses.
85. Beyond the information mandated by PSD2 we propose only to direct firms to provide additional information in the return that is necessary for us to process the notification. This includes an explanation of how the notified product or service falls under the exclusion. We consider this necessary to help us make our assessment of whether the notified product or service falls under the exclusion (as required by PSD2). We would expect businesses to be able to provide this information if they are operating under the exclusion.
86. We believe our approach does not add significant incremental costs to PSPs relative to the counterfactual. Therefore, we only conduct a high-level CBA on the limited network exclusion notification.

### ***Costs***

87. The majority of the information required in the notification form will already be held by businesses, as they will have used that information to assess that they were eligible for the limited network exclusion. Therefore, as a result of our proposals, businesses submitting the limited network exclusion notification will largely incur staff costs of completing the notification form.

### ***Benefits***

88. Submission of this notification will be required under the PSRs 2017. We would expect that the requirement to submit this notification to the FCA would create an additional incentive for businesses to ensure the limited network exclusion is being used correctly. Moreover, the information we propose be provided in this notification will enhance the FCA's ability to identify where the exclusion is being incorrectly claimed. The effect should be that fewer businesses incorrectly make use of the limited network exclusion, and that some businesses become subject to regulation. There will be greater protection for consumers, and enhanced market integrity as a result of these businesses being regulated.

## **8. Electronic communications network notification**

### ***Proposals***

89. The PSRs 2017 also introduce a notification requirement for businesses operating under the electronic communications network (ECN) exclusion (which replaces the existing exemption for telecommunications, digital or IT operators under PSD – commonly known as the “digital download” exemption). These businesses must notify the FCA if they are currently operating under the ECN exclusion, or before beginning to undertake excluded activity. Businesses are

required to provide the FCA with a description of the service provided and an annual audit opinion that the transactions to which the service relates comply with the transaction limits.

90. The FCA will have the power to direct the form, timing and content of notifications. Our proposed notification form and the draft direction are set out in Appendix 2.
91. The form breaks the description down into parts and provides options to choose from where relevant. This should make the form easier to complete and enable us to collect the information in a standardised manner across all notifying businesses.
92. We do not propose to ask for any more information than is already required under the PSRs 2017, unless it will help us to process the notification. For example, we ask the notifying business to briefly set out the grounds on which the service provider is able to rely on the ECN exclusion. This information will help us in any assessment we make of the claimed exclusion.
93. We believe our approach does not add significant incremental costs to PSPs relative to the counterfactual. Therefore, we only conduct a high-level CBA on the ECN exclusion notification.

#### **Costs**

94. Businesses operating under this exclusion should already be collecting data on their subscribers' transaction values in order to identify whether the limits established in PSD2 are being exceeded. Therefore, the cost incurred as a result of our proposal will be limited to staff costs of providing this information in the notification form.

#### **Benefits**

95. The benefits of this proposal will be analogous to those arising from the limited network exclusion notification proposal. The ECN exclusion notification should mean that fewer businesses incorrectly make use of the limited network exclusion, and that some businesses instead become subject to regulation. The integrity of the payment services market will be enhanced, as will the level of consumer protection.

### **9. Notification of denial of access to AISP or PISP**

#### **Proposals**

96. Under PSD2, an account servicing payment service provider (ASPSP) may deny account information service providers (AISPs) and payment initiation service providers (PISPs) access to a customer's payment account only where it has objective and duly evidenced reasons relating to unauthorised or fraudulent access to the payment account by that AISP or PISP. PSD2 requires that in these cases the ASPSP must immediately report the incident to the FCA, and provide details of the case and the reasons for taking action. We propose amendments to SUP 15 in order to direct that notifications be made by completing the notification form, included at Appendix 1.
97. In SUP 15.14 we set out that in order to maintain compliance with this PSD2 requirement, ASPSPs must notify us of denial of access immediately.
98. In the proposed notification form we ask ASPSPs to provide information describing the details of the case and the reasons for taking action, as required under PSD2. We have broken down the information required into parts and provided options to choose from where relevant. This should make the form easier to complete and will enable us to collect the information in a standardised manner across all notifying ASPSPs.
99. Beyond the information required by PSD2, we have asked for a minimal amount of additional information from the ASPSP on the steps that the AISP or PISP would need to take for access

to be restored. This information will help us to understand why access has been denied and whether we need to investigate further or take any specific action. We consider that ASPSPs should have this information ready where they have denied access.

100. We believe our approach does not add significant incremental costs to PSPs relative to the counterfactual. Therefore, we only conduct a high-level CBA on the denial of access notification.

#### **Costs**

101. As set out above, beyond the information required in PSD2, we ask for some information on the steps required to restore access (or how the issue was resolved if already restored). ASPSPs should already understand the circumstances that resulted in the denial of access to be able to comply with the requirements of the PSRs 2017. Therefore, the information required in the notification form should already be held by ASPSPs. The costs will therefore be limited to collecting the information and submitting it, and will depend on the number of access requests an ASPSP denies; it is not intended under PSD2 that such denials will be common.
102. There will also be some costs involved in determining whether a notification is required where access has been denied, though these will not be significant. These costs will be incurred as a result of the PSRs 2017; our guidance seeks to reduce these costs by clarifying our expectations.

#### **Benefits**

103. The requirement to submit this notification and our proposals on the information to be provided should create an additional incentive for ASPSPs to make sure they meet the requirements of PSD2 relating to denial of access. It will also enhance the ability of the FCA to identify potential non-compliance and make timely interventions. As a result, fewer AISPs and PISPs should be improperly denied access, and competition in the market should be enhanced. These benefits should be reinforced by improved trust among prospective AISPs and PISPs in the functioning of the market.

### **10. Notification of refusal or withdrawal of payment account services by a credit institution and related guidance**

#### **Proposals**

104. PSD2 introduces obligations for credit institutions to provide PSPs access to payment account services on a proportionate, objective and non-discriminatory (POND) basis and these are implemented by the Treasury through regulation 105 of the PSRs 2017. We have proposed guidance on how credit institutions should meet these obligations in the revised Approach Document (see Chapter 16).
105. Under the PSRs 2017 credit institutions must notify the FCA when access to payment account services is refused or withdrawn, and must provide duly motivated reasons for the refusal within this notification. We propose to direct the content and timing for the notification. The draft form and the proposed changes to the Handbook are provided in Appendix 1.
106. We have structured the questions in the form make it easier to complete and to allow us to collect the information in a standardised manner.
107. Beyond questions covering duly motivated reasons, we have asked for information which will help us assess whether the credit institution has met their obligations to grant access on a POND basis. We have asked for details of the person that was subject to refusal or withdrawal, what products they were seeking access to, when the decision was made to refuse access, and what process was used to make the decision. The provision of this information through the notification will better enable us to assess cases of refusal or withdrawal and compliance with Regulation 105 of the PSRs 2017. This will prevent the potential impact on firms of having to

respond to subsequent ad hoc data requests (although this will not prevent us from requesting further information where necessary).

### **Costs**

- 108.** Our proposed guidance sets out our expectations of how credit institutions should meet their obligations under the PSRs 2017, which implement PSD2. We consider that our guidance is a reasonable interpretation of the PSRs 2017 and does not add material cost. The notification we propose will include information that credit institutions will already hold in order to fulfil their obligations under the PSRs 2017. Credit institutions will incur the costs of staff spending extra time compiling this information and submitting this notification to the FCA, which should not be significant.
- 109.** As we expect the costs of this proposal (relative to the counterfactual) to be of minimal significance, we do not believe it would be proportionate to carry out a survey, which would result in costs for the FCA and businesses. We therefore do not provide a quantitative estimate of costs.

### **Benefits**

- 110.** There is currently evidence of a “de-risking” issue, whereby account access is withdrawn from PSPs (particularly money remittance businesses). The World Bank’s 2015 survey found a decline in bank access for money remittance businesses, with 42% of respondents noting the UK as a jurisdiction where terminations or restrictions of account access were occurring.<sup>43</sup> While the PSRs 2017 do not mandate that payment account access be provided to PSPs, and do not address all of the causes of de-risking, they should increase transparency around the application process for PSPs seeking payment accounts. Our proposed guidance should ensure greater consistency of how credit institutions comply with the requirement of regulation 105 of the PSRs 2017. Our ability to make sure the requirements of regulation 105 are being met by credit institutions will be greater as a result of the information we propose to receive through notifications.
- 111.** Our proposal may contribute positively to our objective of promoting effective competition in the interest of consumers. The increased competition could result in indirect benefits for consumers through greater choice and lower priced products. In particular, there may be certain areas of payment services, such as remittance of money to certain countries, where access for consumers is improved.
- 112.** Data is not available on the extent to which credit institutions currently meet the standards set by the new account access requirements, and this would be difficult for credit institutions and the FCA to assess. It is therefore not reasonably practicable to accurately estimate the size of the benefits.
- 11. Notification by FSMA firms prior to conducting AIS or PIS business**
- 113.** We propose amendments to SUP 15 which will require FSMA firms to notify the FCA if they are currently providing AIS or PIS or intend to, along with a brief description of the services they will provide. We are doing this to improve our understanding of the providers in this new and emerging market. This will help us measure potential risks to consumers, as well as indicate how competition is working in the market.

<sup>43</sup> World Bank, Withdrawal From Correspondents Banking, Where, Why And What To Do About It, November 2015, <http://documents.worldbank.org/curated/en/113021467990964789/pdf/101098-revised-PUBLIC-CBR-Report-November-2015.pdf>

114. This will be a simple notification, and will not require firms to collect or formulate new data, just to indicate that they intend to undertake this business. The costs as a result of this proposal will be of minimal significance and so we do not conduct a CBA.

## BCOBS

### 12. Security of electronic payments

#### *Proposal*

115. We propose adding a rule and accompanying guidance to BCOBS to clarify our expectations in relation to security of electronic payments which are outside the scope of the PSRs 2017.
116. Our proposals are intended to enhance protection for consumers making electronic payments, and improve confidence in the market.
117. This will impact credit unions, and deposit takers that conduct business that is not regulated by the PSRs 2017.

#### *Costs*

118. We expect that our proposal may impose some limited costs on a small proportion of credit unions (there are currently 491 credit unions),<sup>44</sup> and certain providers of non-payment accounts. We expect that businesses who already allow for electronic payments will have developed secure systems to meet our general rules and guidance on systems and controls. We are also aware that a number of credit unions are part of the Government's Credit Union Expansion Project which aims to modernise and grow the credit union industry. As part of this, coordinated systems, including a banking app, which includes similar levels of password protection as other banking apps, have been developed to help credit unions to modernise.<sup>45</sup>
119. We therefore would expect costs to businesses to be limited to reviewing their existing systems to ensure they meet our new, high-level requirement. Businesses who wish to begin offering electronic payments will incur costs developing relevant systems regardless of this proposal, and this requirement is unlikely to impose significant additional costs.

#### *Benefits*

120. The main benefit of this proposal will be enhanced consumer protection. The majority of businesses now offer products and payments online and this is likely to lead to an increased risk of fraud. The larger credit unions also increasingly offer online services. Introducing the proposed rule to clarify our expectations will lead to enhanced consumer protection by decreasing the risk of fraud for those businesses falling outside the scope of the PSRs 2017. The proposed guidance on authentication procedures is aimed at improving consumer protection and providing clarity for businesses.
121. We are unable to provide an estimate of the costs and benefits involved as it would not be reasonably practicable to carry out the estimation process. We would encounter difficulties identifying the affected population, and believe businesses may not be able to provide reasonable estimates of the costs as this would require a review of existing processes. These difficulties would make such an exercise disproportionate given we expect the costs of the proposal not to be significant.

<sup>44</sup> See Bank of England Quarterly Statistics, available here: <http://www.bankofengland.co.uk/prd/Documents/regulatorydata/creditunionquarterlystatisticsjune2016.pdf>

<sup>45</sup> This includes a banking app which includes similar levels of password protection as other banking apps. For more detail please see <http://www.abcul.org/media-and-research/news/view/738>

### 13. Unauthorised transactions

#### *Proposals*

- 122.** We propose amending our rule in BCOBS 5.1.12R to decrease the maximum losses banking customers are liable for in the event of an unauthorised transaction from £50 to £35, aligning this with the PSRs 2017.
- 123.** We also propose adding rules to clarify the circumstances where the customer is not liable for those maximum losses.
- 124.** We are making these changes related to unauthorised transactions so that consumers have consistent levels of protection across different providers and products. As well as improving consumer protection, we believe this consistency will lead to increased market confidence.
- 125.** This will impact credit unions, and other providers of retail banking services when conducting business that is not regulated by the PSRs.

#### *Costs*

- 126.** We believe that this proposal is unlikely to result in significant costs to businesses or benefits for consumers. This is informed by the CBA we conducted when amending our rules in 2009 on the liability for losses in respect of unauthorised transactions.<sup>46</sup> Additionally, the ONS found that 83% of victims of bank and credit account fraud already receive a full reimbursement from their financial services provider.<sup>47</sup>
- 127.** In the limited number of cases where a business would not have otherwise provided full reimbursement to a customer and an unauthorised transaction occurs, there will be a transfer of £15 from the affected business to customer.
- 128.** The proposed clarification on the circumstances where a customer is not liable for any losses may result in minimal costs being incurred by businesses updating their terms and conditions and training staff.

#### *Benefits*

- 129.** As well as the £15 transfer from affected businesses to consumers, we believe the proposal should also increase consumer confidence in the market, as there will be consistent protections regardless of the type of business providing the service.
- 130.** As we previously undertook an analysis of analogous changes in 2009, and these indicated similar changes would not result in significant costs, we believe it would be disproportionate to collect data on the costs of this proposal. We have determined that quantifying costs and benefits would not be reasonably practicable.

### 14. Incorrect payments routing information

#### *Proposal*

- 131.** We propose rules setting out that businesses should co-operate in cases where the customer has provided the incorrect payment routing information when making a payment.

<sup>46</sup> In 2009 we surveyed firms, most of which thought that significant incremental costs or benefits were unlikely to arise. Our proposal amends the existing rule. [http://www.fsa.gov.uk/pubs/cp/cp09\\_20.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_20.pdf)

<sup>47</sup> ONS, 'Statistical Bulletin: Crime in England and Wales: year ending Sept 2016', [www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingsept2016#whats-happening-to-trends-in-fraud](http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingsept2016#whats-happening-to-trends-in-fraud)

**132.** Our proposals will ensure that customers can obtain information to help them to recover sums lost through misdirected payments which could not be recovered by the reasonable efforts of their provider. Protection for consumers will therefore be enhanced.

**133.** This will impact credit unions, and providers of retail banking services when conducting business that is not regulated by the PSRs.

#### **Costs**

**134.** Research carried out by Which? in 2014<sup>48</sup> showed that 6% of customers had inadvertently sent money to the wrong account and 16% of those customers were unable to get their money back. Given that this does not occur often, and is likely to happen less frequently with non-payment accounts where fewer transactions take place, we believe costs imposed on businesses for proposed new requirements will not be significant.

**135.** As our rules in BCBS5.1.15R(2) already require businesses to make reasonable efforts to recover the funds, we believe that businesses will already have the relevant information. Businesses will therefore only incur costs of collating and sending the information to customers, if requested. As with other changes, businesses may also incur small costs of updating terms and conditions and training staff.

#### **Benefits**

**136.** The expected benefits relate to consumer protection. If consumers are increasingly making transactions from online accounts there is an increased risk that the incorrect payment routing information is provided. The proposed rule will make it clear that businesses are obliged to co-operate, whether they are the business of the payer or payee. This will increase consumer protection by making it easier for consumers to get the information they need to claim repayment of funds. We recognise that this will not mean that the customer will automatically receive funds. However, it will benefit the customer by equipping them with all available information to make their claim. This will reduce the time and effort spent on claims by customers and businesses. It should also lead to some increase in the recovered funds received.

**137.** We are unable to provide an estimate of the costs and benefits involved as it would not be reasonably practicable to carry out the estimation process. We consider that businesses will be unable to quantify the impact at this stage as they would be unable to estimate how many customers will request information and how businesses will co-operate in practice. Also, such an exercise may be disproportionate given the costs of this proposal are likely to be small.

#### **15. Other changes to BCBS**

**138.** We propose removing the following guidance, which is no longer relevant:

- BCBS 4.1.1G(8), regarding information to be provided to customers on the Financial Services Compensation Scheme; and
- BCBS 5.1.3G, which references a British Bankers' Association publication that is no longer in use.

**139.** These proposals do not alter the obligations of businesses, therefore there are no changes in costs or benefits, and so we do not conduct a CBA.

<sup>48</sup> Which?, 'One in six mistaken online payments unrecovered', September 2014 <http://www.which.co.uk/news/2014/09/one-in-six-mistaken-online-payments-unrecovered-380124/>

### **16. Consequential changes to the Handbook**

- 140.** We propose a number of consequential changes to the Handbook as a result of changes imposed by the implementation of PSD2. These include changes to definitions in the glossary. As these changes are merely to reflect PSD2, we do not believe they will result in additional costs for businesses, and so we do not conduct a CBA.

### **Proposed guidance**

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### **17. Wider revisions to the Approach Document**

- 141.** Other than the guidance on access to payment account services (discussed above), we set out guidance on a number of topics in the revised Approach Document (as summarised in Chapter 9 of the CP). PSD2 is a maximum harmonising directive, and we consider that our guidance reflects a reasonable interpretation of PSD2 and the PSRs 2017. Therefore, we do not believe the guidance in the revised Approach Document adds any material cost onto businesses, and so we do not conduct a CBA.

# Annex 3

## Compatibility statement

### Compatibility with the FCA's general duties

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1. When consulting on new rules, we are required by section 138I(2) of FSMA to include:
  - an explanation of how our proposals are compatible with our strategic objective and advance one or more of our operational objectives
  - an explanation of how we have had regard to the regulatory principles set out in section 3B of FSMA
  - a statement on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons
2. The requirements of section 138I do not apply to our proposals for guidance or directions under the PSRs 2017. However, under the PSRs 2017, when determining the general policy and principles by reference to which we perform particular functions under those regulations we will be required to have regard to the principles set out in regulation 106 (3) of the draft PSRs 2017. These mirror the principles in Section 3B FSMA.
3. This Annex also includes our assessment of the equality and diversity implications of these proposals.
4. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

### Compatibility with the FCA's regulatory objectives

5. Our proposed Handbook changes and guidance are compatible with our strategic objective of ensuring that the relevant markets function well.
6. Some of our changes, including those to complaints handling in DISP, and consequential changes, primarily give effect to policies put in place by PSD2 and the PSRs 2017, and so contribute to fulfilling their aims. These correspond closely with our operational objectives of ensuring an appropriate level of consumer protection and promoting effective competition in the interests of consumers.
7. Our proposals to extend complaints reporting to PSPs, and for payment institutions and e-money businesses to provide additional periodic reporting will help advance our objective of ensuring an appropriate level of consumer protection by requiring PSPs to report to us on how they are meeting their obligations to consumers, and better enabling us to take supervisory

action as a result of detriment identified. Our proposals to align BCOBS with the PSRs 2017 will also enhance consumer protection.

8. Our proposals are also compatible with our objective of promoting effective competition in the interests of consumers; we are ensuring a level playing field by collecting complaints reporting from all PSPs and aligning BCOBS with the PSRs 2017.

#### **Compatibility with the principles of good regulation and regulation 106 of the PSRs 2017**

9. In preparing the proposals set out in this CP, we have had regard to the regulatory principles set out in section 3B of FSMA and regulation 106 of the draft PSRs 2017. We set out below how our proposals are compatible with each principle.

#### ***The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons***

10. We do not believe that our proposals discriminate against any particular business model or approach. We have considered specific requirements for PSPs conducting new payment services, account information service (AIS) and payment initiation service (PIS). The revised periodic reporting that we propose will continue to be tailored to payment institutions (PIs) and e-money institutions (EMIs), with separate returns for these respective business types.
11. We have also provided detailed guidance in our revised Approach Document, to recognise the different needs of smaller PSPs.

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

12. We believe that by consulting on our proposals we are acting in accordance with this principle. We are also choosing to set out detailed guidance in our Approach Document to help PSPs navigate through the PSRs 2017 and our relevant rules and guidance, and to understand our approach. This includes guidance on our supervisory approach.

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

13. For the proposals in this CP, in the limited areas where we have discretion in implementing PSD2, we have had regard to the burden on the FCA in assessing how best to implement.
14. We have designed the notifications for denial of access to AISPs or PISPs, and for refusal or withdrawal of payment account services by a credit institution, to ensure we do not need to process an excessive number of notifications.
15. Our proposal to supervise individual PSPs according to the risk we think they might pose will allow us to make better use of FCA resources.

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

16. We believe the proposals in this CP containing burdens or restrictions are proportionate to the benefits, and set out our analysis of the costs and benefits of our proposals in our CBA.
17. We have taken into account the impact of our proposed complaints reporting on PSPs. We believe that requiring that complaints concerning rights and obligations under parts six and seven of the PSRs 2017, and part five of the EMRs, be separated from other complaints is proportionate because it will allow us to more effectively identify non-compliance with the new complaint handling time limits under PSD2.

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

18. We have the power to publish information relating to investigations into businesses authorised under FSMA, the PSRs 2017 and the EMRs, and individuals. We are also considering publishing anonymised and aggregated complaints data relating to PSPs.

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

19. The proposals support implementation of PSD2, which seeks to improve competition in payment services, and improve access for payment services businesses.
20. We propose guidance on the access that must be provided by ASPSPs to AISPs or PISPs. These newly regulated services could allow customers to share information about their bank accounts to improve their ability to manage their money, and increase the payment options for customers paying online products and services.
21. We also provide guidance on access to payment account services, in order to support PSD2's aims of increasing transparency around account provision and ensuring that decisions regarding access are made on a non-discriminatory basis. This should enhance competition.
22. Our proposals have the potential to accelerate payment services innovation. This could lead to greater choice for consumers, who could benefit from more flexibility about how they access their accounts and make payments. Competition pressures could also mean that consumers pay lower prices for the payment services they access. This innovation and competition could contribute to growth in the payment services sector and in turn the UK's economy.

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

23. We do not propose any requirements which are inconsistent with this principle. Our guidance on information that should be provided to consumers should support consumers' ability to make informed decisions about payment services.

***The responsibilities of senior management***

24. We believe the proposals in this CP are consistent with this principle. Senior managers of PSPs will need to ensure compliance with the PSRs 2017 and the relevant parts of our Handbook.

***Expected effect on mutual societies***

25. Section 138K of FSMA requires us to provide an opinion on whether the impact of a proposed rule on mutual societies is significantly different to the impact on other authorised persons.
26. We are proposing some changes to partially align rules and guidance in our Banking: Conduct of Business Sourcebook (BCOBS) to the PSRs 2017. These amendments will apply to credit unions, which are mutual societies. Our proposals are intended to increase consumer protection to make sure businesses have secure systems in place to minimise the risk of fraud where online transactions are offered. Our proposals also aim to increase consumer protection in relation to unauthorised transactions and misdirected payments.
27. Our proposals take into consideration credit unions' business models and we do not propose completely aligning BCOBS with the PSRs 2017 so as not to impose a disproportionate impact on credit unions. While we recognise that our proposals will have an impact on credit unions, we are satisfied that the impact is not significantly different to that on other authorised firms.
28. Our other proposals relate to the implementation of the PSRs 2017. The PSRs 2017 do not apply to credit unions, and we are satisfied that the impact of our proposals on other mutual

societies, such as building societies, are not significantly different to that on other authorised firms.

**Equality and diversity**

- 29.** We are required under the Equality Act 2010 to ‘have due regard’ to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
- 30.** The outcome of the assessment in this case is stated in paragraph 1.31 of the CP.

**Legislative and Regulatory Reform Act 2006 (LRR)**

- 31.** We have had regard to the principles in the LRR and the Regulators’ Code for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are proportionate and result in an appropriate level of consumer protection, when balanced with impacts on businesses and on competition.

## Annex 4

# Summary of changes to conduct of business guidance (Chapter 8 of the revised Approach Document)

1. The main changes to Chapter 8 of the revised Approach Document (conduct of business) were summarised in Chapter 4 of the CP. To help readers navigate the revisions to the Approach Document we set out other conduct of business changes below.

### Other changes to information requirements

2. The table below signposts towards changes to Chapter 8 of the revised Approach Document (conduct of business) relating to information requirements.

<b>Section of revised Approach Document (Chapter 8)</b>	<b>Paragraph changed</b>
Form in which information must be provided	8.64-8.74
Pre-contractual information requirements	8.75-8.76
Information during period of contract	8.77
Changes to the framework contract	8.78-8.89
Termination of the framework contract	8.90-8.93
Transaction information under a framework contract	8.94-8.105
Single payment transactions	8.114-8.124
Currency conversions	8.126
Information on additional charges or reductions	8.127-8.130
Burden of proof	8.131
Information requirements applying to RAISPs	8.132-8.136

### Other changes to rights and obligations

3. The table below signposts towards changes to Chapter 8 of the Approach Document (conduct of business) relating to rights and obligations.

<b>Section of revised Approach Document (Chapter 8)</b>	<b>Paragraph changed</b>
Requirements applying to RAISPs	8.142
Charges	8.143-8.146
Charges or reductions for the use of a particular payment instrument	8.147-8.148
Consent	8.149-8.156
Limits on the use of payment instruments and access to payment accounts	8.165-8.169
Obligations of the customer in relation to payment instruments	8.170-8.175
Obligations of the PSP in relation to payment instruments	8.176
Notification and rectification of unauthorised or incorrectly executed payment transactions	8.177-8.183
Evidence on authentication and execution of payment transactions	8.184-8.188
PSP's liability for unauthorised transactions	8.189-8.203
Customer's liability for unauthorised transactions	8.204-8.208
Refunds for payment transactions initiated by or through the payee	8.214-8.218
Requests for refunds for payment transactions initiated by or through a payee	8.219-8.220
Receipt of payment orders	8.221-8.229
Refusal of payment orders	8.230-8.232
Revocation of payment orders	8.234-8.241
Execution time and value date	8.244-8.270
Incorrect unique identifiers	8.271-8.275
Non-execution or defective execution of payment transactions (whether initiated by a payer, payee or through a payment initiation service)	8.278-8.299
Liability of payment service provider for charges and interest	8.300-8.301
Right of recourse	8.302
Consent for the use of personal information	8.304

# Appendix 1

## Draft Handbook text including PERG

## PAYMENT SERVICES INSTRUMENT 2017

### Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes this instrument amending:
- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
  - (2) the rules, standard terms and guidance for Voluntary Jurisdiction participants,
- as set out in Annexes A and H of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 227 (Voluntary jurisdiction);
  - (b) paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme);
  - (c) paragraph 14 (The scheme operator’s rules) of Schedule 17;
  - (d) paragraph 15 (Fees) of Schedule 17;
  - (e) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (f) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules, guidance and standard terms in Annexes A and H by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

### Powers exercised by the Financial Conduct Authority

- C. 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 Act:
    - (a) section 69 (Statement of policy) as applied by paragraph 1 of Schedule 6 to the Payment Services Regulations 2017 (SI [XXXX]) (“the Regulations”);
    - (b) section 137A (The FCA’s general rules);
    - (c) section 137T (General supplementary powers);
    - (d) section 139A (Power of the FCA to give guidance);
    - (e) section 169(9) (Investigations etc. in support of overseas regulator) as applied by paragraph 3 of Schedule 6 to the Regulations;
    - (f) section 210 (Statements of policy) as applied by regulation 112(6) of the Regulations;
    - (g) section 226 (Compulsory jurisdiction);
    - (h) section 229 (Awards);
    - (i) section 395 (The FCA’s and PRA’s procedures) as applied by paragraph 9 of Schedule 6 to the Regulations;
    - (j) paragraph 23 of Schedule 1ZA (fees) as applied by regulation 118(1) of the Regulations; and

- (k) paragraph 13 (FCA’s rules) of Schedule 17 (The Ombudsman Scheme); and
- (2) the following regulations of the Regulations:
- (a) regulation 30(4) and (5) (Supervision of firms exercising passport rights);
  - (b) regulation 71(8) (Limits on the use of payment instruments and access to payment accounts);
  - (c) regulation 98(3) (Management of operational and security risks);
  - (d) [regulation 99(2) (Incident reporting)];
  - (e) regulation 105(4) (Access to bank accounts);
  - (f) regulation 109 (Reporting requirements); and
  - (g) regulation 120 (Guidance).

- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules, guidance and standard terms made and amended by the Financial Ombudsman Service Limited.

**Commencement**

- F. This instrument comes into force on 13 January 2018 except for part 2 of Annex F which comes into force on 1 April 2018.

**Amendments to the Handbook**

- G. 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
General Provisions (GEN)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Banking: Conduct of Business sourcebook (BCOBS)	Annex E
Supervision manual (SUP)	Annex F
Decision Procedure and Penalties manual (DEPP)	Annex G
Dispute Resolution: Complaints sourcebook (DISP)	Annex H
Consumer Credit sourcebook (CONC)	Annex I

**Amendments to material outside the Handbook**

- H. The Enforcement Guide (EG) is amended in accordance with Annex J to this instrument.
- I. The Perimeter Guidance manual (PERG) is amended in accordance with Annex K to this instrument.

## Notes

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

## Citation

- K. This instrument may be cited as the Payment Services Instrument 2017.

By order of the Board of the Financial Ombudsman Service Ltd  
[*date*]

By order of the Board of the Financial Conduct Authority  
[*date*]

## Annex A

### Amendments to the Glossary of definitions

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

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

<i>account servicing payment service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service provider</i> providing and maintaining a <i>payment account</i> for a <i>payer</i> .
<i>account information service</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) an online service to provide consolidated information on one or more <i>payment accounts</i> held by the <i>payment service user</i> with another <i>payment service provider</i> or with more than one <i>payment service provider</i> , and includes such a service whether information is provided:  (a) in its original form or after processing;  (b) only to the <i>payment service user</i> or to the <i>payment service user</i> and to another <i>person</i> in accordance with the <i>payment service user's</i> instructions.
<i>account information service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service provider</i> which provides <i>account information services</i> .
<i>acquiring payment transactions</i>	a <i>payment service</i> provided by a <i>payment service provider</i> contracting with a <i>payee</i> to accept and process <i>payment transactions</i> which result in a transfer of funds to the <i>payee</i> .
<i>complaints reporting directions</i>	The directions in <i>DISP</i> 1.10B.
<i>credit transfer</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service</i> for crediting a <i>payee's payment account</i> with a <i>payment transaction</i> or a series of <i>payment transactions</i> from a <i>payer's payment account</i> by the <i>payment service provider</i> which holds the <i>payer's payment account</i> , based on an instruction given by the <i>payer</i> .
<i>digital content</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) goods or services which are produced and supplied in digital form, the use or consumption of which is restricted to a

technical device and which do not include in any way the use or consumption of physical goods or services.

<i>direct debit</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service</i> for debiting the <i>payer's payment account</i> where a <i>payment transaction</i> is initiated by the <i>payee</i> on the basis of consent given by the <i>payer</i> to the <i>payee</i> , to the <i>payee's payment service provider</i> or to the <i>payer's own payment service provider</i> .
<i>EEA registered account information service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>person</i> that is registered as an <i>account information services provider</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> under the <i>Payment Services Directive</i> .
<i>EMD complaint</i>	any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, an <i>electronic money</i> holder about the provision of, or failure to provide, a financial service or a <i>redress determination</i> :  (a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and  (b) concerning the rights and obligations arising under Part 5 of the <i>Electronic Money Regulations</i> .
<i>issuing payment instruments</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service</i> by a <i>payment service provider</i> contracting to provide a <i>payer</i> with a <i>payment instrument</i> to initiate and process the <i>payer's payment transactions</i> .
<i>payment account</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) an account held in the name of one or more <i>payment service users</i> which is used for the execution of <i>payment transactions</i> .
<i>payment initiation service</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a service to initiate a <i>payment order</i> at the request of the <i>payment service user</i> with respect to a <i>payment account</i> held at another <i>payment service provider</i> .
<i>payment initiation service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>payment service provider</i> which provides <i>payment initiation services</i> .
<i>payment order</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) any instruction by:  (a) a <i>payer</i> ; or  (b) a <i>payee</i> ,

to their respective *payment service provider* requesting the execution of a *payment transaction*.

*PSD complaint* any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *payment service user* about the provision of, or failure to provide, a financial service or a *redress determination*:

- (a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
- (b) concerning the rights and obligations arising under Parts 6 and 7 of the *Payment Services Regulations*.

*registered account information service provider* (in accordance with regulation 2(1) of the *Payment Services Regulations*) an *account information service provider* included by the FCA in the *Financial Services Register* pursuant to regulation 4(1)(c) of the *Payment Services Regulations*.

Amend the existing 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)~~ (38) of the *Payment Services Directive*]

*authorised payment institution* (in accordance with regulation 2(1) of the *Payment Services Regulations*) a person included by the FCA in the *Financial Services Register* as an authorised payment institution pursuant to regulation 4(1)(a), or a person ~~deemed to have been granted authorisation by virtue of regulation 121~~ entitled to provide *payment services* under regulation 150(1) of the *Payment Services Regulations* (Transitional and saving provisions: authorised payment institutions) or a person entitled to provide *payment services* of the type described in paragraph 1(g) of Schedule 1 to the *Payment Services Regulations* 2009 under regulation 152 (2) of the *Payment Services Regulations* (Transitional provisions: payments through network operators).

*branch* ...

- (g) (in accordance with regulation 2(1) of the *Payment Services Regulations*) (in relation to a *payment institution*, a registered account information service provider or an EEA registered account information service provider) a place of business of such a ~~payment institution~~ *payment service provider*, other than its head office, which forms a legally dependent part of ~~the institution~~ such a provider and which carries out directly all or some of the transactions inherent in its business. For the purposes of the *Payment Services Regulations*, all places of

business set up in the same *EEA State* other than the *United Kingdom* by ~~an authorised payment institution~~ such a payment service provider are to be regarded as a single *branch*.

[Note: article 4~~(29)~~ (39) of the *Payment Services Directive*]

- ...
- business day*
- (1) (except in *DISP* 1.6.2A and *DISP* 2.8) (in relation to anything done or to be done in (including to be submitted to a place in) any part of the *United Kingdom*):
- ...
- (2) (except in *DISP* 1.6.2A and *DISP* 2.8) (in relation to anything done or to be done by reference to a market outside the *United Kingdom*) any *day* on which that market is normally open for business.
- (3) (in *DISP* 1.6.2A and *DISP* 2.8) a *day* on which the relevant *payment service provider* of the *payer* or the *payment service provider* of the *payee* involved in the execution of a *payment transaction* is open for business as required for the execution of a *payment transaction*.
- consumer*
- (1) (except as specified in this definition) any natural person acting for purposes outside his trade, business or profession. [Note: article 2 of the *Distance Marketing Directive*, article 2 of the *Unfair Terms in Consumer Contracts Directive* (93/13/EEC), article 2 of the *E-Commerce Directive*, article 4 ~~(11)~~(20) of the *Payment Services Directive* , article 3 of the *Consumer Credit Directive* and article 4(1) of the *MCD*.]
- ...
- EEA authorised payment institution*
- (a) (in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* authorised in an *EEA State* other than the *United Kingdom* to provide *payment services* in accordance with the *Payment Services Directive* or a *person* entitled to provide *payment services* of the type described in paragraph 1(g) of Schedule 1 to the *Payment Services Regulations* 2009 under regulation 152(5) of the *Payment Services Regulations*; and
- ...
- Financial Services Register*
- the public record, as required by section 347 of the *Act* (The public record), regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers), regulation 4 of the *Electronic Money Regulations* and article 8 of the *MCD Order*, of every:

...

- (ab) *small payment institution;*
- (aba) registered account information service provider;
- (abb) person providing a service falling within paragraph 2(k)(i) to (iii), or (l) of Schedule 1 to the Payment Services Regulations who has notified the FCA under regulation 38 or 39 of the Payment Services Regulations;
- (ac) *agent of an authorised payment institution ~~or~~ , a small payment institution or a registered account information service provider ;*

...

*framework contract* (in accordance with regulation 2(1) of the *Payment Services Regulations*) a contract for *payment services* which governs the future execution of individual and successive ~~payment transactions~~ payment transactions and which may contain the obligation and conditions for setting up a ~~payment account~~ payment account.

[Note: article 4 ~~(12)~~(21) of the *Payment Services Directive*]

*money remittance* (in accordance with regulation 2(1) of the *Payment Service Regulations*) a service for the transmission of money (or any representation of monetary value), without any ~~payment accounts~~ payment accounts being created in the name of the ~~payer~~ payer or the ~~payee~~ payee, where:

- (a) funds are received from a ~~payer~~ payer for the sole purpose of transferring a corresponding amount to a ~~payee~~ payee or to another *payment service provider* acting on behalf of the ~~payee~~ payee; or
- (b) funds are received on behalf of, and made available to, the ~~payee~~ payee.

[Note: article 4 ~~(13)~~(22) of the *Payment Services Directive*]

- payer*
- (1) (for the purposes of FEES 9) a person who holds a payment account and allows instructions to be given to transfer funds from that payment account, or who gives instructions to transfer funds.
  - (2) (for purposes other than FEES 9)
    - (a) a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or

- (b) where there is no *payment account*, a person who gives a *payment order*.
- payee* (1) (for the purposes of *FEES 9*) a person who is the intended recipient of transferred funds ; and
- (2) (for purposes other than *FEES 9*) a person who is the intended recipient of funds which have been the subject of a *payment transaction*.
- payment institution* an authorised payment institution, an EEA authorised payment institution or a small payment institution.
- [Note: articles 4(4) and ~~26(3)~~ 32(3) of the *Payment Services Directive*]
- payment instrument* (1) (in *BCOBS*) any personalised device or personalised set of procedures agreed between the *banking customer* and the *firm* used by the *banking customer* to initiate an instruction or request by the *banking customer* to the *firm* to make a payment.
- (2) (except in *BCOBS*) (in accordance with regulation 2(1) of the *Payment Services Regulations*) any:
- (a) personalised device; or
- (b) personalised set of procedures agreed between the *payment service user* and the *payment service provider*, used by the *payment service user* in order to initiate a *payment order*.
- payment service* (in accordance with regulation 2(1) of, and Schedule 1 to, the *Payment Services Regulations*):
- (a) Any of the following activities when carried out as a regular occupation or business activity:
- (i) services enabling cash to be placed on a ~~payment account~~ *payment account* and all of the operations required for operating a ~~payment account~~ *payment account*;
- (ii) services enabling cash withdrawals from a ~~payment account~~ *payment account* and all of the operations required for operating a ~~payment account~~ *payment account*;
- (iii) execution of the following types of ~~payment transaction~~ *payment transaction*:
- (A) ~~direct debits~~ *direct debits*, including one-off ~~direct~~

- ~~debits~~ direct debits;
- (B) ~~payment transactions~~ payment transactions executed through a payment card or a similar device;
- (C) ~~credit transfers~~ credit transfers, including standing orders;
- (iv) execution of the following types of ~~payment transaction~~ payment transaction where the funds are covered by a credit line for the ~~payment service user~~ payment service user:
  - (A) ~~direct debits~~ direct debits, including one-off ~~direct debits~~ direct debits;
  - (B) ~~payment transactions~~ payment transactions executed through a payment card or a similar device;
  - (C) ~~credit transfers~~ credit transfers, including standing orders;
- (v) ~~issuing payment instruments~~ issuing payment instruments or ~~acquiring payment transactions~~ acquiring payment transactions;
- (vi) ...
- (vii) ~~execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods or services. [deleted]~~
- (viii) payment initiation services;
- (ix) account information services.
- (b) The following activities do not constitute ~~payment services~~ payment services:
  - (i) ~~payment transactions~~ payment transactions executed wholly in cash and directly between the ~~payer~~ payer and the ~~payee~~ payee, without any intermediary intervention;
  - (ii) ~~payment transactions~~ payment transactions between the ~~payer~~ payer and the ~~payee~~ payee through a commercial agent authorised in an agreement to negotiate or

conclude the sale or purchase of goods or services on behalf of either the ~~payer~~ payer or the ~~payee~~ payee but not both the payer and payee;

...

- (iv) ~~payment transactions~~ payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;
- (v) services where cash is provided by the ~~payee~~ payee to the ~~payer~~ payer as part of a ~~payment transaction~~ payment transaction for the purchase of goods or services following an explicit request by the ~~payer~~ payer immediately before the execution of the ~~payment transaction~~ payment transaction;
- (vi) ~~money~~ cash-to-cash currency exchange ~~business~~ consisting of ~~cash to cash~~ operations where the funds are not held on a ~~payment account~~ payment account;
- (vii) ~~payment transactions~~ payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the ~~payee~~ payee:

...

- (viii) ~~payment transactions~~ payment transactions carried out within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;
- (ix) ~~payment transactions~~ payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in ~~(h)~~(viii) or by investment firms, full credit institutions, collective investment undertakings, asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;
- (x) services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, excluding payment initiation services or account information services but including:

...

- (xi) services based on ~~instruments~~ specific payment instruments that can be used to acquire goods or services only in a limited way and:
- (A) allow the holder to acquire goods or services only in or on the issuer's premises; or
  - (B) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services, are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or
  - (C) may be used only to acquire a very limited range of goods or services; or
  - (D) are valid only in a single EEA state, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

and for these purposes the "issuer" is the person who issues the instrument in question;

- (xii) ~~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; payment transactions, initiated through a provider of electronic communications networks or services, where such initiation is in addition to electronic communications services for a subscriber to the network or service:~~
- (A) for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or
  - (B) performed from or via an electronic device and charged to the related bill within the framework of

a charitable activity or for the purchase of tickets,

provided that the value of any single *payment transaction* does not exceed 50 euros, and the cumulative value of *payment transactions* for an individual subscriber in a month does not exceed 300 euros;

- (A) ~~payment transactions~~ *payment transactions* carried out  
(xiii) between *payment service providers*, or their agents or *branches* for their own account;
- (B) ~~payment transactions~~ *payment transactions* and related  
(xiv) *services* between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a *payment service provider* other than an undertaking belonging to the same group;
- (C) ~~cash withdrawal services by providers to withdraw cash by means of provided through automated automatic teller machines where the provider is acting on behalf of one or more card issuers, which are is not party to the framework contract with the customer withdrawing money from a payment account payment account, where no and does not conduct any other payment service~~  
(xv) *payment service* is conducted by the provider.

[Note: articles 3 and 4(3) of, and the Annex 1 to, the *Payment Services Directive*]

*payment service provider*

- (1) (except in *DISP*) (in accordance with regulation 2(1) of the *Payment Service Regulations*) any of the following *persons* when they carry out a *payment service*:
- (a) an *authorised payment institution*;
  - (b) a *small payment institution*;
  - (ba) a *registered account information service provider*;
  - (c) an *EEA authorised payment institution*;
  - (d) a ~~full~~ *credit institution*;
  - (e) an *electronic money issuer*;
  - (f) the Post Office Limited;
  - (g) the Bank of England, the European Central Bank and the national central banks of *EEA States* other than the *United Kingdom*, other than when acting in their

capacity as a monetary authority or carrying out other functions of a public nature; and

- (h) government departments and local authorities, other than when carrying out functions of a public nature.

[Note: article 1(1) of the *Payment Services Directive*]

- (2) (in *DISP* and ~~*FEES 5.5*~~) as in (1) but excluding a *full credit institution* and a *registered account information service provider*.

...

*payment service user*

(in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* when making use of a *payment service* in the capacity of either *payer payer*, or *payee payee*, or both.

[Note: article 4(10) of the *Payment Services Directive*]

*Payment Services Directive*

Directive ~~2007/64/EC~~ (EU) 2015/2366 of the European Parliament and of the Council of ~~13th November 2007~~ 25 November 2015 on payment services in the internal market amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

*Payment Services Regulations*

with respect to an activity carried on before 13 January 2018 the Payment Services Regulations 2009 (SI 2009/209), and with respect to an activity carried on or after 13 January 2018 the Payment Services Regulations 2017 (SI 2017/XXX).

*payment transaction*

- (1) (for the purposes of *FEES 9*) an action of transferring funds, initiated by the *payer* or on its behalf or by the *payee*, irrespective of any underlying obligations between the *payer* and the *payee*.
- (2) (for purposes other than *FEES 9*) an act initiated by the *payer* or *payee*, or on behalf of the *payer*, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the *payer* and *payee*.

*small payment institution*

(in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* included by the FCA in the *Financial Services Register* pursuant to regulation 4(1)(b) of the *Payment Services Regulations* or a *person* entitled to provide *payment services* under regulation 151(1) of the *Payment Services Regulations*.

## Annex B

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

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

#### 3 Rules about application

##### 3.1 Who?

...

- 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* (see Parts ~~5 and 6~~ 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)).

## Annex C

### Amendments to the General Provisions (GEN)

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

#### 5 Regulators' logos and the Key Facts logo

##### 5.1 Application and Purpose

Application

5.1.1 G This chapter contains:

- ...
- (1) *guidance for firms, authorised payment institutions, registered account information service providers and authorised electronic money institutions and their appointed representatives, agents or tied agents on the circumstances in which the FCA permits them to reproduce the FSA and FCA logos;*
- ...

#### 7 Charging consumers for telephone calls

##### 7.1 Application

7.1.4 R This chapter does not apply ~~for~~ to telephone lines which:

- (1) *enable payment service users to request information to which paragraph (2) of regulation ~~48~~ 56 of the Payment Services Regulations applies; or*
- ...

#### Sch 4 Powers exercised

##### 4.2G Powers to make rules

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the rules in <i>GEN</i> :	
	...

	Section 226 (Compulsory jurisdiction) (including as applied by <del>regulation 125</del> <u>regulations 117 and 133</u> of the <i>Payment Services Regulations</i> and article 26(1) (Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms) of the <i>MCD Order</i> )
	...
	Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority) (including as applied by article 25 (Application of provisions of the Act to the FCA in respect of its supervision of consumer buy-to-let mortgage firms) of the <i>MCD Order</i> ), and by regulation 15A of the <i>ADR Regulations</i>
	<u>paragraph 23 (fees) of Schedule 1ZA as applied by regulation 118(1) of the <i>Payment Services Regulations</i></u>
	...

**Sch 4.3G**

	The following additional powers have been exercised by the <i>FCA</i> to make the <i>rules</i> in <i>GEN</i> :
	...
	Regulations <del>82</del> <u>109</u> (Reporting requirements), <del>86</del> <u>112</u> (Proposal to take disciplinary measures) and <del>92</del> <u>118</u> (Costs of supervision) of and paragraph 1 of Schedule <del>5</del> <u>6</u> (Disciplinary powers) to the <i>Payment Services Regulations</i>

...

**Sch 4.5G Powers to issue statements**

	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</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 <del>5</del> <u>6</u> to the <i>Payment Services Regulations</i> , paragraph 1 of Schedule 3 to the <i>Electronic Money Regulations</i> , regulation 29(1) of the Legal Aid, <del>Sentencing</del> <u>Sentencing</u> and Punishment of Offender Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635) and regulation 28(1) of the <i>Immigration Regulations</i>
	...
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule <del>5</del> <u>6</u> to the <i>Payment Services Regulations</i> and paragraph 3 of Schedule 3 to the <i>Electronic Money Regulations</i> and by regulation 71(2) of the <i>AIFMD UK regulation</i>

...
Section 210 (Statements of policy) (including as applied by regulation <u>86112</u> (6) of the <i>Payment Services Regulations</i> , regulation 53(6) of the <i>Electronic Money Regulations</i> , regulation 71(3) of the <i>AIFMD UK regulation</i> , regulation 29(2) of the <i>Legal Aid, Sentencing and Punishment of Offenders Act 2012</i> (Referral Fees) Regulations 2013 (SI 2013/1635), regulation 28(2) (Statements of policy) of the <i>Immigration Regulations</i> and article 23(4) (Application of provisions of the Act to registered consumer buy-to-let mortgage firms) of the <i>MCD Order</i> )
...
Section 395 (The FCA's and PRA's procedures) (including as applied by paragraph <u>7 9</u> of Schedule <u>5 6</u> to the <i>Payment Services Regulations</i> , paragraph 8 of Schedule 3 to the <i>Electronic Money Regulations</i> , regulation 30(7) of the <i>Legal Aid, Sentencing and Punishment of Offenders Act 2012</i> (Referral Fees) Regulations 2013 (SI 2013/1635), article 3(11) of the <i>Financial Act 2012</i> (Consumer Credit) Order 2013, regulation 29 (Application of Part 26 of the 2000 Act) of the <i>Immigration Regulations</i> and article 24(2) (Application of procedural provisions of the Act) of the <i>MCD Order</i> )
...

**Sch 4.6G**

The following additional powers and related provisions have been exercised by the *FCA* to issue the parts of the statements in *GEN*:

...
Regulation <u>93120</u> (Guidance) of the <i>Payment Services Regulations</i>
...

...

**Sch 4.8G**

The following additional powers and related provisions have been exercised by the *FCA* in *GEN* to direct, require or specify:

...
Articles 18 (Obligations of registered consumer buy-to-let mortgage firms) and 19 (Power to direct registered consumer buy-to-let mortgage firms to take appropriate action) of the <i>MCD Order</i>
<u>Regulations 30(4) and (5) (Supervision of firms exercising passport rights), 71(8) (Limits on the use of payment instruments and access to payment accounts), 98(3) (Management of operational and security risks), 99(2) (Incident reporting), 105(4) (Access to bank accounts) and 109 (Reporting</u>

	requirements) of the <i>Payment Services Regulations</i>
--	--

...

**Sch 4.12G** The following additional powers have been exercised by the *FCA* to give the other guidance in *GEN*:

	...
	Regulation <del>93</del> <u>120</u> (Guidance) of the <i>Payment Services Regulations</i>
	...

...

## Annex D

### Amendments to the Conduct of Business sourcebook (COBS)

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

#### 5 Distance communications

##### 5.1 The distance marketing disclosure rules

...

Exception: contracts for payment services

...

- 5.1.3B G Where a *distance contract* covers both *payment services* and *non-payment services*, this exception applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part ~~5~~ 6 of the *Payment Services Regulations*.

## Annex E

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

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

## 1 Application

### 1.1 General application

...

1.1.3 R Except as provided for in *BCOBS* 1.1.4R, this sourcebook does not apply to:

- (1) *payment services* where ~~Part 5 and 6~~ Parts 6 and 7 of the *Payment Services Regulations* apply; or

...

1.1.4 R (1) Chapters 2, 2A, 5 and 6 of *BCOBS* (except for *BCOBS* ~~5.1.11R~~ 5.1.10AR to *BCOBS* 5.1.19R) and *BCOBS* 4.3 apply to *payment services* where ~~Parts 5 and 6~~ and 7 of the *Payment Services Regulations* apply.

- (2) Chapter 3 of *BCOBS* applies to *payment services* where ~~Parts 5 and 6~~ and 7 of the *Payment Services Regulations* apply with the modifications set out in *BCOBS* 3.1.2R(2).

...

1.1.4A G Guidance on the application of the *Payment Services Regulations* can be found in *PERG* 15.

...

## 3 Distance communications

### 3.1 Distance marketing

...

Exception: contracts for payment services

3.1.13 G Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in *BCOBS* 3.1.2R(2) applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in ~~Part 5~~ 6 of the *Payment Services Regulations*.

...

## 4 Information to be communicated to banking customers

### 4.1 Enabling banking customers to make informed decisions

...

4.1.4 G The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

...

(8) ~~the terms of any compensation scheme if the *firm* cannot meet its obligations in respect of the *retail banking service*; [deleted]~~

...

...

## 5 Post sale

### 5.1 Post sale requirements

Service

...

5.1.3 G ~~To the extent that it relates to a *retail banking service*, a *firm* may find it helpful to take account of the British Bankers' Association "A Statement of Principles: Banks and businesses — working together". [deleted]~~

...

Security of electronic payments

5.1.10A R A *firm* that allows a *banking customer* to make electronic payments must consider the risk of fraud and put in place appropriate procedures and technical safeguards to ensure that such payments can be carried out in a safe and secure manner.

5.1.10B G Such procedures should include authentication procedures for the verification of the identity of the *banking customer* or the validity of the use of a particular *payment instrument*, proportionate to the risks involved. Where appropriate, *firms* may wish to consider the adoption of 'strong customer authentication', as defined in the *Payment Services Regulations*, and specified in regulatory technical standards adopted by the European Commission under article 98 of the *Payment Services Directive*.

...

Banking customer's liability for unauthorised payments

- 5.1.12 R (1) Subject to (2) and (3), a *firm* may, in an agreement for a *retail banking service*, provide for a *banking customer* to be liable for an amount up to a maximum of ~~£50~~ £35 for losses in respect of unauthorised payments arising:
- (a) from the use of a lost or stolen *payment instrument*; or
  - (b) ~~where the *banking customer* has failed to keep the personalised security features of the *payment instrument* safe, from the misappropriation of the *payment instrument*.~~
- (1A) Paragraph (1) does not apply where:
- (a) the loss, theft or misappropriation of the *payment instrument* was not detectable by the *banking customer* prior to the payment; or
  - (b) the loss was caused by acts or omissions of an *employee* or *branch* of the *firm* or of an entity which carried out activities on behalf of the *firm*.

...

...

Non-execution or defective execution of payments

...

- 5.1.15 R ...
- (2) Where incorrect *payment routing information* has been provided to a *firm* in respect of a payment:
- (a) *BCOBS* 5.1.16R and *BCOBS* 5.1.17R do not apply in relation to that payment; ~~and~~
  - (b) the *firm* must make reasonable efforts to recover the funds involved in the transaction; and
  - (c) if the *firm* is unable to recover the funds it must, on receipt of a written request, provide to the *banking customer* all available relevant information in order for the *banking customer* to claim repayment of the funds.
- (2A) A *firm* that is in receipt of funds as the result of the provision of incorrect *payment routing information* by a *banking customer* must co-operate with the *firm* that is seeking to recover the funds, in particular by providing all relevant information for the collection of

the funds.

...

5.1.15A **G** A firm may only disclose personal data where it is fair and lawful to do so. In drafting its agreements for retail banking services, a firm should take account of its potential obligations under BCOBS 5.1.15R(2)(c) and BCOBS 5.1.15R(2A) so as to ensure that it is in a position to share the necessary information in a way that is consistent with data protection legislation and its obligations to its banking customers.

...

**TP 1 Transitional provisions**

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Materials to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provisions: dates in force</b>	<b>Handbook provisions: coming into force</b>
...					
<u>8</u>	<u>BCOBS 5.1.10BG</u>	<u>R</u>	<u>A firm need not have regard to the guidance referred to in column (2) in interpreting and applying BCOBS 5.1.10AR until 18 months after the date on which the regulatory technical standards adopted under article 98 of the Payment Services Directive come into force.</u>	<u>13 January 2018 until the date specified in column (3)</u>	<u>13 January 2018</u>

## Annex F

### Amendments to the Supervision manual (SUP)

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

#### Part 1: Comes into force on 13 January 2018

#### 15 Notifications to the FCA

##### 15.1 Application

...

15.1.3B D The directions and guidance in SUP 15.14 apply to *payment service providers* as set out in that section.

What?

15.1.4R ...

15.1.4AR D SUP 15.8 and SUP 15.14 apply with respect to the carrying on of *payment services* and other activities to which the *Payment Services Regulations* apply.

...

##### 15.2 Purpose

15.2.1 G ...

15.2.1A G *Payment service providers* are required to provide the FCA with such information as the FCA may direct in respect of their provision of *payment services* or compliance with the requirements imposed by or under Parts 2 to 7 or regulation 105 of the *Payment Services Regulations*. The purpose of SUP 15.8 is to request information from *full credit institutions* where they provide (or propose to provide) *account information services* or *payment initiation services*. In addition to this general requirement, *payment service providers* are required under the *Payment Services Regulations* to notify the FCA on the occurrence of certain specified events. The purpose of SUP 15.14 is to provide directions and guidance to *payment service providers* on the form, content and timing of notifications required under the *Payment Service Regulations*.

15.2.2 G This chapter sets out:

...

- (4) *rules* requiring a *firm* to ensure that information provided to the FCA is accurate and complete; section 398 of the *Act* makes it an offence

knowingly or recklessly to provide the *FCA* with information which is false or misleading in a material particular, in purported compliance with any requirement imposed by or under the *Act*; the purpose of the *rules* in *SUP* 15.6 is to ensure that *firms* take due care to ensure the accuracy of information and to require them to ensure that information is not only accurate but also complete; ~~and~~

- (5) material (in *SUP* 15.10 (Notification of suspicious transactions or orders (market abuse)) which makes reference to the provisions of the *Market Abuse Regulation* that detail requirements on the reporting of transactions or orders about which there is reasonable suspicion of *market abuse*; and
- (6) directions and guidance for a *payment service provider* on the form, content and timing of notifications required to be submitted to the *FCA* in accordance with or in relation to the *Payment Service Regulations*.

...

## 15.8 Notification in respect of particular products and services

...

15.8.11 ...

Credit institutions providing account information services or payment initiation services

15.8.12 D Unless *SUP* 15.8.13D applies, a *full credit institution* must notify the *FCA* before it starts to provide an *account information service* or a *payment initiation service*.

15.8.13 D A *full credit institution* which:

- (1) prior to 13 January 2018, started to provide a service which, if provided on or after 13 January 2018, would have constituted an *account information service* or a *payment initiation service*; and
- (2) continues to provide an *account information service* or a *payment initiation service* on 13 January 2018,

must notify the *FCA* that it is providing *account information services* or *payment initiation services* by 10 February 2018.

15.8.14 D A notification required under *SUP* 15.8.12 or *SUP* 15.8.13 must include a description of the *account information service* or *payment initiation service* that is being or is to be provided.

15.8.15 D The notification required under *SUP* 15.8.12 or *SUP* 15.8.13 must be made in accordance with the requirements in *SUP* 15.7 (Form and method of

notification).

...

After SUP 15.13 (Notification by CBTL firms) insert the following new section. The text is not underlined.

## **15.14 Notifications under the Payment Services Regulations**

Application

15.14.1 G This section applies to *payment service providers*.

Purpose

15.14.2 G The purpose of this section is to give directions and guidance to *payment service providers* relating to the form, content and timing of notifications required under the *Payment Services Regulations*.

Notification by credit institutions under regulation 105

15.14.3 D A *full credit institution* to which regulation 105 of the *Payment Services Regulations* applies must notify the *FCA* if it refuses a request for access to *payment account* services from:

- (1) a *person* falling within paragraphs (1)(a) to (e) of the *Glossary* definition of *payment service provider*; or
- (2) an applicant for authorisation or registration as such a *payment service provider*.

15.14.4 G References in this section to a refusal of a request for access to *payment account* services include a withdrawal or termination of access to such services.

15.14.5 G A notification required by regulation 105(3) of the *Payment Services Regulations* and SUP 15.14.3D must include duly motivated reasons for the refusal.

15.14.6 D A notification required by regulation 105(3) of the *Payment Services Regulations* and SUP 15.14.3D must be submitted by the *full credit institution* to the *FCA*:

- (1) in the form specified in SUP 15 Annex 9;
- (2) by electronic means made available by the *FCA*; and
- (3) at the same time as it informs the *person* referred to in SUP 15.14.3D(1) or (2) of its refusal.

15.14.7 D If for any reason the *full credit institution* does not notify the *person* referred

to in SUP 15.14.3D(1) or (2) of its refusal, the *full credit institution* must submit the notification required by SUP 15.14.3D immediately following the decision by the *full credit institution* to refuse access.

Notification by account servicing payment service providers under regulation 71

- 15.14.8 D An *account servicing payment service provider* to which regulation 71(8)(c) of the *Payment Services Regulations* applies must notify the *FCA* if it denies an *account information service provider* or a *payment initiation service provider* access to a *payment account* under regulation 71(7).
- 15.14.9 D A notification required by regulation 71(8)(c) of the *Payment Services Regulations* and SUP 15.14.8D must include details of the case and the reasons for denying access.
- 15.14.10 D A notification required by regulation 71(8)(c) of the *Payment Services Regulations* and SUP 15.14.8D must be submitted by the *account servicing payment service provider* to the *FCA*:
- (1) in the form specified in SUP 15 Annex 10
  - (2) by electronic means made available by the *FCA*; and
  - (3) immediately after the first occasion on which it denies the *account information service provider* or the *payment initiation service provider* in question access to a *payment account*.
- 15.14.11 G Where:
- (1) an *account servicing payment service provider* denies access to more than one *payment account* or to a *payment account* on multiple consecutive occasions; and
  - (2) these denials of access:
    - (a) are in respect of the same *account information service provider* or *payment initiation service provider*; and
    - (b) arise out of the same facts and happen for the same reasons,
- the *account servicing payment service provider* is required to submit only a single notification in respect of them under regulation 71(8)(c) of the *Payment Services Regulations* and SUP 15.14.8D.
- 15.14.12 G Where an *account servicing payment service provider* has already submitted a notification in accordance with regulation 71(8)(c) of the *Payment Services Regulations* and SUP 15.14.8D and continues to deny access to a *payment account*, it is not required to notify the *FCA* of a consecutive denial of access that happens after the original notification was sent if it:
- (1) is in respect of the same *account information service provider* or

*payment initiation service provider; and*

(2) arises out of the same facts and happens for the same reasons.

- 15.14.13 D An *account servicing payment service provider* that has previously submitted a notification in accordance with regulation 71(8)(c) of the *Payment Services Regulations* and SUP 15.14.8D must notify the *FCA* if it subsequently restores access to the *payment account* for the *account information service provider* or *payment initiation service provider* that was the subject of the original notification.
- 15.14.14 D A notification required under SUP 15.14.13D must be submitted by the *account servicing payment service provider* to the *FCA*:
- (1) in the form specified in SUP 15 Annex 10;
  - (2) by electronic means made available by the *FCA*; and
  - (3) immediately after it restores access to the *payment account(s)* for the *account information service provider* or *payment initiation service provider*.
- 15.14.15 G For the purposes of SUP 15.14.10D and SUP 15.14.14D we would expect the *account servicing payment service provider* to complete and submit the notification as quickly as possible.

Notification by payment service providers under regulation 99 [INCIDENT REPORTING]

15.14.X D [TBC]

General provisions

- 15.14.X D SUP 15.6.1R to SUP 15.6.6G (Inaccurate, false or misleading information) apply to *payment service providers* that are required to make notifications in accordance with this section as if a reference to *firm* in SUP 15.6.1R to SUP 15.6.6G were a reference to the relevant category of *payment service provider* and a reference to a *rule* were a reference to the directions in this section.
- 15.14.X G *Payment service providers* are reminded that regulation 142 of the *Payment Services Regulations* (Misleading the Authority or the Payment Systems Regulator) makes it an offence for a *person* to knowingly or recklessly provide the *FCA* with information which is false or misleading in a material particular in purported compliance with the directions given in this section or any other requirement imposed by or under the *Payment Services Regulations*.
- 15.14.X G If a *payment service provider* fails to comply with the directions in this section then the notification is invalid and there may be a breach of the regulation of the *Payment Services Regulations* or the direction that

required the notification to be given.

- 15.14.X G The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the *FCA*. They do not apply to notifications required under this section because of the specific directions given in this section.

**15 Annex 1R** **Application of SUP 15 to incoming EEA firms and incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions**

...	
3.	For any other <i>incoming EEA firm or incoming Treaty firm, EEA authorised payment institution or EEA authorised electronic money institution</i> , SUP 15 applies as set out in the following table.

Applicable sections		Application
...		
SUP 15.11	...	
<u>SUP 15.14</u>	<u>Notifications under the Payment Services Regulations</u>	<u>Apply in so far as responsibility for the matter in question is not reserved by an EU instrument to the payment service provider's Home State regulator</u>

- 15 Annex 1AR**
- (1) *SUP 15 does not apply to an incoming EEA firm which has permission for cross border services only and which does not carry on regulated activities in the United Kingdom.*
- (2) ...
- (3) *SUP 15 does not apply to an EEA authorised payment institution or an EEA authorised electronic money institution which exercises passport rights in the United Kingdom on a cross border services basis only.*

...

Insert the following new Annexes after SUP 15 Annex 8R Form G: The Retail Investment Adviser Complaints Notifications Form. The text is not underlined.

# 15 Annex Form NOT002 Payment Account Service rejections or withdrawals 9D (notification by credit institutions under regulation 105)

NOT002 - Notification of refusal or withdrawal of access to payment account services to PSPs (regulation 105 PSRs 2017)

**Firm details**

1 Who should the FCA contact at the firm in relation to this notification?

A	B	C	D
Name	Position	Telephone number	Email

**Notification of refusal or withdrawal of access to payment account services**

2 Details of the payment service provider (PSP) refused access to payment account services

A	B	C
FRN (if known)	Name of PSP	Head office address (if known)

3 Please confirm the regulatory status of the PSP that was refused access to payment account services

A
[select]
"authorised payment institution" "electronic money institution" "Small payment institution" "Small E-money Institution" "registered account information service provider" "EEA authorised payment institution" "EEA registered account information service provider" "a person that has submitted an application for registration or authorisation for any of the above"

4 If the PSP has submitted an application for registration or authorisation, please specify the category of authorisation or registration sought

--

5 What products and or services was the PSP accessing (in the case of withdrawal) or seeking access to?

	A		B
safeguarding account	yes/no	operational account (i.e. business current account)	yes/no
payment accounts (for the purposes of making transactions on behalf of customers)	yes/no	other	yes/no

If other selected, please briefly outline the products and or services that were accessed or requested.

--

6 When was a decision made to refuse or withdraw access?

--

7 Was access refused or withdrawn?

	A		B
Withdrawn (please answer questions 8, 9, 15 -19)	yes/no	Refused (please answer questions 10 - 19)	yes/no

8 On what date was the decision to withdraw access communicated to the PSP?

A
[date]

9 What period of notice was given if access was withdrawn?

--

10 Did the credit institution provide its criteria to the PSP enquiring about access to payment account services?

yes/no
--------

11 If not, please explain why no criteria were provided

12 Was the decision to refuse access communicated to the PSP seeking access?

yes/no
--------

13 If so, on what date was the decision communicated?

--

14 If not, please explain why the decision was not communicated

--

15 What were the reasons for refusing or withdrawing access? Where appropriate, please make reference to the criteria against which the access seeker was assessed.

A

16 Please describe the process that was followed to make the decision (for example, the person(s) with responsibility for making the decision, any deadlines that were applies, and the arrangements and/or procedures that were followed when considering whether to reduce or withdraw access)

17 Were the reasons for the decision communicated to the PSP seeking access or having access withdrawn?

yes/no
--------

18 Was the PSP provided with an opportunity to respond to the credit institutions' concerns or rectify any identified risks before the decision to refuse/ withdraw access was made?

yes/no
--------

19 If not, please explain why no opportunity was provided

--

# 15 Annex Form NOT003 AIS/PIS denial (notification by account servicing payment service providers under regulation 71)

NOT003 - AIS/PIS denial (PSRs 2017 regulation 71(8): ASPSP denial of access to payment accounts to a provider of AIS or PIS)

<p><b>Special Instructions</b></p> <p>If this is a notification that access has been denied, answer all questions except question 3 and 6</p> <p>If this is a notification that access has been restored please only answer questions 2, 3 and 6</p>
--

**ASPSP submitting the notification**

1 Details of the ASPSP submitting the notification

<b>A</b>
Details of individual who can be contacted about this notification (telephone & email address)

**Type of notification**

2 Is this notification:  
(i) an initial notification that access to a payment account has been denied under regulation 71(7) of the Payment Services Regulation 2017; or  
(ii) a notification that the issues set out in a previous notification have been resolved such that access has been restored (in accordance with SUP 15.14.13 and SUP 15.14.14)?

<b>A</b>
Access denied Access restored

3 If this is a notification that access has been restored, please provide the transaction ID code provided when you submitted the relevant denial notification

<b>A</b>
[insert transaction ID from previous denial notification]

4 Details of the AISP/PISP that has been denied access

<b>A</b>
Name

<b>B</b>
The authorisation number of the AISP/PISP contained in the public register(s) of the home Member State (e.g. the FCA refers to this as the "Firm Reference Number")

<b>C</b>
Name of the competent authority with which the AISP or PISP is registered or authorised

5 Denial of access

<b>A</b>
On this occasion has access been denied to a single payment account or to all payment accounts or a category of payment accounts?
single payment all payment accounts category of payments accounts

<b>B</b>
Time and date at which access was denied

<b>C</b>
What were the reasons for taking action? How did these relate to unauthorised or fraudulent access to the payment account?

<b>D</b>
What was prevented? (select)
Access to data Payment initiation

<b>E</b>
Please provide a description of the circumstances that led to the denial of access

<b>F</b>
If, at the time of submission of this notification access continues to be denied, what steps does the AISP/PISP need to take in order for the ASPSP to restore access?

6 Restoration of access

<b>A</b>
Where access has been restored, please provide details of how the issue was resolved:

Amend the following text as shown.

## 16 Reporting requirements

### 16.1 Application

...

16.1.1A D The directions and guidance in SUP 16.13 apply to ~~an authorised payment institution and a small payment institution~~ a payment service provider as set out in that section.

16.1.1AA G Credit institutions and electronic money institutions should note that some of the directions in SUP 16.13 apply to them as well as to payment institutions and registered account information service providers.

16.1.1B ...

### 16.2 Purpose

16.2.1 G ...

(3) The FCA has supervisory functions under the Payment Services Regulations and the Electronic Money Regulations. In order to discharge these functions, the FCA requires the provision of information on a regular basis. SUP 16.13 sets out the information that the FCA requires from payment service providers to assist it in the discharge of its functions as well as directions and guidance on the periodic reports that are required under the Payment Services Regulations. SUP 16.15 sets out the information that the FCA requires from electronic money issuers to assist it in discharging its functions and responsibilities under the Electronic Money Regulations.

...

### 16.13 Reporting under the Payment Services Regulations

Application

16.13.1 G This section applies to ~~authorised payment institutions and small payment institutions~~ a payment service provider as set out in this section (see SUP 16.1.1AD).

Purpose

16.13.2 G The purpose of this section is to:

- (1) give directions to *authorised payment institutions* ~~and~~ *small payment institutions* and registered account information service providers under regulation ~~82~~ 109(1) (Reporting requirements) of the *Payment Services Regulations* in relation to:
  - ~~(1)~~ (a) the information in respect of their provision of *payment services* and their compliance with requirements imposed by or under Parts 2 to ~~6~~ 7 of the *Payment Services Regulations* that they must provide to the *FCA*; and
  - ~~(2)~~ (b) the time at which and the form in which they must provide that information and the manner in which it must be verified;
- (2) give directions to *payment service providers* under regulation 109(5) (Reporting requirements) of the *Payment Services Regulations* in relation to the form of the statistical data on fraud relating to different means of payment that must be provided to the *FCA* under regulation 109(4) of the *Payment Services Regulations* at least once per year;
- (3) give directions to *payment service providers* under regulation 98(3) (Management of operational and security risks) of the *Payment Services Regulations* in relation to:
  - (a) the information that must be contained in the assessment of operational and security risks and the adequacy of mitigation measures and control mechanisms that must be provided to the *FCA*;
  - (b) the intervals at which that assessment must be provided to the *FCA* (if the assessment is required to be provided more frequently than once a year); and
  - (c) the form and manner in which that assessment must be provided; and
- (4) give directions to *EEA authorised payment institutions* under regulation 30(4) of the *Payment Services Regulations* in relation to:
  - (a) the information that they must provide to the *FCA* in respect of the *payment services* they carry on in the *United Kingdom* in exercise of passport rights; and
  - (b) the time at which and the form in which they must provide that information and the manner in which it must be verified.

16.13.2-    G    The purpose for which this section requires information to be provided to the *FCA* under regulation 109 of the *Payment Services Regulations* is to assist the *FCA* in the discharge of its functions under regulation 106 (Functions of the Authority), regulation 108 (Monitoring and enforcement) and regulation  
A

109(6) (Reporting requirements) of the *Payment Services Regulations*.

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

16.13.2B G *Authorised payment institutions and small payment institutions* should refer to the transitional provisions in SUP TP 1.11 (*Payment services and electronic money returns*).

Reporting requirement

16.13.3 D (1) An ~~*authorised payment institution or a small payment institution*~~, *an EEA authorised payment institution or a registered account information service provider* must submit to the FCA the duly completed return applicable to it as set out in column (2) of the table in SUP 16.13.4D.

(2) An ~~*authorised payment institution or a small payment institution*~~ *or a registered account information service provider* must submit the return referred to in (1):

...

16.13.3-A D *SUP 16.4.5R (Annual controllers report) and SUP 16.5.4R (Annual Close Links Reports)* apply to an ~~*authorised payment institution*~~ as if a reference to *firm* in these rules were a reference to an ~~*authorised payment institution*~~.

16.13.3A D *SUP 16.3.11R (Complete reporting) and SUP 16.3.13R (Timely reporting)* also apply to ~~*authorised payment institutions and small payment institutions*~~, *EEA authorised payment institutions and registered account information service providers* as if a reference to *firm* in these rules were a reference to ~~*authorised payment institutions and small payment institutions*~~ these categories of *payment service provider*.

16.13.3B R *SUP 16.3.14R (Failure to submit reports)* also applies to ~~*authorised payment institutions and small payment institutions*~~ *payment service providers* that are required to submit reports or assessments in accordance with this section and the *Payment Services Regulations* as if a reference to *firm* in this rule were a reference to ~~*authorised payment institutions and small payment institutions*~~ the relevant category of *payment service provider*.

16.13.3C G *Authorised payment institutions, small payment institutions and registered account information service providers* are reminded that they should give the FCA reasonable advance notice of changes to their *accounting reference date* (among other things) under regulation 37 of the *Payment Services Regulations*. The *accounting reference date* is important because many frequencies and due dates for reporting to the FCA are linked to the *accounting reference date*.

16.13.4 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *authorised payment institutions* and *small payment institutions*, *EEA authorised payment institutions* and *registered account information service providers*.

(1)	(2)	(3)	(4)	(5)
Type of <del>firm</del> payment service provider	Return	Format	Reporting frequency	Due date
<i>Authorised Payment Institution</i> <i>authorised payment institution</i>	Authorised Payment Institution Capital Adequacy Return	FSA056 (Note 1)	Annual (Note 2)	30 <i>business days</i> (Note 3)
<i>registered account information service provider</i>	<u>Authorised Payment Institution Capital Adequacy Return</u>	<u>FSA056 (Note 1)</u>	<u>Annual (Note 2)</u>	<u>30 business days (Note 3)</u>
<i>Small Payment Institution</i> <i>small payment institution</i>	Payment Services Directive Transactions	FSA057 (Note 4)	Annual (Note 5)	1 <i>month</i> (Note 3)
Note 1	When submitting the completed return required, the <i>authorised payment institution</i> or <i>registered account information service provider</i> must use the format of the return set out in SUP 16 <del>Annex 27AD</del> <u>Annex 27CD</u> . Guidance notes for the completion of the return are set out in SUP 16 <del>Annex 27BG</del> <u>Annex 27DG</u> .			
Note 2	This reporting frequency is calculated from an <i>authorised payment institution's</i> or <i>registered account information service provider's</i> accounting reference date.			
Note 3	...			
Note 4	When submitting the completed return required, the <i>small payment institution</i> must use the format of the return set out in SUP 16 <del>Annex 28AD</del> <u>Annex 28CD</u> . Guidance notes for the completion of the return are set out in SUP 16 <del>Annex 28BG</del> <u>Annex 28DG</u> .			
...				

Statistical data on fraud

16.13.5 G Regulation 109(4) of the *Payment Services Regulations* requires *payment*

service providers to provide to the FCA statistical data on fraud relating to different means of payment.

- 16.13.6     G     This requirement applies to:
- (1)     *authorised payment institutions;*
  - (2)     *small payment institutions;*
  - (3)     *registered account information service providers;*
  - (4)     *EEA authorised payment institutions;*
  - (5)     *EEA registered account information service providers;*
  - (6)     *electronic money institutions;*
  - (7)     *credit institutions;*
  - (8)     the Post Office Limited;
  - (9)     the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
  - (10)    government departments and local authorities, other than when carrying out functions of a public nature.
- 16.13.7     D     This statistical data on fraud must be submitted to the FCA by electronic means made available by the FCA using the format of the return set out in SUP 16 Annex 27ED. Guidance notes for the completion of the return are set out in SUP 16 Annex 27FG.
- 16.13.8     G     The return set out in SUP 16 Annex 27ED must be provided to the FCA at least once per year. The first return should cover the period beginning on 13 January 2018 and ending on 30 November 2018 and should be submitted by 31 December 2018. Subsequent returns should cover consecutive reporting periods of one year beginning on 1 December each year and should be submitted within 1 month of the end of the reporting period.

Assessments of operational and security risks and mitigation measures and control mechanisms

[TBC]

...

## **16.15     Reporting under the Electronic Money Regulations**

...

16.15.3 G ...

16.15.3A G Electronic money institutions should refer to the transitional provisions in SUP TP 1.11 (Payment services and electronic money returns).

Reporting requirement

...

16.15.8 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*.

(1) Type of <i>electronic money issuer</i>	(2) Return	(3) Format	(4) Reporting Frequency	(5) Due date (Note 4)
<i>Authorised electronic money institution</i> (Note 1)	<u>Balance sheet EMI and SEMI Questionnaire</u>	FSA059 FIN060	Half Yearly <u>Annual</u> (Note 3)	30 <i>business days</i>
	Income statement	FSA060	Half yearly (Note 3)	30 <i>business days</i>
	Capital requirements	FSA061	Half yearly (Note 3)	30 <i>business days</i>
	Safeguarding	FSA062	Half yearly (Note 3)	30 <i>business days</i>
	Supplementary information	FSA063	Half yearly (Note 3)	30 <i>business days</i>
	<i>Annual report and accounts</i>	No standard format	Annual (Note 3)	80 <i>business days</i>
<i>Small electronic money institutions</i> (Note 2)	<u>Return EMI and SEMI Questionnaire</u>	FSA064 FIN060	Half yearly <u>Annual</u> (Note 5)	30 <i>business days</i>
	Total electronic money outstanding @ 31st December	FSA065	Annual (Note 5)	1 <del>month</del> <i>month</i>
	<i>Annual report and accounts</i>	No standard format	Annual (Note 5)	80 <i>business days</i>
(a) the Post Office Limited	<i>Average outstanding</i>	No standard format	Half yearly <u>Annual</u> (Note	30 <i>business days</i>

<p>(b) the Bank of England, the ECB and the national central banks of <i>EEA States</i> other than the <i>United Kingdom</i></p> <p>(c) Government departments and local authorities</p> <p>(d) <i>credit unions</i></p> <p>(e) municipal banks</p> <p>(f) the National Savings Bank</p>	<p><i>electronic money</i></p>		<p>6)</p>	
<p>Note 1</p>	<p>When submitting the completed returns required, the <i>authorised electronic money institution</i> must use the format of the returns set out in <del>SUP 16 Annex 30A to SUP 16 Annex 30E</del> <u>SUP 16 Annex 30HD</u>. <u>Guidance notes for the completion of the return are set out in SUP 16 Annex 30IG.</u></p>			
<p>Note 2</p>	<p>When submitting the completed returns required, the <i>small electronic money institution</i> must use the format of the returns set out in <del>SUP 16 Annex 30F to SUP 16 Annex 30G</del> <u>SUP 16 Annex 30JD (FIN060) and SUP 16 Annex 30GD (FSA065)</u>. <u>Guidance notes for the completion of the FIN060 return are set out in SUP 16 Annex 30KG.</u></p>			
<p>Note 3</p>	<p><del>Where the <i>authorised electronic money institution's</i> reporting frequency is half yearly or annual, this</del> <u>This</u> field is calculated from the <i>authorised electronic money institution's</i> accounting reference date.</p>			
<p>Note 4</p>	<p>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.</p>			
<p>Note 5</p>	<p>The reporting frequency in relation to FSA065 is calculated from 31 December each calendar year. <del>Otherwise, where the <i>small electronic money institution's</i> reporting frequency is half yearly or annual,</del> <u>In relation to FIN060,</u> this field is calculated from the <i>small electronic money institution's</i> accounting reference date.</p>			
<p>Note 6</p>	<p>This is calculated from 31 December each calendar year.</p>			

After SUP 16 Annex 27B (Notes on Completing FSA056 (Authorised Payment Institution Capital Adequacy Return – SUP 16 Annex 27AD)) insert the following new Annex as SUP 16 Annex 27C. The text is not underlined.

## 16 Annex Authorised Payment Institution Capital Adequacy Return 27CD

This annex consists only of one or more forms. Forms are to be found through the following address:

*Authorised Payment Institution Capital Adequacy Return – [link to new API return]*

### FSA056 Authorised Payment Institution Capital Adequacy Return

Currency Units Single

#### INTRODUCTORY MATTERS

Questions 67 to 69 must be answered in GBP

B

- 1 Is the firm included in the consolidated supervision of a parent credit institution pursuant to the Capital Requirements Directive 2013/36/EU and are all of the conditions specified in Article 7(1) the Capital Requirements Regulations (EU) 575/2013 met?
- 2 If 'yes', please give the firm reference number of the firm that submitted the most recent consolidated capital statement to the FCA
- 67 Total income during the reporting period
- 68 Total income derived from payment services during reporting period
- 69 Operating profit / loss of firm in the reporting period


#### Part One: CAPITAL REQUIREMENT

Part One must be answered in EUR

##### Initial Capital Requirement

- 3 Initial capital requirement at authorisation

--

##### Own Funds Requirement

- 4-6 Please indicate which method your firm uses to calculate its own funds requirement

--

##### Method A

- 7 Total fixed overheads for preceding year
- 8 Own funds requirement (10% of fixed overheads for preceding year)
- 9 Total capital requirement (higher of initial capital and own funds requirement)


##### Method B

- 10 Payment volume
- 11 4% of first €5m of payment volume
- 12 2.5% of payment volume between €5m and €10m
- 13 1% of payment volume between €10m and €100m
- 14 0.5% of payment volume between €100m and €250m
- 15 0.25% of any remaining payment volume
- 16 Total
- 17 Scaling factor
- 18 Own funds requirement
- 19 Total capital requirement (higher of initial capital and own funds requirement)


##### Method C

##### 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 Multiplication Factor
- 31 Scaling factor
- 32 Own funds requirement
- 33 Total capital requirement (higher of initial capital and own funds requirement)


**Part Two: TOTAL CAPITAL RESOURCES**

Questions on the items that make up the "own funds" will be consulted on as part of the second consultation in mid-2017.

52	Total capital resources (GBP)	
53	£/€ exchange rate	
54	Total capital resources (EUR)	
55	Total capital requirement (EUR)	
56	Capital surplus/deficit (EUR )	

**Part Three: SUPPLEMENTARY INFORMATION**

**Safeguarding of relevant funds**

Please indicate which method the firm uses to safeguard client assets  
(Select all that apply and add the appropriate information)

	B	C	D
61	Placed in a separate account with an authorised credit institution	Credit institution name	Country where the account is located
62	Invested in approved secure liquid assets held in a separate account with an authorised custodian	Custodian name	Country where the account is located
63	Covered by an insurance policy with an authorised insurer	Insurer name	
64	Covered by a guarantee from an authorised insurer	Insurer name	
65	Covered by a guarantee from an authorised credit institution	Credit institution name	

**Number of Agents**

66	Please report the number of agents the firm has	B
----	---	---

**Payment Systems**

70	Is the firm a member of any sterling interbank payment systems? <i>Select all that apply</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> LINK <input type="checkbox"/> MasterCard <input type="checkbox"/> Visa <input type="checkbox"/> No <input type="checkbox"/> Other(s)
----	---	--

71	If Other(s), please specify	
----	-----------------------------	--

72	Which, if any, sterling interbank payment systems does your firm access <i>Select all that apply.</i>	<input type="checkbox"/> Bacs <input type="checkbox"/> CHAPS <input type="checkbox"/> Cheque and Credit <input type="checkbox"/> Faster Payments <input type="checkbox"/> None <input type="checkbox"/> Other(s)
----	--	---

73	If Other(s), please specify	
----	-----------------------------	--

74	Which institution is the firm's primary provider of indirect access to sterling interbank payment systems?	
----	--	--

**Transaction and User Information**

75	Number of full months in the reporting period in which the firm was FCA authorised	
----	--	--

76	Number of payment transactions executed in the reporting period	
----	---	--

	A	B
77	Total value of payment transactions executed in the reporting period	EUR
	GBP	

78	Number of new payment service users in the reporting period	
----	---	--

Part Four: PROVIDERS OF ACCOUNT INFORMATION AND/OR PAYMENT INITIATION SERVICES

**Account information services (AIS)**

*Please only answer the following questions if you provide account information services*

	B	C
79 How many different payment accounts have been accessed by the firm in the reporting period for the purposes of providing AIS?	<input type="text"/>	
80 How many customers have used the firm's account information services in the reporting period?	<input type="text"/>	
81 Please enter the minimum monetary amount of the PII (or comparable guarantee) calculated in accordance with the EBA's Guidelines (EUR)	<input type="text"/>	
82 Please enter the amount of coverage of the professional indemnity insurance (or comparable guarantee) (EUR)	<input type="text"/>	
83 Has the minimum monetary amount, the insurance provider or the terms and conditions of the insurance policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the	<input type="text"/>	If yes, please explain <input type="text"/>

**Payment initiation services (PIS)**

*Please only answer the following questions if you provide payment initiation services*

84 How many contracts has the firm entered into with customers for the purposes of providing PIS?	<input type="text"/>	
85 How many payment transactions has the firm initiated in the reporting period?	<input type="text"/>	
86 What is the total value of all payment transactions initiated by the firm during the reporting period? (EUR)	<input type="text"/>	
87 Please enter the minimum monetary amount of the PII (or comparable guarantee) calculated in accordance with the EBA's Guidelines (EUR)	<input type="text"/>	
88 Please enter the amount of coverage of the professional indemnity insurance (or comparable guarantee) (EUR)	<input type="text"/>	
89 Has the insurance provider or the terms and conditions of the insurance policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the FCA?	<input type="text"/>	If yes, please explain <input type="text"/>

After SUP 16 Annex 27C insert the following new Annex as SUP 16 Annex 27D. The text is not underlined.

**16 Notes on completing FSA056 (Authorised Payment Institution Capital Adequacy Annex Return – SUP 16 Annex 27C D) 27DG**

**Notes on completing FSA056 Authorised Payment Institution Capital Adequacy Return**

**Valuation**

Firms should follow their normal accounting practice wherever possible.

**Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR. The exchange rate entered at Element 53 should be used throughout the return to convert GBP to EUR where required.

- Elements 67-69 and [X-52, Capital resource item values] must be completed in GBP.
- Element 77 must be answered in GBP and EUR.
- All other monetary answers must be in EUR.

**Type of payment service: special instructions**

- **Registered account information service providers**  
Registered account information service providers (as defined in the Payment Services Regulations 2017, “PSRs 2017”) should only answer Elements 67-69 (income), and 79 - 83 (AIS).
- **Authorised payment institutions that only provide payment initiation services**  
Authorised payment institutions (APIs) that ONLY provide payment initiation services (PIS) should only answer Elements 67-69 (income), Element 3 (initial capital), Part Two (capital resources), Element 66 (Agents), 70-75 (payment systems) and 84-89 (PIS).
- APIs that provide PIS / AIS and other payments services should answer all Elements, including the relevant sections of Part 4 (depending on whether they provide AIS / PIS or both).

## Data elements

These are referred to by row first, then by column, so data Element 2B will be the element numbered 2 in column B.

Figures should be entered in single units in the currency specified. For example, €1,234,567.50 should be entered as 1234567.

## INTRODUCTORY MATTERS

**Element 1B:** You must only answer ‘Yes’ to this question if both parts of the question apply to the API required to submit this report (i.e. if the API falls within paragraph 2(b) of regulation 22: (a) the API is included in the consolidated supervision of a parent credit institution pursuant to the Capital Requirements Directive 2013/36/EU and (b) that all of the conditions in Article 7(1) of the Capital Requirements Regulations (EU) 575/2013 are met in respect of the API and its parent. If either part of this question does not apply, you should enter “no”.

**Element 2B:** If you have answered “yes” to ‘Element 1B’ then please enter the Firm Reference Number of your firm’s parent credit institution. If you have answered “yes” to ‘Element 2B’ then you do not need to answer Elements 4 to 33 (own funds requirement).

**Element 67B:** State, in GBP, the total income of the whole legal entity, across all activity, for the reporting period. Follow your firm’s normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 68B:** State, in GBP, the total income for the reporting period, which derived from payment services. Follow your normal accounting practice when answering this question.

**Element 69B:** State, in GBP, the total operating profit or loss of the whole legal entity for the reporting period. Operating profit or loss is calculated after ordinary operating expenses are deducted from the gross profit, but before interest, tax, dividend payments and any extraordinary items are deducted.

## Part One: CAPITAL REQUIREMENT

### Initial capital requirement

Element 3B: State, in EUR the firm’s initial capital requirement at authorisation (Part 1, Schedule 3 of the PSRs 2017).

### Own Funds Requirement

Elements 4B – 6B: Firms should indicate which of the three methods they use to calculate their own funds requirement, as described in Part 2 of Schedule 3 of the PSRs 2017.

Firms only need to complete those parts of the form that apply to their chosen method of

calculating own funds.

If your firm has not completed a full financial year of business, then, in lieu of the figure for the “preceding year” or the “previous financial year”, you must use the projected figure(s) that your firm submitted to the *FCA* when applying for authorisation (subject to any adjustments that the *FCA* required or may require).

Please refer to Chapter 9 (Capital resources and requirements) of our Approach Document for further detail on how to calculate the own funds requirement.

### Method A Calculation

**Element 7B:** State, in EUR, the total fixed overheads for the preceding year. Please refer to Chapter 9 of our Approach Document for further guidance on fixed overheads.

**Element 8B:** State, in EUR, the figure equal to 10% of the figure you have reported in ‘Element 7B’.

**Element 9B:** State, the larger of the two figures you have reported in ‘Element 3B’ and ‘Element 8B’.

### Method B Calculation

**Element 10B:** “Payment volume” means the total amount (i.e. value) of payment transactions executed by the API in the preceding financial year divided by the number of months in that year (paragraph 9(3), Part 2, Schedule 3 of the PSRs 2017). This figure should include transactions executed by agents of the API.

**Element 11B:** State, in EUR, the figure that equals 4% of the first €5m of payment volume.

**Element 12B:** State, in EUR, the figure that equals 2.5% of payment volume between €5m and €10m. If your firm has undertaken less than €5m in payment volume, insert a zero in this box.

**Element 13B:** State, in EUR, the figure that equals 1% of payment volume between €10m and €100m. If your firm has undertaken less than €10m in payment volume, insert a zero in this box.

**Element 14B:** State, in EUR, the figure that equals 0.5% of payment volume between €100m and €250m. If your firm has undertaken less than €100m in payment volume, insert a zero in this box.

**Element 15B:** State, in EUR, the figure that equals 0.25% of all payment volume over €250m. If your firm has undertaken less than €250m in payment volume, insert a zero in this box.

**Element 16B:** State, in EUR, the sum of the values from ‘Elements 11B to 15B’ above.

**Element 17B:** The “scaling factor” is:

- 0.50 for a payment institution that is authorised to provide only the payment service specified in paragraph 1(f) of Schedule 1 PSRs 2017 (money remittance); and

- 1.00 for a payment institution that is authorised to provide any other payment service specified in paragraph 1(a) to (e) of Schedule 1 PSRs 2017.

The scaling factor should be entered to 2 decimal places.

**Element 18B:** This figure is calculated using the following equation – ‘Element 16B x Element 17B’.

**Element 19B:** Insert the larger of the two figures you have reported in ‘Element 3B’ and ‘Element 18B’.

## Method C calculation

### Relevant Indicator

**Element 20B – Element 23B:** these figures should be entered in EUR and should cover the expenses or income generated over the reporting period. Please refer to Chapter 9 (Capital resources and requirements) of our Approach Document for further detail on the Elements that make up the relevant indicator.

Firms should have regard to paragraphs 10(4)(a)-(d), Part 2, Schedule 3 of the PSRs 2017 for the purposes of calculating the relevant indicator:

- each element must be included in the sum with its positive or negative sign;
- income from extraordinary or irregular items must not be used;
- expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
- the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
- the relevant indicator must be calculated over the previous financial year; and
- audited figures must be used unless they are not available in which case business estimates may be used.

**Element 24B:** This should be the sum of the amounts stated in ‘Elements 20B to 23B’ above.

### Multiplication Factor

**Element 25B:** State, in EUR, the figure that equals 10% of the first €2.5m of the “total relevant indicator of income” in ‘Element 24B’.

**Element 26B:** State, in EUR, the figure that equals 8% of the “total relevant indicator of income” in ‘Element 24B’ between €2.5m and €5m. If your firm's total relevant indicator of income is less than or equal to €2.5m, you should enter zero in this box.

**Element 27B:** State, in EUR, the figure that equals 6% of the “total relevant indicator of income” in ‘Element 24B’ between €5m and €25m. If your firm's total relevant indicator of

income is less than or equal to €5m, you should enter zero in this box.

**Element 28B:** State, in EUR, the figure that equals 3% of the “total relevant indicator of income” in ‘Element 24B’ between €25m and €50m. If your firm's total relevant indicator of income is less than or equal to €25m, you should enter zero in this box.

**Element 29B:** State, in EUR, the figure that equals 1.5% of the “total relevant indicator of income” in ‘Element 24B’ over €50m. If your firm's total relevant indicator of income is less than or equal to €50m, you should enter zero in this box.

**Element 30B:** State, in EUR, the sum of the values of ‘Elements 25B to 29B’ above.

**Element 31B:** The “scaling factor” is:

- 0.50 for a payment institution that is authorised to provide only the payment service specified in paragraph 1(f) of Schedule 1 PSRs 2017 (money remittance); and
- 1.00 for a payment institution that is authorised to provide any other payment service specified in paragraph 1(a) to (e) of Schedule 1 PSRs 2017.

The scaling factor should be entered to 2 decimal places.

**Element 32B:** This figure is calculated by multiplying ‘Element 24B’ by Element 30B and ‘Element 31B’.

**Element 33B:** Insert the larger of the two figures you have reported in ‘Element 3B’ and ‘Element 32B’.

## **Part Two: TOTAL CAPITAL RESOURCES**

*[Editor’s note: We will consult on questions in the part of the annual return that relates to items that make up the “own funds” and the accompanying notes for completion as part of our second consultation planned for mid-2017]*

**Element 52B:** This should be the sum of the capital items listed at [X] after deductions and adjustments (GBP).

**Element 53B:** Please provide the EUR equivalent value for 1 GBP to 4 decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 54B:** State the EUR equivalent of ‘Element 52B’ above.

**Element 55B:** State, in EUR, the same figure as you have reported in ‘Element 9B’, ‘Element 19B’ or ‘Element 33B’ (depending on the method your firm uses to calculate its capital requirement). If you answered “yes” to question 1, you must enter the figure reported in ‘Element 3B’ (initial capital requirement).

**Element 56B:** State, in EUR, the total capital surplus / deficit for your firm. This is calculated

by subtracting the total capital requirement in ‘Element 55B’ above, from the total net capital resources in ‘Element 54B’ above (i.e. Element 54B – Element 55B = total capital surplus / deficit).

### **Part Three: SUPPLEMENTARY INFORMATION**

#### **SAFEGUARDING OF RELEVANT FUNDS**

You must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds. At least one of the boxes in ‘Elements 61 to 65’ must be selected.

#### **NUMBER OF AGENTS**

**Element 66B:** State the number of agents that you have registered to undertake payment services.

#### **PAYMENT SYSTEMS**

**Element 70B:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 72B:** If your firm accesses, on an indirect basis, any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where the PSP indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 74B:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

#### **TRANSACTION AND USER INFORMATION**

**Element 75B:** Enter the full number of months during the reporting period that your firm was *FCA* authorised or registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the *FCA* on 15 October then you should enter “2”.

**Element 76B:** State the number of payment transactions executed by your firm during the reporting period. This includes payment transactions executed by agents of your firm.

**Element 77B:** State, the total amount (i.e. value) of all payment transactions executed during the reporting period This includes payment transactions executed by agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them. This figure should be provided in EUR and GBP.

**Element 84B:** State the number of new users / customers who have used your firm’s payment services during the reporting period. This means those users that have entered into framework contracts or (where known) single payment service contracts during the reporting period and includes all customer types, including individual consumers and any corporate customers.

## **Part Four: PROVIDERS OF ACCOUNT INFORMATION AND/OR PAYMENT INITIATION SERVICES**

### **Account information services (AIS)**

**Elements 79 – 83** should only be answered by firms providing account information services.

**Element 79B:** State the number of payment accounts that the AIS provider has accessed for the purposes of providing AIS during the reporting period. You should count each individual payment account once, even where it has been accessed multiple times.

**Element 80B:** State the number of customers that have used the provider's AIS in the reporting period. Each customer should be counted once (including where the customer has used the AIS multiple times).

**Element 81B:** State the minimum monetary (in EUR) amount of the professional indemnity insurance (or comparable guarantee) ("PII") calculated in accordance with the European Banking Authority Guidelines on Professional Indemnity Insurance under PSD2.

**Element 82B:** Please enter the amount of coverage of the PII that is held by the AIS provider. This should be entered in EUR. Please use the same conversion rate entered at 'Element 53B'.

**Element 83B:** If the terms of the AIS provider's PII have changed in any respect since its authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount), what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

### **Payment initiation services (PIS)**

**Element 84B:** Please enter the total number of contracts that the PIS provider has entered into for the purposes of providing PIS. This should be the total number of framework contracts existing as at the end of the reporting period (irrespective of whether they were entered into during the reporting period). For the purposes of calculating the number of "contracts", you should consider each legal entity (or individual), as one contract.

**Element 85B:** This should be the total number of payment transactions initiated using the provider's PIS in the reporting period.

**Element 86B:** This should be the total value (in EUR) of the payment transactions initiated using the provider's PIS in the reporting period.

**Element 87B:** State the minimum monetary amount (in EUR) of the professional indemnity insurance (or comparable guarantee) ("PII") calculated in accordance with the European Banking Authority Guidelines on Professional Indemnity Insurance under PSD2.

**Element 88B:** Please enter the amount of coverage of the PII that is held by the PIS provider. This should be entered in EUR. Please use the same conversion rate entered at 'Element 53B'.

**Element 89B:** If the terms of the PIS provider's PII have changed in any respect since its

authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount), what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

After SUP 16 Annex 27D insert the following new Annex as SUP 16 Annex 27E. The text is not underlined.

**16 Annex REP017 Payments Fraud Report  
27ED**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Payments Fraud Report - [add link to fraud report]*

REP017 - Payments Fraud Report

Table 1 - Fraud relating to different means of payment

Please provide data on the payment types subject to the most fraud (by value of fraudulent transactions)

	A	B	C	D	E	F	G	H
	Payment type	Total transaction volume for payment type (000s)	Total transaction value for payment type (£millions)	Fraudulent transaction volume for payment type (000s)	Fraudulent transaction value for payment type (£millions)	Volume fraudulent transactions initiated through PISP using payment type	Please select the three fraud types which cause the highest value of fraudulent transactions for the payment type	Fraudulent transaction value (£millions)
1	Please select the payment type which has the highest fraud rate by value of fraudulent transactions	BACS Direct Credit/BACS single payment/CHAPS credit transfer/Faster Payments (including standing orders)/SEPA credit transfer/Inter-bank transfer (On-Us) payment/International SWIFT payment/BACS Direct Debits/SEPA Direct debit/Pre-paid Card/Credit Card/Charge card/Debit card or cash card					1 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	
							2 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	
							3 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	
2	Please select the payment type which has the second highest fraud rate by value of fraudulent transactions	BACS Direct Credit/BACS single payment/CHAPS credit transfer/Faster Payments (including standing orders)/SEPA credit transfer/Inter-bank transfer (On-Us) payment/International SWIFT payment/BACS Direct Debits/SEPA Direct debit/Pre-paid Card/Credit Card/Charge card/Debit card or cash card					1 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	
							2 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	
							3 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	

	Payment type	Total transaction volume for payment type (000s)	Total transaction value for payment type (£millions)	Fraudulent transaction volume for payment type (000s)	Fraudulent transaction value for payment type (£millions)	Volume fraudulent transactions initiated through PISP using payment type	Top three fraud types using the payment type	Fraudulent transaction value (£millions)
3	Please select the payment type which has the third highest fraud rate by value of fraudulent transactions	BACS Direct Credit/BACS single payment/CHAPS credit transfer/Faster Payments (including standing orders)/SEPA credit transfer/Inter-bank transfer (On-Us) payment/International SWIFT payment/BACS Direct Debits/SEPA Direct debit/Pre-paid Card/Credit Card/Charge card/Debit card or cash card					1 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	
							2 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	
							3 Manipulation of the payer to issue a payment order/Issuance of a payment order by the fraudster/Modification of a payment order by the fraudster/Account takeover/Lost and stolen card fraud/Card Not Received fraud/Counterfeit card fraud	

Table 2 - Fraud relating to account information services

Please provide data on incidents of fraud relating to account information services

	A	B	C
	Number of incidents	Please indicate the total value of fraud across all incidents (or an estimation of the loss to the persons defrauded) (£millions)	Please provide a brief description of how fraud was most commonly committed - descriptions of up to three different fraud types, in order of those with the highest loss
4	In respect of account information services only, please indicate the number of incidents of fraud (if zero, you do not need to complete B and C)		1
			2
			3

After SUP 16 Annex 27E insert the following new Annex as SUP 16 Annex 27F. The text is not underlined.

**16 Annex Notes on completing REP017 Payments Fraud Report  
27FG**

**NOTES ON THE COMPLETION OF REP017 PAYMENTS FRAUD REPORT**

These notes contain guidance for payment service providers that are required to complete the Payments Fraud Report in accordance with Regulation 109(4) of the Payment Service Regulations 2017 and *SUP 16.13.7D*

**What is a fraudulent transaction?**

For the purposes of this report, a fraudulent transaction is any payment transaction that the PSP has:

- executed;
- acquired; or
- in the case of a PISP, initiated;

and that the PSP deems to have been subject to one of the following fraud types:

(for credit transfers & direct debits)

- Manipulation of the payer to issue a payment order.
- Issuance of a payment order by the fraudster.
- Modification of a payment order by the fraudster.
- Account takeover.

(for credit cards)

- Lost and stolen card fraud.
- Card Not Received fraud.
- Counterfeit card fraud.

If a payment transaction meets the conditions above it should be recorded as a fraudulent transaction for the purposes of this report irrespective of whether:

- the PSP had primary liability to the user;

- the fraudulent transaction would be reported as such by another PSP in the same payment chain;
- the fraud is committed by the user (first party fraud) or by another person with whom the PSP does not have a contractual relationship (third party fraud).

## **Fraud types**

PSPs should use their discretion when determining the appropriate fraud type for each fraudulent transaction and should choose the fraud type that most closely matches the circumstances of the fraud. We have provided guidance on the fraud types for this purpose.

### **Credit transfers & direct debits:**

#### *“Manipulation of the payer to issue a payment order”*

This would cover fraud where the payer authorises a push payment to a fraudulent payee, also referred to as “malicious misdirection”, for example, when a scammer contacts the victim purporting to be from the victim’s bank. The scammer then convinces the victim to transfer money (using a credit transfer) to a different account in order to safeguard it but that is in fact controlled by the scammer. (See Payment Systems Regulator response to Which? Super-complaint: <https://www.psr.org.uk/psr-publications/news-announcements/which-super-complaint-our-response-Dec-2016>).

#### *“Issuance of a payment order by the fraudster”*

This would cover fraud where the fraudster uses stolen personalised security credentials in order to issue a payment order, either through contacting the victim’s bank or accessing the victim’s online banking service. For example, where a victim’s online banking has been accessed using stolen personal identity details and credit transfers (such as Faster Payment or CHAPS payments) have been made or direct debits set up from the victim’s account to beneficiaries chosen by the fraudster.

#### *“Modification of a payment order by the fraudster”*

This would cover fraud where the fraudster has gained unauthorised access to the victim’s account in order to change the details of existing payment orders or payment instructions. For example, where a victim’s account has been accessed using stolen personalised security credentials in order to modify the beneficiary of the victim’s existing standing orders or direct debits or, for example, where a victim’s account has been accessed by a fraudster and a batch of payment details have been modified so that when payments are executed by the victim, the funds are unintentionally transferred to a beneficiary or beneficiaries chosen by the fraudster rather than the intended beneficiary. (See CIFAS paper, Table 2 Unlawful obtaining or disclosure of personal data: <https://www2.cipd.co.uk/NR/rdonlyres/710B0AB0-ED44-4BD7-A527-B9AC29B28343/0/empfraud.pdf>)

### **Credit cards:**

#### *“Lost and stolen card fraud”*

This would cover any fraud committed as a result of a lost or stolen card (except where Card non-receipt fraud has occurred). (See FFAUK Fraud Facts 2016  
[https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud\\_the\\_facts.pdf](https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud_the_facts.pdf))

*“Card non-receipt fraud”*

This would cover fraud where a payment card is stolen (with or without the details of the PIN also being intercepted) whilst in transit – after the card company sends it out and before the genuine cardholder receives it. The payment card is then used to make transactions by the fraudster. (See FFAUK Fraud Facts 2016  
[https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud\\_the\\_facts.pdf](https://www.financialfraudaction.org.uk/fraudfacts16/assets/fraud_the_facts.pdf))

*“Counterfeit card fraud”*

This would cover fraud where the fraudster uses a card which has been printed, embossed or encoded so as to purport to be a legitimate card but which is not genuine because the issuer did not authorise the printing, embossing, or encoding. (See  
<https://www.financialfraudaction.org.uk/wp-content/uploads/2016/07/Fraud-the-Facts-A5-final.pdf>)

*“Account takeover”*

This would cover fraud using another person’s credit or debit card account, first by gathering information about the intended victim, then contacting their bank or credit card issuer whilst masquerading as the genuine cardholder. The fraudster will then arrange for funds to be transferred out of the account, or will change the address on the account and ask for new or replacement cards to be sent to the new address. (See  
<https://www.financialfraudaction.org.uk/wp-content/uploads/2016/07/Fraud-the-Facts-A5-final.pdf>)

**Data elements**

<b>Payments Fraud Report - table 1</b>		
1A	Please select the payment type which has the highest fraud rate by value of fraudulent transactions	<p><b>Payment types</b></p> <p>The payment types available in the dropdown list are payment types provided by UK PSPs. These include different types of credit transfer, direct debit and card payment types.</p> <p><b>Credit transfers:</b></p> <p>BACS Direct Credit</p> <p>BACS single payment</p> <p>CHAPS credit transfer</p>

		<p>Faster Payments (including standing orders)</p> <p>SEPA credit transfer</p> <p>Inter-bank transfer (On-Us) payment</p> <p>International SWIFT payment</p> <p><b>Direct debits:</b></p> <p>BACS Direct Debits</p> <p>SEPA Direct debit</p> <p><b>Cards:</b></p> <p>Pre-paid Card</p> <p>Credit Card</p> <p>Charge card</p> <p>Debit card/cash card</p> <p>If the PSP provides three or fewer than three payment types it should complete the report in respect of each of those payment types.</p> <p><b>Calculating the value of fraudulent transactions</b></p> <p>In order to complete this report, PSPs should, throughout the reporting period, record for each payment type: the number and value of payment transactions and the number and value of payment transactions that are categorised as fraudulent transactions. PSPs should use this data to determine which payment type has the highest fraud rate.</p> <p>“Highest fraud rate” means the highest total value of fraudulent transactions.</p> <p>If the PSP executes more than one payment transaction in respect of the same funds (for example placing and transferring the same funds), the PSP should record this transaction and the corresponding value once only.</p>
1B-1E	Volume and value of payment transactions and fraudulent transactions	<p>PSPs should report the following information in respect of the payment type selected at 1A:</p> <ul style="list-style-type: none"> <li>• Total transaction volume (i.e. the</li> </ul>

		<p>number of transactions) for payment type (000s)</p> <ul style="list-style-type: none"> <li>• Total transaction value for payment type (£millions)</li> <li>• Fraudulent transaction volume (i.e. the number of transactions) for payment type (000s)</li> <li>• Fraudulent transaction value for payment type (£millions)</li> </ul> <p>Figures should be entered in units of thousands (for volume) or millions (for value). If the figure is less than one thousand or one million, you should enter the figure as a decimal fraction: e.g. if the total fraudulent transaction value is £23,000 this should be entered as 0.023</p>
1F	Volume fraudulent transactions initiated through PISP using payment type	PSPs that only provide payment initiation services (i.e. those that do not come into possession of user funds) do not need to answer this question. All other PSPs should enter the number of fraudulent transactions that were initiated by a third party PISP using the payment type selected at 1A. If there were none, PSPs should enter “0”.
1G	Please select the three fraud types attributed to the highest value of fraudulent transactions for the payment type	The PSP should select the three fraud types (from the drop down list of in the form) that cause the most fraud for the payment type selected at 1A. The three fraud types should be those with the three highest total values of fraudulent transactions.
1H	Fraudulent transaction value	For each of the fraud types selected at 1G, the PSP should enter the value of fraudulent transactions for that fraud type. This will allow us to understand the proportion of the total fraud transaction value (entered as 1F) that is attributable to that particular fraud type.
2A and 3A	Please select the payment type which has the second and third highest fraud rate by value of fraudulent transactions	The second and third highest fraud rate should be calculated as set out above in relation to 1A.  If the PSP provides three or fewer than

		three payment types in the reporting period, it should complete the report only in respect of each of those payment types. For example, if the PSP provides two payment types, it should complete sections 1A – 1H and 2A-H only.
2B-H 3B-H	PSPs should answer questions 2B-H and 3B-H as set out above in respect of the payment types entered at 2A and 3A (where applicable).	

<b>Table 2 - Fraud relating to account information services</b>		
This section should be answered by PSPs that provide account information services (AISPs). Registered account information service providers (i.e. PSPs that do not provide any other type of payment service) do not need to answer the questions in table 1.		
4A	Please indicate the number of incidents of fraud.	This should be the total number of incidents of fraud that the AISP has recorded. If there are no incidents of fraud, please enter “0” (there is no need to complete the rest of table 2).
4B	Total value of fraud	<p>Where known, the AISP should report the value of any fraudulent transactions that were executed or initiated (by a third party PSP) as a result of the fraud committed against the AIS user or the AISP.</p> <p>In all other circumstances the AISP should provide an estimation of the loss to the persons defrauded. In this context “persons” would include the user of the AIS service, any other PSP (such as a credit institution that operated the payment account that the AISP accessed) or the AISP itself. Loss would include loss of funds incurred as a result of fraudulent transactions or loss incurred as an indirect result of the fraud for example by having to reissue new payment instruments or fix breached security systems.</p> <p>If the fraudulent incident(s) did not result in any financial loss, the AISP should still report the incident, enter “0” at 4B and explain the type of fraud at</p>

		4C.
4C	Description of fraud	In this section we would expect AISPs to describe the type of fraud that has resulted in the highest total value of fraud (unless the AISP is reporting fraudulent incidents that did not result in any financial losses as above). The AISP should also explain how the losses were incurred (on the basis that the AISP does not come into possession of the payment transaction funds and is not responsible for the execution of payment transactions).

After SUP 16 Annex 28B (Notes on Completing FSA057 (Payment Services Directive Transactions)) insert the following new Annex as SUP 16 Annex 28C. The text is not underlined.

**16 Annex Small Payment Institution Return  
28CD**

This annex consists only of one or more forms. Forms are to be found through the following address:

*FSA057 (Payment Services Directive Transactions) – [Link to new form]*

FSA057 PAYMENT SERVICES DIRECTIVE TRANSACTIONS

Currency Units: Single

**Introductory Matters**

Questions 11 to 13 must be answered in GBP

- |   | A                    | B |
|---|----------------------|---|
| 11 Total income during the reporting period                               | <input type="text"/> |   |
| 12 Total income derived from payment services during the reporting period | <input type="text"/> |   |
| 13 Operating profit / loss of firm in the reporting period                | <input type="text"/> |   |

**Transaction and User Information**

- |   |                             |                             |
|---|-----------------------------|-----------------------------|
| 1 Please report the total number of payment transactions the firm has undertaken during the reporting period  | <input type="text"/>        |                             |
| 14 Please provide the exchange rate used to convert GBP to EUR in this return   | <input type="text"/>        |                             |
| 2 Please report the total value of these transactions<br><i>(The figure should be entered in single units and in both currencies)</i>   | EUR<br><input type="text"/> | GBP<br><input type="text"/> |
| 3 Number of full months in the reporting period in which the firm was registered  | <input type="text"/>        |                             |
| 15 What is the monthly average of the total value of payment transactions executed over the reporting period including payment transactions executed through UK agents (EUR)? | <input type="text"/>        |                             |
| 16 Number of new payment service users in the reporting period  | <input type="text"/>        |                             |

**Safeguarding of relevant funds**

- 4 Has your firm voluntarily adopted safeguarding arrangements?

If you have answered YES to question 4, please indicate which method(s) the firm uses to safeguard client assets  
*(Select all that apply and add the appropriate information)*

- |   | B                    | C                       | D                                    |
|---|----------------------|-------------------------|--------------------------------------|
| 5 Placed in a separate account with an authorised credit institution                                | <input type="text"/> | Credit institution name | Country where the account is located |
| 6 Invested in approved secure liquid assets held in a separate account with an authorised custodian | <input type="text"/> | Custodian name          | Country where the account is located |
| 7 Covered by an insurance policy with an authorised insurer   | <input type="text"/> | Insurer name            |                                      |
| 8 Covered by a guarantee from an authorised insurer   | <input type="text"/> | Insurer name            |                                      |
| 9 Covered by a guarantee from an authorised credit institution                                      | <input type="text"/> | Credit institution name |                                      |

**Number of Agents**

- 10 Please report the number of agents the firm has

**Payment Systems**

- 17 Is the firm a member of any sterling interbank payment systems?  
*Select all that apply*
- |                   |
|-------------------|
| Bacs              |
| CHAPS             |
| Cheque and Credit |
| Faster Payments   |
| LINK              |
| MasterCard        |
| Visa              |
| No                |
| Other(s)          |

- 18 If Other(s), please specify

- 19 Which, if any, sterling interbank payment systems does your firm access indirectly?  
*Select all that apply.*
- |                   |
|-------------------|
| Bacs              |
| CHAPS             |
| Cheque and Credit |
| Faster Payments   |
| None              |
| Other(s)          |

- 20 If Other(s), please specify

- 21 Which institution is your firm's primary provider of indirect access to sterling interbank payment systems?

After SUP 16 Annex 28C insert the following new Annex as SUP 16 Annex 28D. The text is not underlined.

**16 Annex Notes on completing FSA057 (Small Payment Institution Return)  
28DG**

**Notes on completing FSA057 Payment Services Directive Transactions**

**Valuation**

Firms should follow their normal accounting practice wherever possible.

**Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR.

- Elements 11 to 13 should be completed in GBP.
- Element 15 should be completed in EUR.
- Element 2 should be answered in EUR and GBP.

The exchange rate entered at Element 14 should be used throughout the return to convert GBP to EUR where required.

**Data elements**

These are referred to by row first, then by column, so data element 2A will be the element numbered 2 in column A.

**INTRODUCTORY MATTERS**

**Element 11A:** State, in GBP, the total income of the whole legal entity, across all activity, for the reporting period. Follow your firm's normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 12A:** State, in GBP, the total income for the reporting period, which derived from payment services. Follow your normal accounting practice when answering this question.

**Element 13A:** State, in GBP, the total operating profit or loss of the whole legal entity for the reporting period. Operating profit or loss is calculated after ordinary operating expenses are

deducted [from the gross profit], but before interest, tax, dividend payments and any extraordinary items are deducted.

## TRANSACTION AND USER INFORMATION

**Element 1A:** State the number of payment transactions executed by your firm during the reporting period. This includes payment transactions executed by UK agents of your firm. If your firm was not *FCA* authorised or registered for the entire year to which this return relates, you should only include transactions made since your firm was *FCA* authorised or registered.

**Element 14A:** Please provide the EUR equivalent value for 1 GBP to 4 decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 2:** State the total amount (i.e. value) of all payment transactions executed during the reporting period. This includes payment transactions executed by agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them. This figure should be provided in EUR and GBP.

**Element 3A:** Enter the full number of months during the reporting period that your firm was *FCA* registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the *FCA* on 15 October then you should enter “2”.

**Element 15A:** Enter the monthly average value of the total payment transactions executed over the reporting period. This should be the (EUR) figure entered at Element 2 divided by the number of full months during the reporting period that your firm was registered (i.e. the number entered at Element 3A). If the monthly average is inflated as a result of rounding to full months, you may calculate the monthly average by taking into account the partial month of registration in this figure only.

**Element 16A:** State the number of new users / customers who have used your firm’s payment services during the reporting period. This means those users that have entered into framework contracts or single payment service contracts during the reporting period and includes all customer types, including individual consumers and any corporate customers.

## SAFEGUARDING OF CLIENT ASSETS

**Element 4A:** State whether you voluntarily safeguard relevant funds. Under the PSRs 2017, small PIs can choose to comply with safeguarding requirements in order to offer the same protections over customer funds as authorised PIs must provide. If an SPI does choose to safeguard they will need to apply the same level of protections as are expected of an authorised PI. We will expect an SPI to tell us if it is choosing to safeguard funds. SPIs that answer “No” to this question should move to the ‘**NUMBER OF AGENTS**’ section.

If you answer “Yes”, to this question you must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds and answer the relevant questions

relating to this method. At least one of the boxes in ‘Elements 5 to 9’ must be selected.

## NUMBER OF AGENTS

**Element 10A:** State the number of agents in the UK that you have registered to undertake payment services.

## PAYMENT SYSTEMS

**Element 17A:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 19A:** If your firm accesses, on an indirect basis, any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where the PSP indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 21A:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

After SUP 16 Annex 30G (Small electronic money institutions – total outstanding electronic money return) insert the following new Annex as SUP 16 Annex 30H. The text is not underlined.

**16 Annex    Authorised electronic money institution questionnaire  
30HD**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Authorised e-money institution questionnaire – [Link to new form]*

FIN060 Authorised Electronic Money Institution Questionnaire

**Section 1: Income Statement**

Firm annual income for the legal entity only  
Section 1 must be answered in GBP

	A
	As at the end of the reporting period
1 Total income during reporting period	
2 Total income during reporting period derived from e-money issuance and related payment services	
3 (Where relevant) total income during reporting period derived from unrelated payment services	
4 Total operating profit / loss of legal entity during reporting period	

**Section 2: EMRs and PSRs 2017 activity**

Section 2(a): EMRs 2011 activity

5 How many full months in the reporting period has the firm been authorised?	
6 Electronic money outstanding at the end of the reporting period (EUR)	
7 Number of e-money accounts open at the start of the reporting period	
8 Number of e-money accounts open at end of the reporting period	

Section 2(b): PSRs 2017 activity

9 Do you carry out any unrelated payment services?	
10 Number of unrelated payment transactions executed in reporting period	
11 Total value of unrelated payment transactions executed in reporting period (EUR)	

**Section 3: Net capital resources**

Questions on the items that make up the "own funds" will be consulted on as part of the second consultation in mid-2017.

Section 3[X]: Total capital resources

	As at the end of the reporting period
12 Total capital resources (GBP)	
13 £/€ exchange rate	
14 Total capital resources (EUR)	

**Section 4: Capital requirements for unrelated payment services**

Sections 4(b) to 4(d) must be answered in EUR

These questions are only applicable to an authorised EMI that has answered "Yes" to Q9

Section 4(a): Method used to calculate ongoing requirements

15 Please indicate which method your firm uses to calculate its own funds requirement	
---	--

Section 4(b): Method A calculation

	As at the end of the reporting period
16 Total fixed overheads for preceding year	
17 <b>Own funds requirement (10% of total fixed overheads)</b>	

Section 4(c): Method B calculation

18 Payment volume	
19 4% of first €5m of payment volume	
20 2.5% of payment volume between €5m and €10m	
21 1% of payment volume between €10m and €100m	
22 0.5% of payment volume between €100m and €250m	
23 0.25% of any payment volume above €250m	
24 <b>Total (sum of above)</b>	
25 Scaling factor	
26 <b>Own funds requirement</b>	

Section 4(d): Method C calculation

Section 4(d)(i): Relevant indicator

	As at the end of the reporting period
27 Interest income	
28 Interest expenses	
29 Gross commissions and fees received	
30 Gross other operating income	
31 <b>Total relevant indicator of income (sum of above)</b>	

Section 4(d)(ii): Multiplication factor

	As at the end of the reporting period
32 10% of the first €2.5m of the total relevant indicator	
33 8% of the total relevant indicator between €2.5m and €5m	
34 6% of the total relevant indicator between €5m and €25m	
35 3% of the total relevant indicator between €25m and €50m	
36 1.5% of any remaining amount of the total relevant indicator	
37 <b>Total Multiplication Factor</b>	
38 Scaling factor	
39 <b>Own funds requirement</b>	

**Section 5: Overall capital requirements**

Sections 5 must be answered in EUR

	As at the end of the reporting period
40 Average outstanding electronic money	
41 Method D own funds requirement for e-money issuance and related payment services	
42 Total own funds requirement including for unrelated payment services	
43 Total capital requirements (the higher of €350,000 or the total own funds requirement)	
44 Capital surplus / deficit	
45 Have the firm's own funds been equal to or greater than its own funds requirement at all time throughout the reporting period?	

2% of outstanding electronic money

**Section 6: Method of Safeguarding**

	A	B
	Electronic Money	Unrelated Payment Services
46 Placed in a separate account with an authorised credit institution If so:		
47 Name of the credit institution		
48 Country where account is located		
49 Invested in secure liquid assets held in a separate account with an authorised custodian If so:		
50 Name of the custodian		
51 Country where account is located		
52 Covered by an insurance policy with an authorised insurer If so:		
53 Name of the insurer		
54 Covered by a guarantee from an authorised insurer If so:		
55 Name of the insurer		
56 Covered by a guarantee from an authorised credit institution If so:		
57 Name of the credit institution		

**Section 7: Agents**

	As at the end of the reporting period
58 Number of agents	

**Section 8: Payment systems**

	As at the end of the reporting period											
59 Is the firm a member of any sterling interbank payment systems? <i>Select all that apply</i>	+	<table border="1"> <tr><td>Bacs</td></tr> <tr><td>CHAPS</td></tr> <tr><td>Cheque and Credit</td></tr> <tr><td>Faster Payments</td></tr> <tr><td>LINK</td></tr> <tr><td>MasterCard</td></tr> <tr><td>Visa</td></tr> <tr><td>No</td></tr> <tr><td>Other(s)</td></tr> <tr><td>Free Text up to 100</td></tr> </table>	Bacs	CHAPS	Cheque and Credit	Faster Payments	LINK	MasterCard	Visa	No	Other(s)	Free Text up to 100
Bacs												
CHAPS												
Cheque and Credit												
Faster Payments												
LINK												
MasterCard												
Visa												
No												
Other(s)												
Free Text up to 100												
60 Which, if any, sterling interbank payment systems does your firm access indirectly? <i>Select all that apply</i>	+	<table border="1"> <tr><td>Bacs</td></tr> <tr><td>CHAPS</td></tr> <tr><td>Cheque and Credit</td></tr> <tr><td>Faster Payments</td></tr> <tr><td>None</td></tr> <tr><td>Other(s)</td></tr> <tr><td>Free Text up to 100</td></tr> </table>	Bacs	CHAPS	Cheque and Credit	Faster Payments	None	Other(s)	Free Text up to 100			
Bacs												
CHAPS												
Cheque and Credit												
Faster Payments												
None												
Other(s)												
Free Text up to 100												
61 Which institution is the firm's primary provider of indirect access to sterling interbank payment systems?												

**Section 9: Providers of account information services or payment initiation services**

**Account information services (AIS)**

*Please only answer the following questions if you provide account information services*

	B	C
62 How many different payment accounts have been accessed by the firm in the reporting period for the purposes of providing AIS?		
63 How many customers have used the firm's account information services in the reporting period?		
64 Please enter the minimum monetary amount of the PII (or comparable guarantee) calculated in accordance with the EBA's RTS (EUR)		
65 Please enter the amount of coverage of the professional indemnity insurance (or comparable guarantee) (EUR)		
66 Has the minimum monetary amount, the insurance provider or the terms and conditions of the insurance policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the FCA?		If yes, please explain

**Payment initiation services (PIS)**

*Please only answer the following questions if you provide payment initiation services*

67 How many contracts has the firm entered into with customers for the purposes of providing PIS?		
68 How many payment transactions has the firm initiated in the reporting period?		
69 What is the total value of all payment transactions initiated by the firm during the reporting period? (EUR)		
70 Please enter the minimum monetary amount of the PII (or comparable guarantee) calculated in accordance with the EBA's RTS (EUR)		
71 Please enter the amount of coverage of the professional indemnity insurance (or comparable guarantee) (EUR)		
72 Has the insurance provider or the terms and conditions of the insurance policy (or where relevant, the guarantor and terms of the guarantee) changed in any way since the information was last submitted to the FCA?		If yes, please explain

After SUP 16 Annex 30H insert the following new Annex as SUP 16 Annex 30I. The text is not underlined.

## **16 Annex Notes on completing authorised electronic money institution questionnaire 30IG**

### **Notes on completing FIN060 Authorised Electronic Money Institution Questionnaire**

#### **Valuation**

Firms should follow their normal accounting practice wherever possible.

#### **Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR. The exchange rate entered at Element [13] should be used throughout the return to convert GBP to EUR where required.

- Elements 1- 4 and [X-11 (Capital resource item values)] must be completed in GBP.
- All other monetary answers must be in EUR.

Figures should be entered in single units in the currency specified. For example, €1,234,567.50 should be entered as 1234567.

#### **Section 1: Income Statement**

**Element 1:** State, in GBP, the total income of the whole legal entity, across all activity, for the reporting period. Follow your firm’s normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 2:** State, in GBP, the total income for the reporting period, which derived from the issuance of e-money and related payment services. Follow your normal accounting practice when answering this question. “Related payment services” means those payment services that are related to the issuance of electronic money.

**Element 3:** State, in GBP, the total income for the reporting period, which derived from the provision of unrelated payment services. Follow your normal accounting practice when answering this question. “Unrelated payment services” means those payment services (as defined in the Payment Services Regulations 2017) that are not related to the issuance of electronic money. If you do not provide unrelated payment services, please enter “0”.

**Element 4:** State, in GBP, the total operating profit or loss of the whole legal entity for the

reporting period. Operating profit or loss is calculated after ordinary operating expenses are deducted from the gross profit, but before interest, tax, dividend payments and any extraordinary items are deducted.

## Section 2: EMRs and PSRs 2017 activity

### *Section 2(a): EMRs 2011 activity*

**Element 5:** Enter the full number of months during the reporting period that your firm was *FCA* authorised or registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the *FCA* on 15 October then you should enter “2”.

**Element 6:** State (in EUR) the amount of e-money that was outstanding at the end of the period to which this return relates.

**Elements 7 and 8:** State the number of e-money accounts open at the start and end of the reporting period. This includes all customer types (consumers and corporates). If a customer has multiple accounts, you should include each account in the total.

### *Section 2(b): PSRs 2017 activity*

**Element 9:** “Unrelated payment services” means payment services as defined in the PSRs 2017 that are not related to the issuance of e-money. If the answer to this question is “no” you do not need to answer questions 10 and 11 or Section: Capital requirements for unrelated payment services.

**Element 10:** State the number of unrelated payment transactions executed by your firm during the reporting period. This includes payment transactions executed by agents of your firm.

**Element 11:** State, the total amount (i.e. value) of all the unrelated payment transactions executed during the reporting period (in EUR). This includes payment transactions executed by agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them.

## Section 3: Net capital resources

[*Editor’s note:* We will consult on questions in the part of the annual return that relate to items that make up the “own funds” and the accompanying notes for completion as part of our second consultation planned for mid-2017]

**Element 12:** This should be the sum of the capital items listed at [X] after deductions and adjustments (GBP).

**Element 13:** Please provide the EUR equivalent value for 1 GBP to 4 decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 14:** State the EUR equivalent of Element 12 above.

#### **Section 4: Capital requirements for unrelated payment services**

These questions are only applicable to an authorised EMI that has answered "Yes" to Q9.

##### *Section 4(a): Method used to calculate ongoing requirements*

**Element 15:** Firms should indicate which of the three methods (Methods A/B/C) they use to calculate their own funds requirement for unrelated payment services (Part 2 of Schedule 2 of the Electronic Money Regulations 2011).

Firms only need to complete those parts of the form that apply to their chosen method of calculating own funds.

If your firm has not completed a full financial year of business, then, in lieu of the figure for the “preceding year” or the “previous financial year”, you must use the projected figure(s) that your firm submitted to the *FCA* when applying for authorisation (subject to any adjustments that the *FCA* required or may require).

Please refer to Chapter 9 (Capital resources and requirements) of our Approach Document for further detail on how to calculate the own funds requirement.

##### *Section 4(b): Method A calculation*

**Element 16:** State, in EUR, the total fixed overheads for the preceding year. Please refer to Chapter 9 of our Approach Document for further guidance on fixed overheads.

**Element 17:** State, in EUR, the figure equal to 10% of the figure you have reported in Element 16.

##### *Section 4(c): Method B calculation*

**Element 18:** “Payment volume” means the total amount (i.e. value) of unrelated payment transactions executed by the firm in the preceding financial year divided by the number of months in that year (paragraph 9(3), Part 2, Schedule 3 of the PSRs 2017). This figure should include unrelated payment transactions executed by agents.

**Element 19:** State, in EUR, the figure that equals 4% of the first €5m of payment volume.

**Element 20:** State, in EUR, the figure that equals 2.5% of payment volume between €5m and €10m. If your firm has undertaken less than €5m in payment volume, insert a zero in this box.

**Element 21:** State, in EUR, the figure that equals 1% of payment volume between €10m and €100m. If your firm has undertaken less than €10m in payment volume, insert a zero in this box.

**Element 22:** State, in EUR, the figure that equals 0.5% of payment volume between €100m and €250m. If your firm has undertaken less than €100m in payment volume, insert a zero in this box.

**Element 23:** State, in EUR, the figure that equals 0.25% of all payment volume over €250m. If

your firm has undertaken less than €250m in payment volume, insert a zero in this box.

**Element 24:** State, in EUR, the sum of the values from Elements 19 to 23 above.

**Element 25:** The “scaling factor” is:

- 0.50 for an authorised EMI that is providing a payment service specified in paragraph 1(f) of Schedule 1 PSRs 2017 (money remittance); and
- 1.00 for an authorised EMI that is providing any other payment service specified in paragraph 1(a) to (e) of Schedule 1 PSRs 2017.

The scaling factor should be entered to 2 decimal places.

**Element 26B:** This figure is calculated using the following equation – Element 24 x Element 25.

*Section 4(d): Method C calculation*

*Relevant Indicator*

**Element 27 – Element 30:** these figures should be entered in EUR and should cover the expenses or income generated over the reporting period. Please refer to Chapter 9 (Capital resources and requirements) of our Approach Document for further detail on the Elements that make up the relevant indicator.

Firms should have regard to paragraphs 10(4)(a)-(d), Part 2, Schedule 3 of the PSRs 2017 for the purposes of calculating the relevant indicator:

- each element must be included in the sum with its positive or negative sign;
- income from extraordinary or irregular items must not be used;
- expenditure on the outsourcing of services rendered by third parties may reduce the relevant indicator if the expenditure is incurred from a payment service provider;
- the relevant indicator is calculated on the basis of the twelve-monthly observation at the end of the previous financial year;
- the relevant indicator must be calculated over the previous financial year; and
- audited figures must be used unless they are not available in which case business estimates may be used.

**Element 31:** The “total relevant indicator of income” is the sum of the amounts stated in Elements 27-30 above.

*Multiplication Factor*

**Element 32:** State, in EUR, the figure that equals 10% of the first €2.5m of the “total relevant indicator of income” (i.e. the figure in Element 31).

**Element 33:** State, in EUR, the figure that equals 8% of the “total relevant indicator of income”

between €2.5m and €5m. If your firm's total relevant indicator of income is less than or equal to €2.5m, you should enter zero in this box.

**Element 34:** State, in EUR, the figure that equals 6% of the “total relevant indicator of income” between €5m and €25m. If your firm's total relevant indicator of income is less than or equal to €5m, you should enter zero in this box.

**Element 35:** State, in EUR, the figure that equals 3% of the “total relevant indicator of income” between €25m and €50m. If your firm's total relevant indicator of income is less than or equal to €25m, you should enter zero in this box.

**Element 36:** State, in EUR, the figure that equals 1.5% of the “total relevant indicator of income” over €50m. If your firm's total relevant indicator of income is less than or equal to €50m, you should enter zero in this box.

**Element 37:** State, in EUR, the sum of the values of Elements 32 - 36 above (the Multiplication Factor).

**Element 38:** The “scaling factor” is:

- 0.50 for an authorised EMI that is providing a payment service specified in paragraph 1(f) of Schedule 1 PSRs 2017 (money remittance); and
- 1.00 for an authorised EMI that is providing any other payment service specified in paragraph 1(a) to (e) of Schedule 1 PSRs 2017.

The scaling factor should be entered to 2 decimal places.

**Element 39:** The own funds requirement is calculated by multiplying the total relevant indicator of income (Element 31) by the multiplication factor (Element 37) and the scaling factor (Element 38).

## Section 5: Overall capital requirements

**Element 40:** You should enter the average outstanding electronic money for the last month of the reporting period (in EUR). “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.

**Element 41:** This figure is 2% of the average outstanding electronic money (Method D). This figure should be provided in EUR.

**Element 42:** Total own funds: for firms that do not provide unrelated payment services, this is the same figure as Element 41. For firms that do provide unrelated payment services, this is the sum of the own funds requirement for unrelated payment services (Method A/B/C) as calculated above and the Method D own funds requirement at Element 41 above. This figure should be provided in EUR.

**Element 43:** Total capital requirement: enter the higher of the €350,000 or the Total own funds

figure at Element 42 (in EUR).

**Element 44:** This is calculated by subtracting the total capital requirement (Element 43) from the total net capital resources (Element 14). You must enter the figure with a minus symbol (“-”) if it is of negative value.

**Element 45:** Firms are reminded that Method D own funds is based on average outstanding e-money, which involves monthly calculations and the figure entered above at Element 41 provides a snapshot for that month. Firms must confirm whether own funds have been equal to or greater than the own funds requirement in all months of the reporting period. If the answer to this question is “no” you should notify us separately with an explanation.

### **Section 6: Method of Safeguarding**

You must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds. You must provide separate safeguarding information for relevant funds received in exchange for electronic money that has been issued and (where relevant) relevant funds received for the purposes of executing unrelated payment transaction.

If you do not provide unrelated payment services you do not need to answer Elements 46B – 57B.

### **Section 7: Agents**

**Element 58:** State the number of agents that you have registered to undertake payment services (whether unrelated or related).

### **Section 8: Payment systems**

**Element 59:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 60:** If your firm accesses, on an indirect basis, any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where the EMI indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 61:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

### **Section 9: Providers of account information services or payment initiation services**

*Account information services (AIS)*

**Element 62:** State the number of payment accounts that your firm has accessed for the purposes of providing AIS during the reporting period. You should count each individual payment account once, even where it has been accessed multiple times.

**Element 63:** State the number of customers that have used your firm's AIS in the reporting period. Each customer should be counted once (including where the customer has used the AIS multiple times).

**Element 64:** State the minimum monetary (in EUR) amount of the professional indemnity insurance (or comparable guarantee) ("PII") calculated in accordance with the European Banking Authority Guidelines on Professional Indemnity Insurance under PSD2.

**Element 65:** Please enter the amount of coverage of the PII that is held. This should be entered in EUR. Please use the same conversion rate entered at 'Element 53B'.

**Element 66:** If the terms of your firm's PII have changed in any respect since its authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount), what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

*Payment initiation services (PIS)*

**Element 68:** This should be the total number of payment transactions initiated using your firm's PIS in the reporting period.

**Element 69:** This should be the total value of the payment transactions initiated using your firm's PIS in the reporting period.

**Element 70:** State the minimum monetary amount (in EUR) of the professional indemnity insurance (or comparable guarantee) ("PII") calculated in accordance with the European Banking Authority Guidelines on Professional Indemnity Insurance under PSD2.

**Element 71:** Please enter the amount of coverage of the PII that is held. This should be entered in EUR.

**Element 72:** If the terms of your firm's PII has changed in any respect since its authorisation or registration (if this is the first return), or since the last time this report was submitted, please explain here. This includes the insurance cover (i.e. the monetary amount), what the insurance covers (i.e. the losses or circumstances in which the insurance is payable), the terms and conditions, any limits or exclusions or any other change to the policy.

After SUP 16 Annex 30I insert the following new Annex as SUP 16 Annex 30J. The text is not underlined.

**16 Annex Small electronic money institution questionnaire  
30JD**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Small e-money institution questionnaire – [Link to new form]*

FIN060 Small E-money Institution Questionnaire

**Section 1: Income Statement**

*Firm annual income for the legal entity only  
Section 1 must be answered in GBP*

- |   |  |  |
|---|--|--|
| 1 | Total income during reporting period   |  |
| 2 | Total income during reporting period derived from emoney issuance and related payment services |  |
| 3 | Total income during reporting period derived from unrelated payment services                   |  |
| 4 | Total operating profit / loss of legal entity during reporting period                          |  |

**Section 2: EMRs and PSRs 2017 activity**

*Section 2(a): EMRs 2017 activity*

- |   |   |  |
|---|---|--|
| 5 | How many full months in the reporting period has the firm been registered             |  |
| 6 | Total electronic money outstanding at the end of the reporting period (EUR)           |  |
| 7 | Average outstanding electronic money for the last month in the reporting period (EUR) |  |
| 8 | Number of e-money accounts open at the start of the reporting period                  |  |
| 9 | Number of e-money accounts open at end of the reporting period                        |  |

*Section 2(b): PSRs 2017 activity*

*If your firm does not provide unrelated payment services, please enter "0" for each of these questions.*

- |    |   |  |
|----|---|--|
| 10 | Number of unrelated payment transactions executed in reporting period   |  |
| 11 | Total value of unrelated payment transactions executed in reporting period (EUR)  |  |
| 12 | What is the monthly average of the total amount of unrelated payment transactions executed over the reporting period (including payment transactions executed through UK agents)? |  |

**Section 3: Capital requirements for electronic money**

- |    |  |        |
|----|--|--------|
| 13 | Has the firm generated average outstanding e-money of €500,000 or more at any point during the reporting period? | Yes/No |
|----|--|--------|

If yes, please answer the following questions on capital requirements and resources

- |    |   |  |                                   |
|----|---|--|-----------------------------------|
| 14 | Capital requirement as at the end of the reporting period (EUR) |  | 2% of average outstanding e-money |
|----|---|--|-----------------------------------|

**Section 4: Net capital resources**

Questions on the items that make up the "own funds" will be consulted on as part of the second consultation in mid-2017.

*Section 4(x): Total capital resources*

**As at the end of the reporting period**

- |    |                                      |  |
|----|--------------------------------------|--|
| 15 | <b>Total capital resources (GBP)</b> |  |
| 16 | £/€ exchange rate                    |  |
| 17 | <b>Total capital resources (EUR)</b> |  |

*Section 4(d): Total capital surplus / deficit*

- |    |  |        |
|----|--|--------|
| 18 | Capital surplus / deficit (EUR)  |        |
| 19 | Have the firm's own funds been equal to or greater than its own funds requirement (where applicable) at all times throughout the reporting period? | Yes/No |

**Section 6: Method of Safeguarding**

**A**

**B**

Electronic Money	Unrelated Payment Services
------------------	----------------------------

- |    |  |  |  |
|----|--|--|--|
| 20 | Placed in a separate account with an authorised credit institution |  |  |
|----|--|--|--|

If so:

- |    |                                  |  |  |
|----|----------------------------------|--|--|
| 21 | Name of the credit institution   |  |  |
| 22 | Country where account is located |  |  |

- |    |  |  |  |
|----|--|--|--|
| 23 | Invested in secure liquid assets held in a separate account with an authorised custodian |  |  |
|----|--|--|--|

If so:

- |    |                                  |  |  |
|----|----------------------------------|--|--|
| 24 | Name of the custodian            |  |  |
| 25 | Country where account is located |  |  |

- |    |   |  |  |
|----|---|--|--|
| 26 | Covered by an insurance policy with an authorised insurer |  |  |
|----|---|--|--|

If so:

- |    |                     |  |  |
|----|---------------------|--|--|
| 27 | Name of the insurer |  |  |
|----|---------------------|--|--|

- |    |   |  |  |
|----|---|--|--|
| 28 | Covered by a guarantee from an authorised insurer |  |  |
|----|---|--|--|

If so:

- |    |                     |  |  |
|----|---------------------|--|--|
| 29 | Name of the insurer |  |  |
|----|---------------------|--|--|

- |    |  |  |  |
|----|--|--|--|
| 30 | Covered by a guarantee from an authorised credit institution |  |  |
|----|--|--|--|

If so:

- |    |                                |  |  |
|----|--------------------------------|--|--|
| 31 | Name of the credit institution |  |  |
|----|--------------------------------|--|--|

**Section 7: Agents**

32 Number of agents

As at the end of the reporting period

**Section 8: Payment systems**

33 Is the firm a member of any sterling interbank payment systems? Select all that apply

As at the end of the reporting period

+

Bacs
CHAPS
Cheque and Credit
Faster Payments
LINK
MasterCard
Visa
No
Other(s)
Free Text up to 100

34 Which sterling interbank payment systems does your firm access indirectly? Select all that apply.

+

Bacs
CHAPS
Cheque and Credit
Faster Payments
None
Other(s)
Free Text up to 100

35 Which institution is the firm's primary provider of indirect access to sterling interbank payment systems?

After SUP 16 Annex 30J insert the following new Annex as SUP 16 Annex 30K. The text is not underlined.

**16 Annex Notes on completing small electronic money institution questionnaire  
30KG**

**FIN060 Small Electronic Money Institution Questionnaire**

**Valuation**

Firms should follow their normal accounting practice wherever possible.

**Currency**

Some questions require you to answer in GBP, whilst some require you to answer in EUR. The exchange rate entered at Element [16] should be used throughout the return to convert GBP to EUR where required.

- Elements 1- 4 and [X-15 (Capital resource item values)] must be completed in GBP.
- All other monetary answers must be in EUR.

Figures should be entered in single units in the currency specified. For example, €1,234,567.50 should be entered as 1234567.

**Section 1: Income Statement**

**Element 1:** State, in GBP, the total income of the whole legal entity, across all activity, for the reporting period. Follow your firm’s normal accounting practice when answering this question (i.e. this should be the same figure as the total income figure in your annual accounts).

**Element 2:** State, in GBP, the total income for the reporting period, which derived from the issuance of e-money and related payment services. Follow your normal accounting practice when answering this question. “Related payment services” means those payment services that are related to the issuance of electronic money.

**Element 3:** State, in GBP, the total income for the reporting period, which derived from the provision of unrelated payment services. Follow your normal accounting practice when answering this question. “Unrelated payment services” means those payment services (as defined in the Payment Services Regulations 2017) that are not related to the issuance of electronic money. If you do not provide unrelated payment services, please enter “0”.

**Element 4:** State, in GBP, the total operating profit or loss of the whole legal entity for the

reporting period. Operating profit or loss is calculated after ordinary operating expenses are deducted from the gross profit, but before interest, tax, dividend payments and any extraordinary items are deducted.

## **Section 2: EMRs and PSRs 2017 activity**

### *Section 2(a): EMRs 2011 activity*

**Element 5:** Enter the full number of months during the reporting period that your firm was *FCA* authorised or registered. For example, if you are completing this return for the period ending 31 December and you were authorised or registered by the *FCA* on 15 October then you should enter “2”.

**Element 6:** State (in EUR) the amount of e-money that was outstanding at the end of the period to which this return relates.

**Elements 7:** You should enter the average outstanding electronic money for the last month of the reporting period (in EUR). “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.

**Element 8 and 9:** State the number of e-money accounts open at the start and end of the reporting period. This includes all customer types (consumers and corporates). If a customer has multiple accounts, you should include each account in the total.

### **Section 2(b): PSRs 2017 activity**

*Unrelated payment services” means payment services as defined in the PSRs 2017 that are not related to the issuance of e-money. If you do not provide unrelated payment services please enter “0” for each of these questions.*

**Element 10:** State the number of unrelated payment transactions executed by your firm during the reporting period. This includes payment transactions executed by agents of your firm.

**Element 11:** State, the total amount (i.e. value) of all the unrelated payment transactions executed during the reporting period (in EUR). This includes payment transactions executed by UK agents of your firm. Note that you should enter the total gross value of the payment transactions, not the income generated by them.

**Element 12:** Enter the monthly average value of the total unrelated payment transactions executed over the reporting period. This should be the (EUR) figure entered at Element 11 divided by the number of full months during the reporting period that your firm was registered (i.e. the number entered at Element 10). If the monthly average is inflated as a result of rounding to full months, you may calculate the monthly average by taking into account the partial month of registration in this figure only.

### Section 3: Capital requirements for electronic money

[We will consult on questions in the part of the annual return that relate to items that make up the “own funds” as part of our second consultation planned for mid-2017]

**Element 13:** “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. If your firm has generated average outstanding electronic money of €500,000 or more for any month of the reporting period you should enter yes. This triggers the requirement to hold own funds (regulation 19(2) of the Electronic Money Regulations 2011).

If the answer to Element 13 is “yes” you must answer the Elements [14 – 19].

**Element 14:** This figure is 2% of the average outstanding electronic money (Element 7). This figure should be provided in EUR.

### Section 4: Net capital resources

*Section 4(x): Total capital resources*

**Element 15:** This should be the sum of the capital items listed at [X] after deductions and adjustments (GBP).

**Element 16:** Please provide the EUR equivalent value for 1 GBP to 4 decimal places. This should be the market rate as quoted by the European Central Bank in place at the end of the reporting period. The InforEuro website provides historical exchange rates on a month-by-month basis: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

**Element 17:** State the EUR equivalent of Element 15 above.

*Section 4(d): Total capital surplus / deficit*

**Element 18:** This is calculated by subtracting the capital requirement (Element 14) from the total net capital resources (Element 17). You must enter the figure with a minus symbol (“-“) if it is of negative value.

**Element 19:** Firms are reminded that the capital requirement (or own funds) is based on average outstanding e-money, which involves monthly calculations. The figure entered above at Elements 14 and 18 provide a snapshot as at the end of the reporting period. Firms must confirm whether own funds have been equal to or greater than the own funds requirement in all months of the reporting period. If the answer to this question is “no” you should notify us separately with an explanation.

### Section 6: Method of Safeguarding

You must select the relevant box(es) to identify the method(s) used by the firm to safeguard relevant funds. You must provide separate safeguarding information for relevant funds received in exchange for electronic money that has been issued and (where relevant) relevant funds received for the purposes of executing unrelated payment transaction.

If you do not provide unrelated payment services you do not need to answer Elements 46B – 57B.

### **Section 7: Agents**

**Element 32:** State the number of agents that you have registered to undertake payment services in the UK (whether unrelated or related).

### **Section 8: Payment systems**

**Element 59:** If your firm is a member of any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where you have a direct relationship with the operators of the payment system.

**Element 60:** If your firm accesses, on an indirect basis, any sterling interbank payment systems, select the appropriate system(s) from the drop-down list. This means where the EMI indirectly accesses payment systems through the services of another PSP that is a direct participant or member of that payment system.

**Element 61:** If your firm accesses any sterling interbank payment systems on an indirect basis select the institution that is the primary provider of that indirect access.

Amend the following as shown.

**TP 1**      **Transitional provisions**

...

**TP 1.11**      **Payment services and electronic money returns**

<b><u>(1)</u></b>	<b><u>(2) Material to which the transitional provision applies</u></b>	<b><u>(3)</u></b>	<b><u>(4) Transitional provision</u></b>	<b><u>(5) Transitional provision: dates in force</u></b>	<b><u>(6) Handbook provision: coming into force</u></b>
1	<u>SUP 16.3.3D to SUP 16.3.4D and SUP 16.15.8D</u>	D	The changes effected by the <u>Payment Services Instrument 2017 to SUP 16.3.4D to SUP 16.3.4D and SUP 16.15.8D do not apply where a <i>payment institution</i> or <i>electronic money institution</i> is required to submit a return covering a reporting period ending on 12 January 2018 or earlier. SUP 16.3.3D to SUP 16.3.4D and SUP 16.15.8D apply as they stood immediately before 13 January 2018 with respect to periodic reporting of information to the FCA covering a period ending before 12 January 2018.</u>	<u>13 January 2018 to 1 April 2018</u>	<u>13 January 2018</u>
2	<u>SUP 16.3.3D to SUP 16.3.4D and SUP 16.15.8D</u>	G	The effect of (1) is that an <u><i>authorised payment institution</i> or a <i>small payment institution</i> should submit the annual return FSA056 or FSA057 in the pre-13 January 2018 format in respect of a reporting period that ends on or before 12 January 2018. The due dates for submission after the end of the reporting period are the same before and after 13 January 2018.</u>  The effect of (1) is also that an <u><i>authorised electronic money institution</i> should submit FSA059 to FSA063 in the pre-13 January 2018 formats (rather than the new return FIN060) in respect of a</u>	<u>13 January 2018 to 1 April 2018</u>	<u>13 January 2018</u>

			<p><u>reporting period that ends on or before 12 January 2018. The reporting frequencies for these returns are half-yearly, calculated from the <i>authorised electronic money institution's accounting reference date</i>, and the due dates for submission are within 30 <i>business days</i> following the end of the reporting period.</u></p> <p><u>A <i>small electronic money institution</i> should submit FSA064 in the pre-13 January 2018 format (rather than the new return FIN060) in respect of a reporting period that ends on or before 13 January 2018. The reporting frequency for this return is half-yearly, calculated from the <i>small electronic money institution's accounting reference date</i>, and the due date for submission is within 30 <i>business days</i> following the end of the reporting period.</u></p>		
<u>3</u>	<u>SUP 16.3.3D to SUP 16.13.4D and SUP 16.15.8D</u>	<u>D</u>	<p><u>(1) This direction applies to an <i>authorised payment institution, registered account information service provider, authorised electronic money institution, or small electronic money institution with an accounting reference date falling between 13 January 2018 and 30 March 2018 (inclusive).</i></u></p> <p><u>(2) A <i>person to whom this direction applies</i> must, in respect of the reporting period that ends on the <i>accounting reference date</i> between 13 January 2018 and 30 March 2018, complete and submit the return specified in the second column of the table in SUP 16.13.4D or SUP 16.15.8D (as applicable) within 30 <i>business days</i> of 31 March 2018.</u></p>	<u>13 January 2018 to 18 May 2018</u>	<u>13 January 2018</u>
<u>4</u>	<u>SUP 16.3.3D to SUP 16.3.4D and</u>	<u>G</u>	<u>The effect of (3) is that an <i>authorised payment institution or registered account information</i></u>	<u>13 January 2018 to 18 May 2018</u>	<u>13 January 2018</u>

	<u>SUP</u> <u>16.15.8D</u>		<p><u>service provider</u> should submit the return FSA056 by 11 May 2018 if the return relates to a reporting period that ends between 13 January 2018 and 30 March 2018 (inclusive).</p> <p>The effect of (3) is also that an <u>authorised electronic money institution</u> or <u>small electronic money institution</u> should submit the return FIN060 by 11 May 2018 if the return relates to a reporting period that ends between 13 January 2018 and 30 March 2018 (inclusive).</p>		
<u>5</u>	<u>SUP</u> <u>16.13.4D</u> and <u>SUP</u> <u>16.15.8D</u>	<u>D</u>	<p><u>An authorised payment institution, registered account information service provider, authorised electronic money institution, or small electronic money institution</u> required to submit a return covering a reporting period beginning before and ending after 13 January 2018 is required to answer the “new return questions” only in respect of the period beginning on the 13 January 2018 and ending on its <u>accounting reference date</u>.</p> <p>“New return questions” means:</p> <p>(a) for an <u>authorised payment institution</u>, questions 68 and 76-78 in FSA056 (Authorised Payment Institution Capital Adequacy Return);</p> <p>(b) for a <u>registered account information service provider</u>, question 68 in FSA056 (Authorised Payment Institution Capital Adequacy Return);</p> <p>(c) for an <u>authorised electronic money institution</u>, questions 2–3 and 9– 10; and</p> <p>(d) for a <u>small electronic money institution</u>, questions 2-3 and questions 9-10.</p>	<u>13 January</u> <u>2018 to 1</u> <u>April 2019</u>	<u>13 January</u> <u>2018</u>

<u>6</u>	<u>SUP</u> <u>16.13.4D and</u> <u>SUP</u> <u>16.15.8D</u>	<u>G</u>	<u>The effect of (5) is that, even if part of the reporting period to be covered by a return falls earlier than 13 January 2018, the <i>authorised payment institution, registered account information service provider, authorised electronic money institution or small electronic money institution</i> is nonetheless required to submit the return in the new form set out in the Payment Services Instrument 2017, but is only required to answer the new questions added by the Payment Services Instrument 2017 in relation to the part of the reporting period that falls on or after 13 January 2018.</u>	<u>13 January</u> <u>2018 to 1</u> <u>April 2019</u>	<u>13 January</u> <u>2018</u>
<u>7</u>	<u>SUP</u> <u>16.15.8D</u>	<u>G</u>	<u><i>Electronic money institutions</i> are reminded that the return FIN060 is to be completed in respect of a reporting period of 12 months. This means that <i>electronic money institutions</i> using FIN060 for the first time should include in that report data from the preceding 12 months, irrespective of whether some of that data has already been reported to the FCA as a result of the previous half yearly reporting frequency.</u>	<u>13 January</u> <u>2018 to 1</u> <u>April 2019</u>	<u>13 January</u> <u>2018</u>

**Part 2: Comes into force on 1 April 2018**

**16 Annex 27A**

In this Annex, the entire data item FSA056 is deleted, and replaced by ‘[deleted]’.

**16 Annex 27B**

In this Annex, the guidance notes relating to FSA056 are deleted and replaced, in each case, by ‘[deleted]’.

**16 Annex 28A**

In this Annex, the entire data item FSA057 is deleted, and replaced by '[deleted]'.

**16 Annex 28B**

In this Annex, the guidance notes relating to FSA057 are deleted and replaced, in each case, by '[deleted]'.

**16 Annex 30A**

In this Annex, the entire data item FSA059 is deleted, and replaced by '[deleted]'.

**16 Annex 30B**

In this Annex, the entire data item FSA060 is deleted, and replaced by '[deleted]'.

**16 Annex 30C**

In this Annex, the entire data item FSA061 is deleted, and replaced by '[deleted]'.

**16 Annex 30D**

In this Annex, the entire data item FSA062 is deleted, and replaced by '[deleted]'.

**16 Annex 30E**

In this Annex, the entire data item FSA063 is deleted, and replaced by '[deleted]'.

**16 Annex 30F**

In this Annex, the entire data item FSA064 is deleted, and replaced by '[deleted]'.

**Annex G**

**Amendments to the Decision Procedure and Penalties manual (DEPP)**

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

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

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk \* (see *DEPP* 2.4)

...

<b>Payment Services Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
Regulations 9(7) <del>and 14</del> , <u>15 and 19</u>	when the <i>FCA</i> is proposing to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration as a <i>small payment institution</i> , <u>or for registration as an <i>account information service provider</i></u> , or to impose a requirement, or to refuse an application to vary an authorisation <u>or existing registration</u>		<i>Executive procedures</i>
Regulations 9(8)(a) <del>and 14</del> , <u>15 and 19</u>	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , <u>or for registration as an <i>account information service provider</i></u> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>

	<u>or existing registration</u>		
Regulations 10(2) and 10(3)(a) <del>and 14, 15 and 19</del>	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution's institution or account information service provider's</i> registration, otherwise than at that institution's own request*		<i>RDC</i>
Regulations <del>24(2)</del> 28(1) and 26	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i>		<i>Executive procedures</i>
Regulations <del>24(3)(a)</del> 28(2)(a) and 26	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations <del>24(2)</del> and <del>24(3)(a)</del> 28(1), 28(2)(a) and 26	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch*</i> or an <i>EEA registered account information service provider</i>		<i>RDC</i>
Regulation <del>29(9)</del> 34(8)	when the <i>FCA</i> is proposing to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i>
Regulation <del>29(10)(a)</del> 34(9)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i> where no representations are made in

			response to a warning notice, otherwise by the <i>RDC</i>
Regulations <del>30(2)</del> <u>35(2)</u> and <del>30(3)(a)</del> <u>35(3)(a)</u>	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of a <i>payment institution</i> *		<i>RDC</i>
Regulations <del>86(1)</del> <u>112(1)</u> and <del>86(3)</del> <u>112(3)</u>	when the <i>FCA</i> is proposing, or deciding, to impose a financial penalty*		<i>RDC</i>
Regulations <del>86(1)</del> <u>112(1)</u> and <del>86(3)</del> <u>112(3)</u>	when the <i>FCA</i> is proposing, or deciding, to publish a statement that a <i>payment service provider</i> has contravened the <i>Payment Services Regulations</i> *		<i>RDC</i>
Regulations <del>89(1)</del> <u>115(1)</u> and <del>89(3)</del> <u>115(3)</u>	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*		<i>RDC</i>
<del>Regulation 121(7)</del>	<del>when the <i>FCA</i> is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</del>		<i>Executive Procedures</i>
<del>Regulation 121(8)</del>	<del>when the <i>FCA</i> is deciding that it has not received the required information or that the required conditions are not met as concerns deemed authorisation</del>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>

Schedule 4A <u>5</u> paragraph 5(6)	when the <i>FCA</i> is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures</i>
Schedule 4A <u>5</u> paragraph 5(7)	when the <i>FCA</i> is deciding to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures, where no representations are made in response to a warning notice, otherwise by the RDC</i>
Schedule <u>5 6</u> paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Payment Services Regulations</i> (Note 2)		<i>RDC</i>
Schedule <u>5 6</u> paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 3)		<i>RDC</i>
<p>Notes:</p> <p>(2) The <i>Payment Services Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.</p> <p>(3) The <i>Payment Services Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.</p>			

...

**2 Annex**      **Supervisory notices**  
**2G**

...

Payment Services Regulations	Description	Handbook reference	Decision maker
<del>11(6)</del> <del>11(9)</del> <del>11(10)(b)</del> <del>14</del> <u>12(6), 12(9), 12(10)(b), 15 and 19</u>	<del>When</del> <u>when</u> the <i>FCA</i> is exercising its powers to vary a person's authorisation on its own initiative		<i>RDC</i> or <i>Executive procedures</i>  See also <i>DEPP</i> 3.4 (Note 1)
<del>Schedule 4A</del> <u>5</u> , paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7)	when exercising its power to impose a prohibition or restriction, or to vary a restriction		<i>RDC</i> or <i>executive procedures</i> (Note 2)  See also <i>DEPP</i> 3.4
...			

## Annex H

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

[*Editor's note:* The text in this Annex takes into account the changes proposed by “CP16/19 Markets in Financial Instruments Directive II Implementation – Consultation Paper II (July 2016)” as if they were made]

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

#### INTRO 1 Introduction

...

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* and *directions* made by the *FCA* and rules made (and standard terms set) by *FOS Ltd* with the consent or approval of the *FCA*.

The powers to make *rules* and *directions* (or set *standard terms*) relating to *firms*, *payment service providers*, *electronic money issuers*, *CBTL firms*, *designated credit reference agencies*, *designated finance platforms* 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.

...

#### 1 Treating complainants fairly

##### 1.1 Purpose and application

...

Application to firms

...

##### 1.1.3 R ...

##### 1.1.3A D The complaints reporting directions apply to a firm that provides payment services or issues electronic money in respect of:

(1) complaints from payment service users; and

(2) complaints from electronic money holders that are eligible complainants

concerning activities carried on from an establishment maintained by it in the United Kingdom.

...

Application to payment services providers that are not firms

- 1.1.10A R This chapter (except ~~the *complaints record rule*~~, the *complaints reporting rules* and the *complaints data publication rules*) applies to *payment service providers that are not firms* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.
- 1.1.10AB D The *complaints reporting directions* apply to a *payment service provider* that is not a *firm* in respect of *complaints* from *payment service users* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.
- 1.1.10B G (1) In this sourcebook, the term *payment service provider* does not include *full credit institutions* (which are covered by this sourcebook as *firms*), but it does include *small electronic money institutions*.
- (2) ~~Although *payment service providers* 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.~~

Application to electronic money issuers that are not firms

- 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 that are not firms* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.
- 1.1.10CA D The *complaints reporting directions* apply to *electronic money issuers* that are not *firms* 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 *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 75(1) or regulation 76(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.~~

...

## 1.2 Consumer awareness rules

Publishing and providing summary details, and information about the Financial Ombudsman Service

1.2.1 R To aid consumer awareness of the protections offered by the provisions in this chapter, *respondents* must:

...

(2) refer *eligible complaints* to the availability of this information:

(a) in relation to a *payment service*, in the information on out-of-court complaint and redress procedures required to be provided or made available under regulations ~~36(2)(e)~~ 43(2)(e) (Information required prior to the conclusion of a single payment service contract) or ~~40~~ 48 (Prior general information for framework contracts) of the *Payment Services Regulations*; or

...

(b) otherwise, in writing at, or immediately after, the point of sale; or

(c) in relation to a *payment service*, at the *branch* where the service is provided;

...

[**Note:** article 15 of the *UCITS Directive*, article 13(2) of the *ADR Directive*, article 14(1) of the *ODR Regulation*, ~~and~~ regulation 19 of the *ADR Regulations*; and article 101 of the *Payment Services Directive*]

...

1.2.2A R ...

1.2.2B R To the extent that it applies to an *EMD complaint* or *PSD complaint*, the information specified in *DISP* 1.2.1R must be available in an official language of each such *EEA State* where the *respondent* offers the *payment services* or issues *electronic money*, or in another language if agreed between the *respondent* and the *payment service user* or *electronic money holder*.

[**Note:** article 101 of the *Payment Services Directive*]

...

## 1.6 Complaints time limit rules

...

Final or other response within eight weeks

- 1.6.2 R ~~The Subject to *DISP* 1.6.2AR, the *respondent* must, by the end of eight weeks after its receipt of the *complaint*, send the complainant:~~

...

EMD and PSD Complaints

- 1.6.2A R Where a *complaint* is an *EMD complaint* or a *PSD complaint*, the *respondent* must:

- (1) send a *final response* to the complainant by the end of 15 *business days* after the day on which it received the *complaint*; or
- (2) in exceptional circumstances, if a *final response* cannot be given in accordance with paragraph (1) for reasons beyond the control of the *respondent*:
  - (a) send a *holding response* to the complainant by the end of 15 *business days* after the day on which it received the *complaint*, clearly indicating the reasons for the delay in answering the *complaint* and specifying the deadline by which it will send the *final response*; and
  - (b) send a *final response* to the complainant by the end of 35 *business days* after the day on which it received the *complaint*.

A *final response* sent under (1) or (2) above must be on paper, or if agreed between the *respondent* and the complainant, on another *durable medium*.

[Note: article 101 of the *Payment Services Directive*]

- 1.6.2B R Where only part of a *complaint* is an *EMD complaint* or a *PSD complaint*, that part must be treated in accordance with *DISP* 1.6.2AR.

- 1.6.2C R Where a *respondent* chooses to treat the whole *complaint* in accordance with *DISP* 1.6.2AR, *DISP* 2.8 will also apply as if the whole *complaint* were an *EMD complaint* or a *PSD complaint*.

...

Complainant's written acceptance

- 1.6.4 R ...

- 1.6.4A G *DISP* 1.6.4R does not affect the requirements imposed by *DISP* 1.6.2AR. Where a *complaint* is an *EMD complaint* or *PSD complaint* and *DISP* 1.6.2AR applies a final response must always be sent unless *DISP* 1.5.1R

applies.

...

- 1.6.6A G The information regarding the *Financial Ombudsman Service* required to be provided in responses sent under the *complaints time limit rules* (*DISP* 1.6.2R, *DISP* 1.6.2AR and *DISP* 1.6.4R) should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[**Note:** article 13 of the *ADR Directive*]

...

## **1.8 Complaints time barring rule**

- 1.8.1 R If a *respondent* receives a *complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see *DISP* 2.8) it may reject the complaint without considering the merits, but must explain this to the *complainant* in a final response in accordance with *DISP* 1.6.2R or *DISP* 1.6.2AR.

## **1.9 Complaints record rule**

- 1.9.1 R A *firm*, including, in the case of *MiFID business* or *collective portfolio management* services for a *UCITS scheme* or an *EEA UCITS scheme*, a *branch* of a *UK firm* in another *EEA state State*, a *payment service provider* or an *e-money issuer* must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

...

...

After *DISP* 1.10A (Complaints data publication rules) insert the following new section as *DISP* 1.10B. The text is not underlined.

## **1.10B Payment services and electronic money complaints reporting**

- 1.10B.1 D (1) Once a year a *credit institution* that provides *payment services* or issues *electronic money* must provide the *FCA* with a complete report concerning *complaints* received about *payment services* and *electronic money*.
- (2) Once a year an *electronic money institution*, an *EEA authorised electronic money institution* or a *payment institution* must provide the *FCA* with a complete report concerning *complaints* received

about *payment services* and *electronic money*.

- (3) The report required by (1) and (2) must be set out in the format in *DISP 1 Annex 1AD*.
- 1.10B.2 G (1) In contrast to the other provisions in *DISP 1* which generally apply only to *complaints* from *eligible complainants*, the *complaints reporting directions* apply in addition to *complaints* from *payment service users* that are not *eligible complainants*.
- (2) *Payment service providers* are reminded that regulation 101 of the *Payment Services Regulations* contains requirements relating to complaints resolution procedures applicable to *complaints* from *payment service users* that are not *eligible complainants*.

#### Forwarded complaints

- 1.10B.3 D A *respondent* must not include in the report a *complaint* that has been forwarded in its entirety to another *respondent* under the complaints forwarding *rules*.
- 1.10B.4 D Where a *respondent* has forwarded to another *respondent* only part of a *complaint* or where two *respondents* may be jointly responsible for a *complaint*, then the *complaint* should be reported by both *respondents*.

#### Joint Reports

- 1.10B.5 D *Respondents* that are part of a group may submit a joint report to the *FCA*. The joint report must contain the information required from all *respondents* concerned and clearly indicate the *respondents* on whose behalf the report is submitted. The obligation to provide a report, and the responsibility for the report, remains with each *respondent* in the group.
- 1.10B.6 G Not all the *respondents* in the group need to submit the report jointly. *Respondents* should only consider submitting a joint report if it is logical to do so, for example, where the *firms* have a common central *complaints* handling team and the same *accounting reference date*.

#### Information requirements

- 1.10B.7 D *DISP 1 Annex 1AD* requires, for the relevant reporting period and in respect of particular categories of products:
- (1) in Table 1, information about the total number of *complaints* received by the *respondent* and the cause of the *complaint*;
- (2) in Table 2, information about the number of *complaints* that were:
- (a) closed or upheld within different periods of time; and
- (b) the total amount of redress paid by the *respondent* in relation to *complaints* upheld and not upheld in the relevant reporting

period; and

- (3) in Table 3, information providing context about the *complaints* received.

1.10B.8 G When completing the return, the *respondent* should take into account the following matters.

- (1) If a *complaint* could fall into more than one category, the *complaint* should be recorded in the category which the *respondent* considers to form the main part of the *complaint*.
- (2) Under *DISP* 1.10B.7D(2)(a), a *respondent* should report information relating to all *complaints* which are closed and upheld within the relevant reporting period, including those resolved under *DISP* 1.5 (Complaints resolved by close of the third business day). Where a complaint is upheld in part, or where the *respondent* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *respondent* should treat the *complaint* as upheld for reporting purposes. However, where a *respondent* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the complaint should be recorded as 'rejected'.
- (3) If a *respondent* reports on the amount of redress paid under *DISP* 1.10B.7D(2)(b) redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
  - (a) amounts paid for distress and inconvenience;
  - (b) a free transfer out to another provider which transfer would normally be paid for;
  - (c) goodwill payments and goodwill gestures;
  - (d) interest on delayed settlements;
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the complainant back into the position the complainant should have been in had the act or omission not occurred.
- (4) If a *respondent* reports on the amount of redress paid under *DISP* 1.10B.7D(2)(b) the redress should not include the amount of a non-executed, defective or unauthorised payment transaction but should include any redress paid as a result of losses incurred by the complainant as a result of the non-executed, defective or unauthorised payment transaction.

- 1.10B.9 D The relevant reporting period is the year immediately following:
- (1) where the *respondent* has an *accounting reference date*, its *accounting reference date*.
  - (2) where the *respondent* does not have an *accounting reference date*, 31 December each year.
- 1.10B.10 D Reports are to be submitted to the *FCA* within 30 *business days* of the end of the relevant reporting periods through, and in the electronic format specified in, the *FCA* complaints reporting system or the appropriate section of the *FCA* website.
- 1.10B.11 D If a *respondent* is unable to submit a report in electronic format because of a systems failure of any kind, the *respondent* must notify the *FCA*, in writing and without delay, of that systems failure.
- 1.10B.12 R
- (1) If a *respondent* does not submit a complete report by the date on which it is due, in accordance with *DISP* 1.10B.10D, the *respondent* must pay an administrative fee of £250.
  - (2) The administrative fee in (1) does not apply if the *respondent* has notified the *FCA* of a systems failure in accordance with *DISP* 1.10B.11R.
- 1.10B.13 D A closed *complaint* is a *complaint* where:
- (1) the *respondent* has sent a *final response*; or
  - (2) the complainant has indicated in writing acceptance of the *respondent's* earlier response under *DISP* 1.6.4R (where applicable).
- 1.10B.14 G
- (1) To improve *consumer* awareness and to help *respondents* compare their performance against their peers, the *FCA* may publish:
    - (a) *complaints* data about the *payment services* and *electronic money* sector as a whole; and
    - (b) *respondent* level *complaints* data and information giving context to the *complaints* data for those *respondents* that provide appropriate consent in the electronic money and payment services complaints return form at *DISP* 1 Annex 1AD.
  - (2) Although the *complaints data publication rules* do not apply to a report submitted under *DISP* 1.10B.1, the electronic money and payment services complaints return form asks for the *respondent's* consent to the publication by the *FCA* of the data contained in the report.

After DISP 1 Annex 1R (Complaints return form) insert the following new Annex as DISP 1 Annex 1AD. The text is not underlined.

**1 Annex      Electronic money and payment services complaints return form**  
**1AD**

PS-Complaints Payment Services Complaints Return (Disp X Ann XXX)

Currency Reporting Currency | Currency Units Single

**Special Instructions**

Firms that are part of a group may choose to make a joint submission of Complaints data for some or all members of the group. This should only be done if it is logical to do so, e.g. if the group has a central complaints handling team and the firms all have the same accounting reference date. Any firm within the group can submit the joint data, all other firms covered by the joint submission must submit a nil return and will be charged an administration fee if they fail to do so.

**GROUP REPORTING**

A

1 Does the data reported in this return cover complaints relating to more than one entity? (NB: You should always answer "No" if your firm is not part of a group.)

34 If 'Yes' then list the firm reference numbers (FRNs) of all of the additional entities included in this return. Use the 'add' button to add additional FRNs.

**NIL RETURN DECLARATION**

2 We wish to declare a nil return (If yes, leave all questions on complaints activities, including contextualisation, blank.)

**RETURN DETAILS REQUIRED**

3 Total payment services complaints outstanding at reporting period start date.

49 Total number of payment services complaints opened during the reporting period.

**COMPLAINTS DATA PUBLICATION BY FCA AND FIRMS**

A

47 Do you consent to the FCA publishing respondent level complaints data and information giving context to the complaints data?

**Part XXX, DISP 1 Annex XXX**

**Table 1**  
Complaints opened

		A
		Total
230	Direct debits	
231	Standing orders	
232	Pre-paid cards and e-money	
233	Credit cards	
234	Money transfer domestic (i.e. Bacs, Chaps, FPS)	
235	Money transfer abroad	
236	Debit cards/ cash cards	
237	Payment initiation services	
238	Account information services	
239	ATM withdrawals	
240	Merchant acquiring	
241	Other payment service - Please provide details	
241x	xxx	
242	issuing or redemption of e-money	
243	Total complaints about payment services and e-money issuance	

**Table 2**  
Complaints closed, upheld and redress paid

	A	B	C	D	E	F	G	H	I	J
	closed within 3 business days	closed > 3 business days but within 15 days	closed > 15 business days but within 35 business days	closed > 35 business days	closed > 8 weeks	Total closed	Total upheld	Total redress paid for upheld complaints (single units)	Total redress paid for complaints not upheld (single units)	Total redress paid (single units)
244	Complaints about payment services or electronic money									
245	Of complaints about payment services or electronic money, please provide the number of complaints concerning rights and obligations arising under titles III and IV PSD or titles III EMD for the remaining columns in this row.									

**Table 3**  
Contextualisation metrics

		A	B
	Service	Payment volume in reporting period (1 year)	How many customers have used the firm's account information services?
246	Complaints about payment services	Direct debits	
247		Standing orders	
248		Pre-paid cards and e-money	
249		Credit cards	
250		Money transfer domestic (i.e. Bacs, Chaps, FPS)	
251		Money transfer abroad	
252		Debit cards/ cash cards	
253		Payment initiation services	
254		ATM withdrawals	
255		Merchant acquiring	
256	Account information services		

After DISP 1 Annex 1AD insert the following new Annex as DISP 1 Annex 1BG. The text is not underlined.

**1 Annex**      **Notes on completing electronic money and payment services complaints**  
**1BG**            **return form**

**Payment Services Complaints Return**

**NOTES ON THE COMPLETION OF THIS RETURN**

**Nil returns**

If no complaints concerning payment services or electronic money have been received during the reporting period and no such complaints were outstanding at the beginning of the period, the respondent may submit a NIL RETURN by clicking on the relevant box.

**Valuing data to be reported**

Respondents should report the actual data requested in this complaints return, using single units. When reporting information on context in Table 3 of [Part A-2], lines [167, 174, 175, 191, 192, 204, 205, 222 and 223] decimals may be used.

**Service groupings**

In Table 1 and Table 3 complaints should be allocated to the service groupings based on the service the complaint relates to. If a single complaint relates to more than one category of service, respondents should allocate that complaint to the category that it most closely relates to, rather than reporting such a complaint twice. For example, if a complaint is about ATM withdrawal with a credit card, but the complaint is primarily about the ATM withdrawal, it should be recorded under the ATM withdrawal category.

The service groupings do not correspond directly with those set out in the Payment Services Regulations.

If a respondent has not received any complaints relating to a particular product or service during the reporting period, the relevant box should be left blank.

If complaints relate to the issuing or redemption of e-money and not a payment service executed using e-money, these complaints should be allocated to the 'issuing or redemption of e-money' category.

The 'other payment service' category should only be used in exceptional circumstances when none of the specific service categories are appropriate. A PSP should provide information for up to a maximum of five payment services.

**Table 1, row [244] of Table 2 and Table 3**

In table 1, row 244 of table 2 and in table 3 respondents should report all complaints relating to payment services and electronic money. Note that this is a wider category than PSD complaints and EMD complaints as defined in the glossary, and would include, for example, complaints about breaches of the Principles of Business (for firms) or breaches of contract in connection with the issuance of electronic money or provision of payment services.

**Table 2, row [245] - PSD complaints and EMD complaints**

The complaints time limit rules (*DISP* 1.6) require EMD complaints and PSD complaints to be closed (by way of a final response) within 15 business days after the day on which the complaint is received (or, in exceptional circumstances, by the end of 35 business days after the day on which the complaint is received).

To monitor compliance with the complaints time limit rules, PSPs must complete row X of Table 2 with data on EMD complaints and PSD complaints. Respondents are only required to report the number of EMD complaints or PSD complaints that are closed -

- more than 15 business days, but less than 35 business days after they were received (column C);
- more than 35 business days after they were received (column D).

Note that business day in this context has the same meaning as it has in *DISP* 1.6.2A. That is:

a day on which the payment service provider of the payer or the payment service provider of the payee involved in the execution of a payment transaction is open for business as required for the execution of a payment transaction

**Contextualisation (table 3)**

When providing information giving context to its complaints data, respondents should provide payment volumes for payment transaction services in the reporting period, as indicated in the form.

The contextual information for account information services should be the same as that provided by payment and e-money institutions in Q82 of the Authorised Payment Institution Capital Adequacy Return and Q63 Authorised Electronic Money Institution Questionnaire i.e. how many customers have used the firm's account information services (AIS) in the reporting period? Firms that are payment service providers should also use this as the basis for completing the contextualisation information where they provide account information services.

**DISP 1 Ann 1R**

This return (Payment Services Complaints Return) only relates to complaints made in relation to payment services or electronic money. All complaints should be

reported in *DISP* 1 Annex 1R.

### **Transparency**

To improve consumer awareness and to help payment service providers compare their performance against their peers, the *FCA* may publish aggregated and anonymised complaints data.

The *FCA* may also publish respondent level complaints data where it has the respondent's consent. If the respondent ticks the 'Yes' box in this report it is consenting to the *FCA* publishing the complaints data.

Amend the following as shown.

**1 Annex Application of DISP 1 to type of respondent / complaint**  
**2G**

...

Type of respondent/complaint	DISP 1.1A Requirements for MiFID investment firms	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	<u>DISP 1.10B Complaints reporting directions</u>
<i>firm</i> in relation to complaints concerning non-MiFID business (except as specifically provided below)	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (DISP 1.3.4G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<u>Applies in relation to payment services for payment service users and in relation to electronic money for eligible complainants</u>
<i>firm</i> in relation to MiFID complaints concerning MiFID business carried on from an establishment in the UK	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also DISP 1.1A.6R)	Does not apply	Does not apply	DISP 1.7 applies as set out in DISP 1.1A	Does not apply (but see DISP 1.1A.32EU)	Applies as set out in DISP 1.1A	Applies as set out in DISP 1.1A	<u>Does not apply</u>
UK UCITS management company in relation to complaints concerning collective	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<u>Does not apply</u>

<i>portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme provided under the freedom to provide cross border services</i>								
<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme</i>	Does not apply	Applies for unitholders	Applies for unitholders	Does not apply	Applies for unitholders	Does not apply	Does not apply	<u>Does not apply</u>
<i>branch of a UK firm</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

(other than a UK UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business								
branch of a UK firm in another EEA State in relation to MiFID complaints	Applies for retail clients and professional clients, and (where relevant) eligible counterparties (see also DISP 1.1A.6R)	Does not apply	Does not apply	Does not apply	Does not apply (but see DISP 1.1A.32EU)	Does not apply	Does not apply	<u>Does not apply</u>
incoming branch of an EEA firm (other	Does not apply	Applies for eligible complainants	Applies for eligible complainants	Does not apply	<u>Does not apply</u>			

than an EEA UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-MiFID business								
incoming branch of an EEA firm in relation to MiFID complaints	Applies for retail clients and professional clients, and (where relevant) eligible counterparties (see also DISP 1.1A.6R)	Does not apply	Does not apply	Applies as set out in DISP 1.1A	Does not apply (but see DISP 1.1A.32EU)	Applies as set out in DISP 1.1A	Does not apply	<u>Does not apply</u>
incoming branch of an EEA UCITS management company in relation	Does not apply	Applies for unitholders	Applies for unitholders	Applies for eligible complainants	Applies for unitholders	Applies for eligible complainants	Does not apply	<u>Does not apply</u>

to <i>complaints</i> concerning <i>collective</i> <i>portfolio</i> <i>managemen</i> <i>t</i> services in respect of a <i>UCITS</i> <i>scheme</i>								
<i>incoming</i> <i>EEA</i> <i>UCITS</i> <i>managemen</i> <i>t company</i> in relation to <i>complaints</i> concerning <i>collective</i> <i>portfolio</i> <i>managemen</i> <i>t</i> services in respect of a <i>UCITS</i> <i>scheme</i> provided under the freedom to provide <i>cross</i> <i>border</i> <i>services</i>	Does not apply	Does not apply	Does not apply	Applies for <i>eligible</i> <i>complainants</i>	Does not apply	Applies for <i>eligible</i> <i>complainants</i>	Does not apply	<u>Does not apply</u>
<i>incoming</i> <i>EEA firm</i> providing	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

<i>cross border services from outside the UK</i>								
<i>equivalent business of a third country investment firm in relation to MiFID complaints</i>	Applies as set out in <i>DISP</i> 1.1A	Does not apply	Does not apply	Applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.32EU)	Applies as set out in <i>DISP</i> 1.1A	Applies as set out in <i>DISP</i> 1.1A	<u>Does not apply</u>
<i>branch of an overseas firm (in relation to all other complaints)</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>				
<i>payment service provider that is not a firm in relation to complaints concerning payment services</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<del>Does not apply</del> <u>Applies for <i>eligible complainants</i></u>	Does not apply	Does not apply	<u>Applies for <i>payment service users</i></u>
<i>EEA branch of a</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

<i>UK payment service provider in relation to complaints concerning payment services</i>								
<i>incoming branch of an EEA authorised payment institution in relation to complaints concerning payment services</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<del>Does not apply</del> <u>Applies for <i>eligible complainants</i></u>	Does not apply	Does not apply	<u>Applies for <i>payment service users</i></u>
<i>incoming EEA authorised payment institution providing cross border payment services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>electronic</i>	Does not apply	Applies for	Applies for	Applies for	<del>Does not apply</del>	Does not apply	Does not apply	<u>Applies for <i>eligible</i></u>

<i>money issuer that is not a firm in relation to complaints concerning issuance of electronic money</i>		<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	<u>Applies for <i>eligible complainants</i></u>			<u><i>complainants</i></u>
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>incoming branch of an EEA authorised electronic money</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	<del>Does not apply</del> <u>Applies for <i>eligible complainants</i></u>	Does not apply	Does not apply	<u>Applies for <i>eligible complainants</i></u>

<i>institution in relation to complaints concerning issuance of electronic money</i>								
incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
VJ participant	Does not apply	Applies for eligible complainants	Applies for eligible complainants (DISP 1.3.4G to DISP 1.3.5G do not apply)	Applies for eligible complainants (DISP 1.6.8G does not apply)	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>complaints relating to auction</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

<i>regulation bidding</i>								
<i>a full-scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate (unless it is a collective investment scheme)</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
<i>a depositary, for complaints concerning activities carried on for an authorised AIF</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> ( <i>DISP 1.3.4G does not apply</i> )	Applies for <i>eligible complainants</i>	<u>Does not apply</u>			

<p>a <i>depository</i>, for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>charity AIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i>)</p>	<p>Does not apply</p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i> (<i>DISP</i> 1.3.4G does not apply)</p>	<p>Applies for <i>eligible complainants</i></p>	<p><u>Does not apply</u></p>			
<p>a <i>depository</i>, for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>UK ELTIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i>)</p>	<p>Does not apply</p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i> (<i>DISP</i> 1.3.4G does not apply)</p>	<p>Applies for <i>eligible complainants</i></p>	<p><u>Does not apply</u></p>			

a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is not a <i>charity AIF</i> or a <i>UK ELTIF</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> that is a <i>body corporate</i> (other than a <i>collective investment scheme</i> ).	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants (DISP 1.3.4G does</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	<u>Does not apply</u>

<i>AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <i>UK ELTIF</i> under the freedom to provide <i>cross-border services</i>			not apply)					
a <i>CBTL firm</i> in relation to <i>complaints</i> concerning <i>CBTL business</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>
a <i>designated credit reference agency</i> in relation to <i>complaints</i> about providing <i>credit information</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Does not apply	<u>Does not apply</u>

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

...

(2) in relation to a *complaint* that is not an *EMD complaint* or a *PSD complaint*, eight weeks have elapsed since the *respondent* received the *complaint*; or

(2A) in relation to a *complaint* that is an *EMD complaint* or a *PSD complaint*:

(a) 15 business days have elapsed since the *respondent* received the *complaint* and the complainant has not received a *final response* or a holding response as described in *DISP 1.6.2A R(2)(a)*; or

(b) 35 business days have elapsed since the *respondent* received the *complaint*; or

...

(4) the *respondent* consents and:

(a) the *Ombudsman* has informed the complainant that the *respondent* must deal with the *complaint* within eight weeks (or for *EMD complaints* and *PSD complaints* 15 business days or, in exceptional circumstances, 35 business days) and that it may resolve the ~~complaint~~ *complaint* more quickly than the *Ombudsman*; and

...

...

## 3 Complaint handling procedures of the Financial Ombudsman Service

...

### 3.2 Jurisdiction

...

3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* (or for *EMD complaints* and *PSD complaints* the time specified by *DISP 2.8.1R(2A)*) or issued a *final response* or *summary resolution communication*, the *Ombudsman* will refer the *complaint* to the *respondent*

(except where *DISP* 2.8.1R(4) applies).

...

**4 Standard terms**

...

**4.2 Standard terms**

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

(1) *DISP* 1 (Treating complainants fairly), except:

...

(ba) *DISP* 1.10A (Complaints data publication rules); ~~and~~

(bb) *DISP* 1.10B (Payment services and electronic money complaints reporting); and

...

...

**TP 1 Transitional provisions**

**TP 1.1 Transitional Provisions provisions table**

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
41	<u><i>DISP</i> 1</u>	R	<u>With respect to a <i>complaint</i> received on or after 13 January 2018 concerning an act or omission that occurred before that date the definition of <i>PSD complaint</i> in the <i>Glossary</i> is to be read as if the reference to Parts 6 and 7 of the <i>Payment Services Regulations</i> were a reference to Parts 5 and 6 of the <i>Payment Services</i></u>	<u>From 13 January 2018</u>	<u>13 January 2018</u>

			<u>Regulations 2009 (SI 2009/209).</u>		
<u>42</u>	<u>DISP 1.10B.9D</u>	<u>D</u>	<p><u>The first relevant reporting period is the period commencing on 13 January 2018 and ending:</u></p> <p><u>(i) (subject to (ii)) where the respondent has an accounting reference date, the first accounting reference date following 13 January 2018; or</u></p> <p><u>(ii) where the respondent has an accounting reference date that falls between 13 January 2018 and 31 May 2018 inclusive (an “early 2018 accounting reference date”), the next accounting reference date that falls consecutively after the early 2018 accounting reference date; or</u></p> <p><u>(iii) where the respondent does not have an accounting reference date, 31 December 2018.</u></p>	<u>13 January 2018 to 1 August 2019</u>	<u>13 January 2018</u>
<u>43</u>	<u>DISP 1.10B.9D</u>	<u>G</u>	<p><u>The effect of (42) is that, if a firm has an accounting reference date that falls shortly after 13 January 2018 (i.e. between 13 January 2018 and 31 May 2018), the first electronic money and payment services complaints return form that it is required to submit should cover a period of more than one year, from 13 January 2018 to the accounting reference date in 2019.</u></p>	<u>13 January 2018 to 1 August 2019</u>	<u>13 January 2018</u>

## Annex I

### Amendments to the Consumer Credit sourcebook (CONC)

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

## 2 Conduct of business standards: general

### 2.7 Distance Marketing

...

Exception: contracts for payment services

- 2.7.13 G Where a *distance contract* covers both *payment services* and *non-payment services*, the exception in *CONC 2.7.2R(2)* applies only to the *payment services* aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 6 of the *Payment Services Regulations*.

...

### 2.9 Prohibition of unsolicited credit tokens

...

- 2.9.3 G ~~Section 51 of the CCA was repealed by article 20(15) of the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment)(No 2) Order 2013 (SI 2013/1881). However, section 51 is saved for the purposes of regulation 52 of the *Payment Services Regulations*, the effect being that the section continues to apply in relation to a *regulated credit agreement* in place of regulation 58(1)(b) of the *Payment Services Regulations*. [deleted]~~

## Annex J

### Amendments to the Enforcement Guide (EG)

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

#### 19 Non-FSMA powers

...

#### 19.20 Payment Services Regulations ~~2009~~ 2017

...

19.20.4 The *FCA* also has the power to prohibit or restrict the carrying out of certain *regulated activities* by *EEA authorised payment institutions* and *EEA registered account information service providers*.

...

#### 19.21 The conduct of investigations under the Payment Services Regulations

...

19.21.2 ...

19.21.3 The *Payment Services Regulations* also apply much of Part 13 of the *Act*. The effect of this is that the *FCA* has the power to deal with an *EEA authorised payment institution* or an *EEA registered account information service provider* ('incoming firm') that is likely to contravene a requirement which is imposed on it by or under the *Payment Services Regulations*. Under the *Payment Services Regulations* the *FCA* will be able to use the power of intervention to:

- (1) impose a requirement on an incoming *firm* as it considers appropriate; and
- (2) impose a variation on the permissions of an incoming *firm*.

#### 19.22 Decision making under the Payment Services Regulations

19.22.1 The *RDC* is the *FCA*'s decision maker for some of the decisions under the *Payment Services Regulations* as set out in *DEPP* 2 Annex 1G. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. 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 14~~ regulations 12(6), (9), and (10)(b) (including as applied by ~~Regulation 14~~ regulation 15 and 19).

...

## Annex K

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 3A Guidance on the scope of the Electronic Money Regulations 2011

...

##### 3A.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 *United Kingdom* and do not fall within an exclusion or exemption you must be:

an *authorised electronic money institution*; or

a *small electronic money institution*; or

an *EEA authorised electronic money institution*; or

a ~~full~~ *credit institution*; or

the Post Office Limited; or

the Bank of England or a central bank when not acting in its capacity as a monetary authority or other public authority; or

a government department or local authority when acting in its capacity as a public authority; or

a *credit union*, municipal bank or the National Savings Bank.

Otherwise you risk committing a criminal offence under regulation 63.

...

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

The issuance of *electronic money* is not itself a *payment service* but it is likely to entail the provision of *payment services*.

...

The conduct of business requirements in Parts ~~5 and 6~~ and 7 of the *Payment Services Regulations* apply to ~~all payment service providers, including~~ *electronic money issuers*.

Transitional arrangements may also be relevant, see PERG 3A.7.

...

##### 3A.5 Exclusions

**Q26. Are there any exclusions from the definition of electronic money that we should be aware of?**

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

the first covers monetary value stored on specific payment 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 only in a limited way (the "limited network" exclusion) (regulation 3(a)). See *PERG 15 Q40 & Q41* which deal with the same ~~term~~ exclusion for the purposes of the *Payment Services Regulations*; and

the second covers monetary value used to make certain 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 initiated through a provider of electronic communications networks or services in addition to their provision of electronic communications services, where the payment is charged to the related bill (the "electronic communications network exclusion") (regulation 3(b)). See *PERG 15 Q23* for guidance on what 'acting only as an intermediary' might include See *PERG 15 Q41A* which deals with the same exclusion for the purposes of the *Payment Services Regulations*.

**Q27. We offer branded prepaid cards which consumers can use to purchase goods in a particular shopping mall. Are we issuing electronic money?**

Yes, it is likely that you will be issuing *electronic money* unless you are able to fall within an exclusion. The most likely exclusion is ~~if the card is only used to purchase goods and services in your premises or within a~~ the limited network exclusion (see Q26) of service providers. In our view you will ~~only~~ not be able to take advantage of this exclusion here if unless:

it is made clear in the relevant terms and conditions of the card that the purchaser of the value is only permitted to use the card to buy from merchants located within that particular shopping mall with whom you have direct commercial agreements; and

the facility to use the card to purchase goods and services outside this shopping mall has been disabled.

**Q28. For the purposes of the second exclusion referred to at Q26, can you explain when goods or services are "used through" a telecommunication, digital or IT device ("a relevant device")? [deleted]**

~~It is important to realise that it is the good or service purchased on a relevant device that must be used through that device for the purposes of this exclusion.~~

~~So, for example, where a person purchases travel or cinema tickets using prepaid credit on a mobile phone and the ticket is sent to this phone and then used to gain entry onto a transport system or into a cinema, what is being purchased are rights to travel or to watch a film. The ticket itself is a form of receipt confirming the purchase of such rights. Accordingly, as the travel rights or the visit to the cinema cannot be experienced on a relevant device, such a purchase is likely to fail the "used through" part of the regulation 3(b) exclusion.~~

~~Examples of the sorts of goods and services that could meet the "used through" part of the regulation 3(b) exclusion are music, online newspaper or video content, electronic books~~

~~and mobile phone applications. This is because these products are all capable of being enjoyed through the relevant device they have been delivered to.  
For more guidance on this exclusion see *PERG 15, Q23 and 24.*~~

Insert the following new section after PERG 3A.6 (Territorial scope). The text is not underlined.

### **3A.7 Transitional arrangements**

**Q30. We were authorised as an electronic money institution before 13 January 2018 (when the Payment Service Regulations 2017 (PSRs 2017) came into force). Can we continue to provide services under the *Electronic Money Regulations*?**

Yes, but only for a limited time. The PSRs 2017 amend the *Electronic Money Regulations* to require *authorised electronic money institutions* and *small electronic money institutions* that wish to continue to provide services under the *Electronic Money Regulations* on or after 13 July 2018 to provide additional information to the *FCA* before 13 April 2018 (section 78A of the *Electronic Money Regulations*). The *FCA* must then determine whether the institution's authorisation or registration should be continued.

**Q31. We are an authorised electronic money institution. Can we provide account information services and payment initiation services after 13 January 2018?**

In relation to the *payment services* introduced by the PSRs 2017 (account information services and payment initiation services), from 13 January 2018 all *electronic money institutions* authorised before that date will be treated as if the *FCA* had imposed a requirement to refrain from providing those services for an indefinite period. Institutions wishing to provide those services must comply with a number of requirements before they can apply for a variation of this requirement.

More information on these transitional arrangements can be found in Chapter 3 (Authorisation and Registration) of the Approach Document [[link](#)].

Amend the following as shown.

## **15 Guidance on the scope of the Payment Services Regulations ~~2009~~ 2017**

### **15.1 Introduction**

The purpose of this chapter is to help businesses in the UK consider whether they fall within the scope of the Second Payment Services Directive (~~2007/64~~ 2015/2366/EC) (~~PSD~~ PSD2), as given effect to in the Payment Services Regulations ~~2009~~ 2017 (the "~~PSD regulations~~ PSRs 2017"). The ~~PSD regulations~~ PSRs 2017 create a separate authorisation and registration regime which differs from the authorisation requirements under the Financial Services and Markets Act. In particular, it is aimed at helping these businesses

consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK. References to individual regulations are to the ~~PSD regulations~~ PSRs 2017, unless otherwise stated.

## Background

~~PSD~~ PSD2 provides the legal framework for the operation of a single market in payment services. This includes ~~the creation of~~ a harmonised authorisation regime, designed to establish a single licence for payment service providers which are neither deposit-takers nor ~~e-money issuers~~ electronic money institutions. ~~Authorised payment institutions can provide services on a cross-border or branch basis, using passport rights acquired under the PSD.~~

The relevant payment services, as transposed in the ~~PSD regulations~~ PSRs 2017, are set out fully in Annex 2 to this chapter and include, amongst other things, services relating to the operation of payment accounts (for example, cash deposits and withdrawals from current accounts and flexible savings accounts), execution of payment transactions, card issuing, merchant acquiring and money remittance ~~and certain mobile phone based payment services~~. The ~~directive~~ Directive focuses on electronic means of payment including direct debit, debit card, credit card, standing order, mobile or fixed phone payments and payments from other digital devices as well as money remittance services; it does not apply to cash-only transactions or paper cheque-based transfers.

PSD2 also creates authorisation and registration regimes for firms who provide holders of online payment accounts with payment initiation services and account information services.

Authorised payment institutions and registered account information service providers can provide services on a cross-border basis, using passport rights acquired under PSD2.

All payment service providers (including credit institutions and electronic money institutions) must comply with the conduct of business requirements of the PSRs 2017.

## Scope

In terms of scope, the ~~PSD regulations~~ PSRs 2017 are likely to be of relevance to a range of firms including credit institutions, ~~e-money issuers~~ electronic money institutions, the Post Office Limited, money remitters, certain bill payment service providers, card issuers, merchant acquirers, payment initiators, account aggregators and certain ~~telecommunications~~ electronic communication network operators service providers. It is also likely to be relevant to those agents of the above businesses which provide payment services.

Generally speaking, depending on the nature and size of its activities, a business to which the ~~PSD regulations~~ PSRs 2017 apply (other than a credit institution, ~~e-money issuer or~~ electronic money institution, an EEA authorised payment institution or an EEA authorised electronic money institution and their agents) will need to be:

authorised by the FCA as an authorised payment institution; or

registered as a "small payment institution"; or

registered as a registered account information services provider; or

registered as an agent of an authorised payment institution, EEA authorised payment institution ~~or a~~ small payment institution or a registered account information services provider.

The conditions for authorisation as a payment institution are set out in regulation 6. In addition to the authorisation regime for payment institutions, there is an alternative regime for those which fall within the category of small payment institutions (that is businesses which meet the conditions in regulation 13(14)). Broadly, the category of small payment institutions will only be relevant to firms executing payment transactions with a monthly average of 3 million euros (or an equivalent amount) or less, over a 12 month period and that do not carry on account information services or payment initiation services. Broadly, small payment institutions are not subject to the requirements in Part 3 of the ~~PSD regulations~~ PSRs 2017 (including capital requirements), but they are subject to a registration regime and the conduct of business provisions in Parts ~~5 and 6~~ and 7. There is a further registration regime for payment service providers providing no payment services other than account information services. The conditions for registration are set out in regulation 18. Registered account information services providers must comply with certain conduct provisions, as set out in the regulations.

The ~~PSD regulations~~ PSRs 2017 also provide for the appointment of agents by authorised payment institutions ~~and~~, small payment institutions and registered account information services providers. These agents are ~~exempt from the authorisation requirements in~~ not required to be authorised under regulation 6 but they are required to be registered on the Financial Services Register by their principal (or each of their principals). When the agent's principal is an EEA authorised payment institution, it needs to be registered on the register of the Home State register of that payment institution. A business can also provide payment services as an agent of a credit institution ~~or e-money issuer~~, in which case there are no registration requirements under the ~~PSD regulations~~ PSRs 2017. Electronic money institutions can provide payment services through agents, in which case the registration requirements of the Electronic Money Regulations 2011 apply (see PERG 3A).

### **Exemptions and exclusions**

As well as small payment institutions, registered account information services providers and agents, the ~~PSD regulations~~ PSRs 2017 make provision for a limited number of exempt bodies, notably credit unions and municipal banks. The regulations do not apply to these bodies although municipal banks are required to notify the FCA if they propose to provide payment services.

More generally, there is a broad range of activities which do not constitute payment services under Schedule 1 Part 2 to the ~~PSD regulations~~ PSRs 2017. Amongst these excluded activities, set out more fully in Annex 3, are:

payment transactions through commercial agents acting on behalf of either the payer or the payee;

~~money exchange business~~ cash to cash currency exchange activities (for example, bureaux de change);

payment transactions linked to securities asset servicing (for example, dividend payments, share sales or unit redemptions);

services provided by technical service providers (which does not include account information services or payment initiation services);

payment services based on instruments used within a limited network of service providers or for a very limited range of goods or services ("limited network exclusion"); and

~~payment services provided by telecommunications operators other than as an intermediary~~

between payer and payee transactions for certain goods or services up to certain value limits, initiated through a provider of electronic communication networks or services (“electronic communications network exclusion”).

These and other activities are the subject of Q&A in *PERG* 15.5. A firm will be exempt from authorisation and registration requirements under the regulations to the extent that its activities fall within one or more of the exclusions in Schedule 1 Part 2 to the regulations. In each case, it will be for businesses to consider their own circumstances and whether they fall within the relevant exclusions. However, firms making use of the limited network exclusion must notify us when the total value of payment transactions executed through relevant services exceeds 1 million euros in any 12 month period, and we will assess whether the notified services fall within this exclusion. Firms making use of the electronic communications network exclusion must notify us and provide us with an annual audit opinion which testifies that the transactions comply with the value limits set out in that exclusion. See [link to website].

### **Other scope issues**

As explained in *PERG* 15.2, Q13, the regulations also apply in limited circumstances to non-payment service providers, if they provide a currency conversion service. Likewise, a non-payment services provider which imposes charges or offers reductions for the use of a given payment instrument is required to provide information on any such charges or reductions (see regulations 58 50 and 141 443).

### **Transitionals**

Subject to the exclusions and exemptions outlined above, a ~~payment institution with an establishment in the UK~~ person (other than an EEA payment services provider and its agents, a credit institution, an electronic money institution and certain other specified bodies such as the Post Office) is caught by the authorisation and registration requirements of the ~~PSD regulations~~ PSRs 2017 when it provides payment services, ~~by way of business~~ as a regular occupation or business activity, in or from the UK. That said, there are important transitional provisions which delay the need for businesses authorised or registered under the Payment Services Regulations 2009 to re-apply for authorisation or registration under the PSRs 2017, before and during an initial period after the commencement of regulation on ~~4 November 2009~~ 13 January 2018.

### **How does this chapter work?**

The chapter is made up of Q&As divided into the following sections:

General (*PERG* 15.2)

Payment services (*PERG* 15.3)

Small payment institutions, agents and exempt bodies (*PERG* 15.4)

Negative scope/exclusions (*PERG* 15.5)

Territorial scope (*PERG* 15.6)

Transitional arrangements (*PERG* 15.7)

~~Flowcharts and tables~~ Tables (~~*PERG* 15 Annex 1, *PERG* 15 Annex 2 and *PERG* 15 Annex 3~~)

## Definitions

The ~~PSD regulations~~ PSRs 2017 contain their own definitions which you can find in regulation 2. We refer to some of these in the Q&A including "payment transaction", "payment account", "payment instrument" and "money remittance".

## 15.2 General

### Q1. Why does it matter whether or not we fall within the scope of the ~~PSD regulations~~ PSRs 2017?

Broadly, when you provide payment services, ~~by way of business~~ as a regular occupation or business activity, in the UK and these services do not fall within an exclusion or exemption, you must be:

- an authorised payment institution; or
- an EEA authorised payment institution; or
- a small payment institution; or
- a registered account information services provider; or
- a credit institution (either one with a Part 4A permission to accept deposits or an EEA credit institution where it is exercising passport rights under paragraph 4 of Annex 1 to the *CRD*); or
- ~~an *electronic money issuer*~~ electronic money institution or an EEA authorised electronic money institution; or
- the Post Office Limited, Bank of England, a central bank or government departments and local authorities; or
- an exempt person (that is a credit union, municipal bank and the National Savings Bank); ~~or~~
- ~~an agent of a person listed in (a) to (g) above.~~

Unless you are one of the above (or acting as an agent – see *PERG* 15.4), subject to transitional provisions you risk committing a criminal offence under regulation ~~440~~ 138.

### Q2. Is there anything else we should be reading?

The Q&As complement, and should be read in conjunction with, the ~~Payment Services Regulations 2009~~ PSRs 2017. The FCA provides guidance on its regulatory approach under the PSRs 2017 in its Approach Document [link].

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

The answers given in these Q&As represent the FCA's views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of the ~~PSD regulations~~ PSRs 2017 affects the regulatory position of any particular person will depend on ~~his~~ the person's 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 FCA guidance, some ~~PSD~~ PSD2 provisions may be the subject of guidance or communications by the European Commission.

**Q4. We are a UK firm not authorised under FSMA providing payment services to our clients, as a regular business activity. Are we required to be authorised or registered under the regulations?**

Yes, unless the exclusions or exemptions in the regulations apply to you or you are an ~~e-money issuer~~ electronic money institution, an EEA authorised electronic money institution, the Post Office Limited or an agent of a credit institution or e-money issuer electronic money institution. If this is not the case, you need to be:

- authorised by the FCA as an authorised payment institution; or
- registered as a small payment institution; or
- registered as an account information services provider; or
- registered as an agent of an authorised payment institution, EEA authorised payment institution or a small payment institution.

~~You might find helpful the overview, in the form of flowcharts, of the authorisation and registration requirements in the PSD regulations as they apply to payment institutions (that is payment service providers other than credit institutions, e-money issuers and their agents), set out in PERG 15 Annex 1.~~

**Q5. As a payment institution rather than a credit institution, are we right in thinking that our maintenance of payment accounts does not amount to accepting deposits?**

Yes, articles 9AB and 9L of the *Regulated Activities Order* provide that funds received by payment institutions from payment services users with a view to the provision of payment services shall constitute neither deposits nor *electronic money*.

~~As an authorised~~ a payment institution, any funds payment accounts you hold must only be used in relation to payment transactions (see regulation 2833 of the PSD regulations PSRs 2017). A "payment transaction" for these purposes is defined in regulation 2 of the PSD regulations PSRs 2017 as meaning "an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee". Our view is that this means that a payment institution cannot hold funds for a payment service user unless accompanied by a payment order for onward transfer (whether to be executed immediately or on a future date).

The fact that a payment account operated by a payment institution can only be used for payment transactions distinguishes it from a deposit. A deposit can nevertheless be a form of payment account ~~and for~~ (for example a bank current account is both a deposit and a payment account). For guidance on what constitutes a deposit for the purposes of the regulated activity of "accepting deposits" and guidance on the regulated activity itself, see *PERG 2.6.2G to 2.6.4G and PERG 2.7.2G*.

A payment institution is not prohibited from paying interest on a payment account but such interest cannot be paid from funds received from customers. More generally, if a payment institution were to offer savings facilities to its customers in the accounts it provides, in our view it would be holding funds not simply in relation to payment transactions and so would be in breach of regulation ~~28~~ 33.

**Q6. We are a credit card company and a payment institution. We are not a bank. Sometimes our customers will have a positive balance on their account because they have accidentally overpaid or because of refunds. Would this put us in breach of the requirement in regulation 28 to use a payment account 33 that payment accounts held by payment institutions may only be used only in relation to payment transactions?**

No. In our view, this does not amount to a breach of regulation 28 33 and nor does the handling of credit balances in the circumstances constitute the activity of accepting deposits.

**Q7. We are a credit institution. Do the PSD regulations PSRs 2017 apply to us?**

Yes. If you are a credit institution, you will be subject to the conduct of business requirements in the ~~PSD regulations~~ PSRs 2017 to the extent that you provide payment services. ~~In our view, the~~ The authorisation process applying to UK and non-EEA credit institutions remains that imposed by Part 4A of the ~~Act~~ Act. Authorised credit institutions ~~will do not though~~ need to apply for a separate ~~Part 4A permission~~ Part 4A permission, in order to provide payment services. In other words, if a UK credit institution has a Part IV permission to carry on the regulated activity of accepting deposits, it will not need to be separately authorised to provide payment services in the UK. However, credit institutions intending to provide account information services or payment initiation services should have regard to the notification requirements in SUP 15.8. ~~We are aware that the Commission has indicated that branches of non-EEA credit institutions are unable to provide payment services in the EEA, in this legal form. Whilst it is for firms to consider their own position, in our view~~ The ~~the~~ UK branch of a non-EEA credit institution with a Part 4A permission to accept deposits is also authorised to provide payment services in the UK.

An EEA credit institution wishing to provide payment services through a UK branch must exercise its passport rights under paragraph 4 of the Annex to the *CRD*. Similarly, a UK credit institution which wishes to provide payment services in other Member States may exercise its *CRD* passport rights to do so.

**Q8. We are an electronic money institution issuer. Do the PSD regulations PSRs 2017 apply to us?**

Yes. If you are an electronic money institution ~~issuer~~, you will be subject to the conduct of business requirements in the ~~PSD regulations~~ PSRs 2017. ~~The authorisation and registration regime applying to UK electronic money issuers is split between that imposed by the Act (see PERG 2.6.4A) and that imposed~~ If you are a credit institution, a credit union or a municipal bank, issuing electronic money is a regulated activity and you will require permission under the Act (see PERG 2.6.4A). The authorisation and registration requirements for any other person intending to issue electronic money are governed by the ~~Electronic Money Regulations~~ Electronic Money Regulations (see *PERG 3A* for guidance on the scope of the ~~Electronic Money Regulations~~ Electronic Money Regulations). If you are an authorised or small electronic money institution or an EEA authorised electronic money institution, the PSRs 2017 introduce a transitional provision into the Electronic Money Regulations which affects your right to continue to provide services in the UK after 12 July 2018 – see PERG 3A.7.

**Q9. If we provide payment services to our clients, will we always require authorisation or registration under the regulations?**

Not necessarily; you will only be providing payment services, for the purpose of the regulations, when you carry on one or more of the activities in *PERG 15 Annex 2*:

- as a regular occupation or business activity; and
- these are not excluded or exempt activities.

Simply because you provide payment services as part of your business does not mean that you require authorisation or registration. You have to be providing payment services, themselves, as a regular occupation or business to fall within the scope of the regulations (see definition of "payment services" in regulation 2(1)). In our view this means that the services must be provided as a regular occupation or business activity in their own right and not merely as ancillary to another business activity. Accordingly, we would not generally expect the following to be providing payment services as a regular occupation or business activity:

- solicitors or broker dealers, for example, to be providing payment services for the purpose of the regulations merely through operating their client accounts in connection with their main professional activities;
- letting agents, handling tenants' deposits or rent payments in connection with the letting of a property by them;
- debt management companies, receiving funds from and making repayments for a customer as part of a debt management plan being administered for that customer; and
- operators of loan or investment based crowd funding platforms transferring funds between participants as part of that activity.

The fact that a service is provided as part of a package with other services does not, however, necessarily make it ancillary to those services – the question is whether that service is, on the facts, itself carried on as a regular occupation or business activity.

**Q10. ~~We are a "financial institution" under the CRD . How does PSD apply to us?~~  
[deleted]**

~~Financial institutions are only subject to the authorisation and conduct of business requirements of the regulations where they provide payment services by way of business and are unable to rely on any of the statutory exclusions. For those financial institutions which are subject to the regulations, they may be able to benefit from transitional relief from the requirement to be authorised or registered as a payment institution if their parent undertaking is subject to consolidated supervision.~~

~~A "financial institution" for the purposes of the PSD regulations, as for the CRD, is 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 activities listed in points 2 to 12 of Annex 1 to the CRD (see SUP App 3.9.4G). It may include, for example, an authorised person under the Act which is neither a credit institution nor an e-money issuer.~~

**Q11. Is it possible to be both an authorised person under FSMA and the agent of an authorised payment institution ~~or~~, a small payment institution or a**

**registered account information provider?**

Yes. There is nothing in the ~~PSD regulations~~ PSRs 2017 or the ~~Act~~ Act (for example section 39) which prevents a person from being both an ~~authorised person~~ authorised person and the agent of an authorised payment institution ~~or~~, a small payment institution or a registered account information provider.

**Q11A. Is it possible to be both an authorised person under FSMA and an authorised payment institution, a small payment institution or a registered account information provider?**

Yes. There is nothing in the PSRs 2017 or the Act which prevents a person from being both an authorised person and an authorised payment institution, a small payment institution or a registered account information provider. In some cases, for example if you issue credit cards (see further Q20A), it is likely that you will need permissions under the Act and the PSRs 2017 in order to provide your services.

**Q11B. Is it possible to be both an authorised payment institution and the agent of an authorised payment institution, a small payment institution or a registered account information provider?**

Yes. There is nothing in the PSRs 2017 which prevents a person from being both an authorised payment institution or electronic money institution and the agent of an authorised payment institution, a small payment institution or a registered account information provider. However, businesses will need to make clear to payment service users the capacity in which they are providing services, in accordance with regulation 34(16) and consumer protection legislation.

**Q12. We provide electronic foreign exchange services to our customers/clients. Will this be subject to the ~~PSD regulations~~ PSRs 2017?**

Not necessarily, as providing foreign exchange services is not itself a payment service. Foreign exchange transactions may exist as part of, or independent from, payment services. You will fall within the scope of the ~~PSD regulations~~ PSRs 2017 if you are providing payment services, by way of business, in the UK. For example, where a customer instructs ~~his~~ their bank to make payment in euros from ~~his~~ the customer's sterling bank account to a payee's bank account, we expect conduct of business requirements in the regulations to apply to the transfer of funds including information requirements relating to the relevant exchange rate.

By contrast, we would not expect the conduct of business provisions (including the right of cancellation) in the Payment Services regulations to apply to a spot or forward fx transaction itself. That said, the electronic transmission, for example, by a bank on behalf of a customer to an fx services provider is likely to be subject to the PSD, because this is a transfer of funds executed by the bank. Similarly, the onward payment by a bank or fx services provider, on behalf of a client, to a third party of currency purchased in an fx transaction may amount to a payment service.

If you are a small payment institution or an authorised payment institution under the PSRs 2017, you may provide foreign exchange services that are closely related and ancillary to your payment services. However, that does not allow you to provide foreign exchange derivative services that would otherwise require authorisation under MiFID. You therefore

need to consider the availability of MiFID exclusions for your foreign exchange business (see PERG 13 Q31K).

**Q13. We are a business that does not provide payment services. We usually accept payment in sterling for our goods and services but also offer a facility to our customers who prefer to pay us in euros other currencies, to do so on the basis of a sterling/euro currency conversion when making electronic payments via their payment service provider. Do the regulations apply to us?**

Generally no. You are not required to be authorised or registered under the regulations. You will though be required to disclose information relating to your currency conversion service, including charges and the exchange rate to be used (for further information including details of criminal sanctions, see regulations ~~49~~ 57 and ~~113~~ 141).

### **15.3 Payment Services services**

**Q14. Where do we find a list of payment services?**

In Schedule 1 Part 1 to the PSD regulations PSRs 2017. There are ~~seven~~ eight payment services, set out in full in Annex 2 to this chapter (including six activities which were payment services under the PSD regulations and the two new activities of payment initiation services and account information services). References to categories of payment services below adopt the structure of Schedule 1 to the PSD regulations PSRs 2017: for example, paragraph (1)(f) refers to "money remittance".

The payment service referred to in paragraph (1)(g) of Schedule 1 to the PSD regulations does not appear as a separate payment service in the PSRs 2017. Telecommunications, IT system or network operators with a paragraph (1)(g) permission should consider which permission(s) they require under the PSRs 2017, such as executing a payment transaction within (1)(c) or issuing a payment instrument under (1)(e). If your services within your paragraph 1(g) permission are also of the type described in paragraph 1(c), under the transitional provisions in regulation 152 of the PSRs 2017 you will be treated as an authorised payment institution, subject to the requirement to provide us (or your home state competent authority if you are an EEA firm) with evidence, by 13 January 2020, that you hold the required own funds.

**Q15. When might we be providing services enabling cash to be placed on a payment account (paragraph 1(a))?**

When you are accepting cash electronically or ~~over the~~ over the counter or through ATMs which is placed on a payment account which you operate.

The crediting of interest to a payment account is not a service enabling cash to be placed on a payment account.

If you are a professional cash in transit business, or a non-professional cash collector in the not-for-profit sector, you may benefit from one of the exclusions in Schedule 1 paragraphs 2(b) and (c) of the PSRs 2017 (see Q33B and Q34A below).

**Q16. What is a payment account?**

...

Accordingly, in our view, "payment accounts" can include, for example, current accounts, e-money accounts, flexible savings accounts, credit card accounts and current account mortgages. On the other hand, in our view fixed term deposit accounts (where there are restrictions on the ability to make withdrawals), child trust fund deposit accounts and certain cash Individual Savings Accounts (ISAs) are not payment accounts.

...

In our view, mortgage or loan accounts do not fall within the scope of the regulations. This is on the basis that the simple act of lending funds or receiving funds by way of repayment of that loan does not amount to provision of a payment service.

The definition of "payment account" in the PSRs 2017 is different to (and wider than) that in the Payment Accounts Regulations 2015 (see [link]).

If you are a provider of non-payment accounts, you may still be carrying on the payment services in paragraphs 1(c) and (d), for example if you execute credit transfers out of those non-payment accounts. Chapter 8 of the Approach Document provides guidance on how the PSRs 2017 conduct of business requirements apply to you.

...

**Q18. When might we be providing execution of (i) direct debits, including one-off direct debits, or (ii) payment transactions through a payment card or a similar device or (iii) credit transfers, including standing orders (paragraph 1(c))?**

...

In our view, the simple act of accepting payment by way of debit card or credit card for supply of your own goods or services does not generally amount to the provision of the service of execution of payment transactions through a payment card. For instance, where a restaurant accepts payment from a customer using ~~his~~ the customer's payment card it is not providing a payment service to the customer, but simply accepting payment for the price of the meal. It is merely a payment service user receiving payment from the customer. The firm providing the merchant acquiring service enabling the restaurant to process the card transaction and receive payment is providing a payment service in this instance.

As regards a "direct debit", regulation 2 defines this as meaning "a payment service for debiting the payer's payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer to the payee, to the payee's payment service provider or to the payer's own payment service provider". As well as the likes of utility and other household bills, in our view this definition extends to a case where sender and recipient are the same person, for example where the person holds two bank accounts in two different banks.

Providers of electronic communications networks or services may be providing this service or the service in paragraph 1(d). For example, where a subscriber to a mobile network can buy digital content via premium SMS services and the payment transactions do not fall within the exemption in PERG 15 Annex 3(l), the service in paragraph (c) may be provided (this may be the case where the payment is made from the subscriber's prepaid account) or (if the provider is giving the subscriber credit to finance the purchase) the service in paragraph (d) may be provided (this may be the case where the payment is charged to the

subscriber's monthly bill).

...

**Q20. When might we be issuing payment instruments (paragraph 1(e))?**

Issuing of payment instruments is defined in regulation 2 as “a payment service by a payment service provider contracting to provide a payer with a payment instrument to initiate and process the payer’s payment transactions”.

A payment instrument is defined in regulation 2 and means any (a) personalised device or (b) personalised set of procedures agreed between the payment service user and the payment service provider, in both cases where used by the payment service user in order to initiate a payment order.

Examples of persons issuing payment instruments, for the purposes of Schedule 1 to the regulations, include credit card and debit card issuers and ~~e-money issuers~~ electronic money institutions. In addition to the issue of physical instruments such as cards, arrangements by way of telephone call with password, online instruction or a mobile telephone application by which a payment order can be initiated could also amount to issuing payment instruments, depending on the service being provided (see further the Court of Justice of the European Union decision in T-Mobile Austria GmbH v Verein für Konsumenteninformation, C-616/11).

In our view, it is the person who agrees the set of procedures with the payer and agrees that the payer can use those procedures to initiate an instruction to them requesting that they execute a payment that is issuing the payment instrument. So, for example, a business that agrees to provide a service to a payer to transmit the payer’s card details, along with a payment order, for processing by another person who is a payment service provider, is not issuing a payment instrument.

We would not generally expect you to be issuing payment instruments (or providing other payment services) if all you do is issue direct debit mandates simply for the purpose of being paid for the goods or services you provide to your customers or clients. ~~Not if the payment transaction is initiated by paper, would that document be considered to be a payment instrument.~~

**Q20A We are a credit card issuer. Do we need to be regulated under both FSMA and the PSRs 2017?**

If you issue payment instruments and provide a credit line under a regulated credit agreement which covers transactions initiated using those payment instruments, you are likely to require permission to carry out credit-related regulated activities under the FSMA Regulated Activities Order (see *PERG 2.7* and *CONC* generally) in addition to permissions under the PSRs 2017.

**Q21. When might we be acquiring payment transactions (paragraph 1(e))?**

Acquiring of payment transactions is defined in regulation 2 as “a payment services provided with a payment service provider contracting with a payee to accept and process payment transactions which result in a transfer of funds to the payee.”

~~If your business includes~~ This includes traditional "merchant acquiring". This will typically include providing services enabling suppliers of goods, services, accommodation or

facilities to be paid for purchases arising from card scheme transactions. However, as set out in Recital 10 of the PSD2 it is designed to be technology neutral and capture different business models, in particular:

- those where more than one acquirer is involved (and so you may be acquiring payment transactions even if you are not the ‘acquirer of record’ from the point of view of the card scheme);
- regardless of the payment instrument used to initiate the transaction (for example where the instrument is a mobile telephone application); and
- those where there is no actual transfer of funds from acquirer to payee, because another form of settlement is agreed.

In our view, this definition is likely to capture ‘master merchants’ or ‘payment facilitators’ that contract with payees for the provision of acquiring services and activities carried out by businesses that aggregate carrier billing transactions. However, provision of merely technical services to merchants, such as processing or storage of data and provision of terminals or online gateways is will not itself constitute acquiring.

**Q22. When might we be providing money remittance services (paragraph 1(f))?**

Money remittance is defined in regulation 2 as: "... a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or payee, where-

- funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee; or
- funds are received on behalf of, and made available to, the payee".

The service of money remittance cannot therefore involve the creation of payment accounts. Recital 7 9 of the ~~PSD~~ PSD2 describes money remittance as "a simple payment service that is usually based on cash provided by a payer to a payment service provider, which remits the corresponding amount, for example, via a communication network, to a payee or to another payment service provider acting on behalf of the payee".

This service is likely therefore to be relevant, for example, to money transfer companies and hawala brokers.

Although money remittance is traditionally a cash-based service, the definition is technology neutral and may therefore apply to business models where funds are received and transferred electronically.

**Q23. We are a mobile network operator offering our client facilities to ~~transfer funds~~ make payments - how do we tell whether and when the regulations apply to us (~~paragraph 1(g))~~?**

You will be subject to the regulations if you provide a payment ~~execution service to~~ customers and:

- ~~customer consent to execute payment is provided by means of the mobile device you provide; and~~
- ~~you receive payment for transmission to a supplier of goods and services, acting only as intermediary between the payment service user and supplier~~

service as a regular occupation or business activity in the UK and this service does not fall within an exclusion.

~~By contrast, when you add value to the good or service being purchased from a third party, you will not be acting only as an intermediary and hence will not be subject to the regulations (see *PERG 15 Annex 3, paragraph (1)*). Adding value may take the form of adding intrinsic value to goods or services supplied by a third party, for instance by providing access (including an SMS centre), search or distribution facilities. Nor will you You will not be providing this a payment service when a customer uses his their mobile device merely as an authentication tool to execute payment from his bank the customer's payment account held with another provider (for example, simply providing instructions to his their bank via SMS or a payment application), and does not transmit payment is not made via you. Mobile phone top-ups also fall outside the scope of the regulations.~~

If your client can use pre-paid airtime to make purchases, you should also consider whether you are issuing electronic money - see *PERG 3A*.

Mobile network operators and other electronic communication network operators may be able to take advantage of the exclusion set out in *PERG 15 Annex 3(1)* - see Q41A.

**Q24 ~~Do the same provisions apply to other types of telecommunications providers as they do to mobile network operators? [deleted]~~**

~~Yes, paragraph 1(g) and *PERG 15 Annex 3(1)* refer to payment transactions executed by means of any telecommunications, digital or IT device. These could include, for example, desktop and laptop computers, personal digital assistants and interactive television sets. Our guidance for mobile phone operators in relation to these provisions applies, by analogy, to other types of telecommunication provider.~~

**Q25. We are a bill payment firm. Do the ~~PSD regulations~~ PSRs 2017 apply to us?**

...

**Q25A. When might we be providing an account information service?**

The service of providing account information is defined in regulation 2 as “an online service to provide consolidated information on one or more payment accounts held by the payment service user with another payment service provider or with more than one payment service provider, and includes such a service whether information is provided-

- in its original form or after processing; or
- only to the payment service user or to the payment service user and to another person in accordance with the payment service user's instructions”.

Account information service providers include businesses that provide users with an electronic “dashboard” where they can view information from various payment accounts in a single place, businesses that use account data to provide users with personalised comparison services, and businesses that, on a user's instruction, provide information from the user's various payment accounts to both the user and third party service providers such as financial advisors or credit reference agencies.

**Q25B. When might we be providing a payment initiation service?**

The service of payment initiation is defined in regulation 2 as “a service to initiate a

payment order at the request of the payment service user with respect to a payment account held at another payment service provider”.

This includes businesses that contract with online merchants to enable customers to purchase goods or services through their online banking facilities, instead of using a payment instrument or other payment method. However, it is not limited to arrangements where the service provider has a pre-existing relationship with the merchant. Any business offering payment initiation services as a regular occupation or business activity will require this permission unless exempt under Schedule 1 Part 2.

In our view, the provider of a service that transmits a payer’s card details, along with a payment order, to the payer’s payment service provider, but does not come into possession of personalised security credentials, is not carrying out a payment initiation service.

#### 15.4 Small payment institutions, agents and exempt bodies

##### Q26. What criteria must we meet to be a "small payment institution"?

The conditions are set out in regulation ~~13~~ 14 and include the following:

- the average of the preceding 12 months' total amount of payment transactions executed by you, including your agents in the UK, does not exceed 3 million euros (or an equivalent amount) per month;
- your business must not include the provision of account information services or payment initiation services;
- 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, the ~~Aet~~ Act, the PSRs 2017 or the PSD regulations or financial crimes;
- if you are a partnership, an unincorporated association, or a body corporate, you must satisfy us that any persons having a qualifying holding in your business are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution;
- you must satisfy us that your directors (if you are a body corporate), any persons responsible for the management of your business, and where relevant the persons responsible for the management of your payment services, are of good repute and possess appropriate knowledge and experience to provide payment services;
- if you are a body corporate you must satisfy us that any close links you have with another person are not likely to prevent our effective supervision of you. If it appears to us that you have any close links that are subject to the laws, regulations or administrative provisions of a territory outside of the EEA ("the foreign provisions") you must satisfy us that neither the foreign provisions, nor any deficiency in their enforcement, would prevent our effective supervision of you;
- your head office, registered office or place of residence, as applicable, is in the UK; and
- you must comply with the registration requirements of the Money Laundering Regulations ~~2007~~ 2017, where they apply to you.

**Q27. We satisfy the conditions for registration as a small payment institution - does that mean we have to register as one?**

No, there are other options available to you. If you register as a small payment institution, you cannot acquire passport rights under the regulations, so you may wish to become an authorised payment institution if you wish to take advantage of the passport. You may also choose to become an agent of a payment services provider. ~~An overview of the options available to you is set out in PERG 15 Annex 1, Flowcharts 1 and 2.~~

**Q28. We only wish to be an agent of a payment institution. Do we need to apply to the FCA and/or PRA for registration?**

No. If your principal is a payment institution or a registered account information service provider, it is its responsibility to ~~apply for registration on your behalf~~ register you as its agent. Assuming your principal is not an EEA firm, you are required to be registered on the Financial Services Register before you provide payment services, ~~subject to any relevant transitional provisions (see PERG 15.7) 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. You will not be able to provide payment services in the UK on behalf of an EEA firm unless it has also complied with the relevant requirements for the exercise of its passport rights.

You may act for more than one principal, but each principal must register you as its agent.

**Q29. We are an agent of a credit institution for the purpose of providing payment services. Do we need to apply to the FCA and/or PRA for registration?**

No. If you are such an agent of a credit institution which is permitted to provide payment services in the UK, you are not required to be registered under the ~~PSD regulations~~ PSRs 2017. A credit institution will be permitted to provide payment services if it has a Part 4A permission to accept deposits, or if it is an EEA credit institution exercising passport rights under paragraph 4 of the Annex I to the ~~Banking Consolidation directive~~ Fourth Capital Requirements Directive.

**Q30. We are an agent of an electronic money institution for the purpose of providing payment services. Do we need to apply to the FCA for registration under the PSD regulations PSRs 2017?**

As such an agent you will need to be registered by your principal under the *Electronic Money Regulations*, see PERG 3A Q21. ~~However, in our view you do not need to be registered as an agent under the PSD PSD2 regulations unless you are also providing payment services on behalf of another payment institution.~~

**Q31. We are a credit union. Are we exempt from the regulations?**

Yes. You are exempt from the ~~regulations~~ PSRs 2017 by virtue of regulation 3. Note, however, that as a consequence of this the conduct requirements set out in the FCA's Banking: Conduct of Business sourcebook (BCOBS) will apply to you in circumstances in which they would not apply to other payment service providers.

**Q32. We are a municipal bank. Are we exempt from the regulations?**

Yes. You are exempt from the ~~regulations~~ PSRs 2017 (together with credit unions and the National Savings Bank), by virtue of regulation 3. Unlike credit unions, you are required to notify us if you wish to provide payment services, although you only need to do this once.

## 15.5 Negative scope/exclusions

Schedule 1 Part 2 to the ~~regulations~~ PSRs 2017 contains a list of activities which do not constitute payment services. The following questions only deal with a selection of these. You should consult Annex 3 to this chapter for a full list of provisions, if you require more details.

### **Q33. Our business consists of cash payments directly from or to our customers - do the regulations apply to us?**

No. The ~~regulations~~ PSRs 2017 do not apply to payment transactions made in cash, without the intervention of an intermediary (see *PERG 15 Annex 3*, paragraph (a)).

### **Q33A. We are an e-commerce platform that collects payments from buyers of goods and services and then remits the funds to the merchants who sell goods and services through us – do the regulations apply to us?**

The platform should consider whether they fall within the exclusion at *PERG 15 Annex 3*, paragraph (b). The PSRs 2017 do not apply to payment transactions from the payer to the payee through a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee.

Recital 11 of PSD2 makes clear that some e-commerce platforms are intended to be within the scope of regulation. An example of where a platform will be acting for both the payer and the payee would be where the platform allows a payer to transfer funds into an account that it controls or manages, but this does not constitute settlement of the payer's debt to the payee, and then the platform transfers corresponding amounts to the payee, pursuant to an agreement with the payee.

The platform should also consider whether they are offering payment services as a regular occupation or business activity (see Q9). Depending on your business model, the payment service may be ancillary to another business activity, or may be a business activity in its own right. Where the payment service is carried on as a regular occupation or business activity, and none of the exclusions apply, the platform will need to be authorised or registered.

### **Q33B. We are a professional cash collection company. We collect coins and banknotes from our customers and then remit them electronically to our customers' bank accounts – do the regulations apply to us?**

No. The PSRs 2017 do not apply to the professional physical transport of banknotes and coins, including their collection, processing and delivery (*PERG 15 Annex 3*, paragraph (c)). In our view, the exclusion applies to the delivery of funds to the customer, whether in physical or electronic form. However, it does not extend to the remitting of funds to third parties on the customer's behalf.

**Q34. We are a charity which collects ~~cash~~ donations in the form of coins, banknotes and electronic payments and transmits funds via bank transfer to the causes that we support ~~intended recipients~~ do the regulations apply to us?**

No. The ~~regulations~~ PSRs 2017 do not apply to payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity (see *PERG 15*; Annex 3, paragraph (d)).

**Q34A. We are an online fundraising platform which collects donations in the form of electronic payments and transmits funds electronically to the causes and charities that have an agreement with us - do any of the exclusions apply to us?**

Persons collecting cash on behalf of a charity and then transferring the cash to the charity electronically do not fall within the exclusion in *PERG 15* Annex 3, paragraph (d), unless they themselves are carrying this out non-professionally and as part of a not-for-profit or charitable activity. For example, a group of volunteers that organises regular fundraising events to collect money for charities would fall within this exclusion. On the other hand, an online fundraising platform that derives an income stream from charging charities a percentage of the money raised for them is unlikely to fall within this exclusion.

Nor will an online fundraising platform accepting donations and then transmitting them to the intended recipient be able to take advantage of the exclusion in paragraph (b), as they are not a commercial agent authorised via an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee but not both the payer and the payee.

Online fundraising platforms should also consider the guidance in Q33A.

**Q35. We provide a "cashback" service to our customers when they pay for their goods at the checkout - do the regulations apply to us?**

No. The ~~regulations~~ PSRs 2017 do not apply to cashback services (see *PERG 15*; Annex 3, paragraph (e)).

**Q36. We are a bureau de change providing cash only forex services and our clients do not have accounts with us - are these services outside the scope of the regulations?**

Yes. The ~~regulations~~ PSRs 2017 do not apply to ~~money exchange business consisting of cash-to-cash~~ currency exchange operations where the funds are not held on a payment account (see *PERG 15*; Annex 3, paragraph (f)). If you allow a customer to pay for foreign currency using a payment card, this does not mean that you will be providing a payment service. The regulations will though apply to the payment transaction made using the payment card and the payment service provided to you by the merchant acquirer. In other words, the regulations apply to the merchant acquirer's services but yours remain outside the scope of authorisation or registration.

The ~~regulations~~ PSRs 2017 do not affect your obligations under the Money Laundering Regulations 2007.

**Q37. Do the regulations distinguish between (i) payment transactions between payment service providers and (ii) payment services provided to clients?**

Yes, broadly the object of the ~~regulations~~ PSRs 2017 is the payment service provided to specific clients and not the dealings among payment service providers to deliver the end payment arising from that service. The PSRs 2017 do not apply to payment transactions carried out between payment service providers, their agents or branches for their own account (see PERG 15 Annex 3, paragraph (m)). This would include, for example, electronic payment from one payment services provider to another acting as such, in discharge of a debt owed by one to the other.

A payment transaction may involve a chain of payment service providers. Where a bank, for example, provides a cash withdrawal or execution of payment transaction service to its customer which involves the use of a clearing bank, it will still be providing a payment service to its customer.

...

**Q38. We are an investment firm providing investment services to our clients - are payment transactions relating to these services caught by the regulations?**

Generally, no. Where payment transactions only arise in connection with ~~your~~ the main activity of providing investment services, in our view it is unlikely that you will be providing payment services by way of business. In those limited cases where you are, the ~~regulations~~ PSRs 2017 do not apply to securities assets servicing, including dividends, income or other distributions and redemption or sale (see *PERG 15 Annex 3, paragraph (i)*).

**Q39. We are a firm simply providing IT support in connection with payment system infrastructures - are these services subject to the regulations?**

No. There is an exclusion for technical service providers which simply provide IT support for the provision of payment services (see *PERG 15 Annex 3, paragraph (j)*). Other support services excluded from the regulations that may be provided by technical service providers include data processing, storage and authentication. This does not mean that where these services form part of a payment service they are not regulated, but that in that case it is the payment service provider that is responsible under the PSRs 2017 for the provision of these services, not the person they have outsourced these technical services to.

Providers of payment initiation services or account information services are not technical service providers.

**Q40. Which types of payment card could fall within the so-called "limited network" exclusion (see PERG 15, Annex 3, paragraph (k))?**

The "limited network" exclusion forms part of a broader exclusion which applies to services based on specific payment instruments that can be used to acquire goods or services only in a limited way and -

- ~~• in or on the issuer's premises; or~~
- ~~• under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services..."~~

- (a) allow the holder to acquire goods or services only in the issuer's premises;
- (b) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer;
- (c) may be used only to acquire a very limited range of goods or services; or
- (d) are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

As regards (a), examples of excluded instruments could include:

- staff catering cards - reloadable cards for use in the employer's canteen or restaurant;
- tour operator cards - issued for use only within the tour operator's holiday village or other premises (for example, to pay for meals, drinks and sports activities);
- store cards - where the card can only be used at the ~~store's~~ issuer's premises or website (so where a store card is co-branded with a third party debit card or credit card issuer and can be used as a debit card or credit card outside the store, it will not benefit from this exclusion).

In our view, examples of excluded instruments falling within (b) include: ~~As regards (b), this exclusion has two discrete limbs and so applies either to instruments that can be used only:~~

- ~~• within a limited network of service providers; or~~
- ~~• for a limited range of goods or services.~~
- petrol cards (including pan-European cards) - where these are issued for use at a specified chain of petrol stations and forecourts at these stations;
- membership cards - where a card can only be used to pay for goods or services offered by a specific club or organisation;
- ~~store card cards~~ - where the card can be used at a specified chain of stores ~~at their premises or on their website~~ sharing a common brand under a franchise agreement between the store owners and the issuer.

In order to meet the test in limb (b), recital 13 of PSD2 states that the instrument must be limited to use at a "specific retailer or specific retail chain, where the entities involved are directly linked by a commercial agreement which for example provides for the use of a single payment brand and that payment brand is used at the points of sale and appears, where feasible, on the payment instrument that can be used". It also states that to help limit risks to consumers, it should not be possible to use the same instrument to make payment transactions to acquire goods and services within more than one limited network. Recital 14 of PSD2 goes on to state that "instruments which can be used for purchases in stores of listed merchants should not be excluded from the scope of this Directive as such instruments are typically designed for a network of service providers which is continuously growing."

While transport cards, petrol cards, membership cards and store cards may fall within this exclusion, we would not generally expect "city cards" to do so, to the extent that participation is open to all a city's shops and businesses. "Mall cards" may fall within this

exclusion if, on the facts, the criteria are met. However a card that can be used at a number of different shopping centres, or where use is restricted only by the terms and conditions and is not functionally limited is unlikely to fall within this exclusion.

Examples of instruments falling within (c) could be transport cards – where these are used only for purchasing travel tickets (for example, the Oyster card which provides access to different service providers within the London public transport system);

Recital 13 of states that it should only be possible to purchase a “very limited range of goods or services, such as where the scope of use is effectively limited to a closed number of functionally connected goods or services regardless of the geographical location of the point of sale”.

In our view, instruments falling within (d) could include:

- pre-paid cards provided by local authorities to benefit recipients for use at a specified chain of grocery stores;
- government-issued childcare vouchers.

Instruments for the purpose of this exclusion can include, for example, vouchers, mobile applications, cards and other devices.

Service providers relying on this exclusion are required to notify the FCA where the total value of payment transactions executed through such services exceeds 1 million euros in any 12 month period: see [\[link to website\]](#).

**Q41. ~~Do the regulations specify or define what a "limited network" is for these purposes? [deleted]~~**

~~Neither the PSD nor consequently the PSD regulations provide any definition, conditions or criteria for determining what is a "limited network of service providers". The issue of whether or not a "limited network" is in existence is ultimately a question of judgement that, in our view, should take account of various factors (none of which is likely to be conclusive in itself). These include the number of service providers involved, the scale of the services provided, whether membership of the network is open-ended, the number of clients using the network and the nature of the services being offered.~~

~~While a "limited network" could include transport cards, petrol cards, membership cards and store cards, we would not generally expect "city cards" to fall within this exclusion, to the extent that these tend to provide users with access to a broad range of goods and services offered by a city's shops and businesses.~~

**Q41A. In what circumstances are payments made via a mobile phone excluded?**

The “electronic communications network exclusion” (see PERG Annex paragraph) applies to payment transactions initiated through a provider of electronic communications networks or services.

For this exclusion to apply the initiation of the payment transaction must be provided in addition to electronic communications services for a subscriber to the network or service and the payment must be charged to the related bill.

Where the provider of the network or service allows the customer to pay for eligible transactions out of a prepaid balance that is also used to purchase the electronic communications services, in our view this will amount to the payment transaction being charged to the related bill.

The exclusion only applies:

- to the purchase of digital content and voice-based services (such as music and other digital downloads and premium rate services), regardless of the device used for the purchase or consumption of the digital content; or
- when performed from or via an electronic device within the framework of a charitable activity (for example SMS donations) or for the purchase of tickets.

In all cases the value of any single payment transaction must not exceed 50 euros, and the cumulative value of payment transactions for an individual subscriber in a month must not exceed 300 euros.

Any person providing services falling within the electronic communications network exclusion must notify the FCA and provide it with an annual audit opinion that the transactions to which the services relate comply with the financial limits - see [link to website]. Our view is that the ‘subscriber’ is the person that contracts with the provider of the network or service - operators may, therefore, need to aggregate expenditure across a number of devices and transaction types.

In practice electronic network operators often do not deal directly with suppliers of digital goods and services, but via carrier billing platforms that act as intermediaries or aggregators. Our view is that it is the transaction that is initiated through the network operator that benefits from the exclusion. The service provided by the billing platform to merchants may itself amount to a payment service (for example merchant acquiring or operation of a payment account) and it is our view that these services do not fall within this exclusion.

**Q42. ~~We are a payment services provider which carries out payment transactions for our own account – are these payment transactions excluded from the scope of the regulations? [deleted]~~**

~~Yes. Payment transactions carried out between payment service providers, or their agents or branches, for their own account, are all excluded from the scope of the regulations (see PERG 15 Annex 3, paragraph (m)). This would include, for example, electronic payment from one payment services provider to another, in discharge of a debt owed by one to the other.~~

**Q43. We are a company which performs a group treasury function, including providing payment services directly to other group companies - are these intra-group payment services excluded from the regulations?**

Yes. Intra-group payment transactions and related services are excluded from the ~~regulations~~ PSRs 2017, where payment is made direct from one group company to another (see *PERG 15 Annex 3*, paragraph (n)). This includes the case where the group company providing the payment service is, itself, a payment service provider otherwise subject to the regulations. However, it does not include intra-group payment transactions that are made through a payment service provider that does not belong to the group.

**Q44. We are an independent ATM deployer offering cash dispensing facilities to users on behalf of card issuers. We are not a bank. Are we subject to the regulations?**

No, assuming you do not provide other payment services listed in Schedule 1 Part 1 to the

~~regulations PSD~~ PSRs 2017 and are not party to the framework contract with the customer withdrawing money (see *PERG 15 Annex 3*, paragraph (o)). However, you must still provide the customer with the information referred to in regulation 61 of the PSRs on withdrawal charges. If other payment services are provided, all your payment services (including the ATM cash dispensing facilities) will be subject to the regulations, to the extent that other exclusions are inapplicable.

## 15.6 Territorial scope

### **Q45. We are a UK payment institution - when will we need to make a passport notification?**

...

As to the circumstances in which you may need to exercise these rights, this gives rise to issues of interpretation both under the ~~PSD regulations~~ PSRs 2017 and the local law of the EEA State in which you wish to do business. Our guidance below relates only to the ~~PSD regulations~~ PSRs 2017 and may differ from the approach in other EEA States. We cannot give guidance on the local law of other EEA States and you may therefore wish to take professional advice if you think your business is likely to be affected by these issues (for instance, if you are soliciting clients in other EEA States).

...

The establishment of a physical presence (for example, offices) in another EEA State, for use by you, triggers the need for ~~a branch~~ an establishment notification.

...

### **Q46. We are a non-EEA payment institution providing payment services to UK customers from a location outside the EEA. Do we require authorisation or registration under the regulations?**

No. When considering whether you fall within the scope of the ~~regulations~~ PSRs 2017, our starting point is to consider whether a UK payment services provider would be providing cross-border services in analogous circumstances (for example, when it provides payment services to EEA customers from a location in the UK). Accordingly, we would not generally expect a payment services provider incorporated and located outside the EEA to be within the scope of the regulations, if all it does is to provide internet-based and other services to UK customers from that location. A non-EEA payment institution for these purposes would include firms incorporated in the Isle of Man or Channel Islands, both of which are outside the scope of the Second Payment Services Directive.

*PERG 15 Annex 1* is deleted in its entirety. The deleted text, except the title, is not shown.

**15 Annex 1** [deleted]

**15 Annex** **Payment Services in Schedule 1 Part 1 to the ~~PSD regulations~~ PSRs 2017**  
2

(a)	Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account
(b)	Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account
(c)	The execution of the following types of payment transaction -
	(i) direct debits, including one-off direct debits;
	(ii) payment transactions through a payment card or a similar device;
	(iii) credit transfers, including standing orders
(d)	The execution of the following types of payment transaction where the funds are covered by a credit line for the payment user-
	(i) direct debits, including one-off direct debits;
	(ii) payment transactions executed through a payment card or a similar device;
	(iii) credit transfers, including standing orders
(e)	Issuing payment instruments or acquiring payment transactions
(f)	Money remittance
(g)	<del>The execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment user and the supplier of the goods or services</del> <u>Payment initiation services</u>
(h)	<u>Account information services</u>

15 Annex 3 Schedule 1 Part 2 to the PSD regulations PSRs 2017: Activities which do not constitute payment services

(a)	Payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention.
(b)	Payment transactions between the payer and the payee through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of <u>either</u> the payer or the payee <u>but not both the payer and the payee</u> .
(c)	The professional physical transport of banknotes and coins, including their collection, processing and delivery.
(d)	Payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity.
(e)	Services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction.
(f)	<del>Money exchange business consisting of eCash-to-cash</del> <u>currency exchange</u> operations where the funds are not held on a payment account.
(g)	Payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee-
	(i) paper cheques of any kind, including travellers' cheques;
	(ii) bankers' drafts;
	(iii) paper-based vouchers;
	(iv) paper postal orders.
(h)	Payment transactions carried out within a payment or securities settlement system between payment services providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system.
(i)	Payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in sub-paragraph (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments.
(j)	Services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, <u>excluding payment initiation services or account</u>

	<u>information services but including-</u>
(i)	the processing and storage of data;
(ii)	trust and privacy protection services;
(iii)	data and entity authentication;
(iv)	information technology;
(v)	communication network provision; and
(vi)	the provision and maintenance of terminals and devices used for payment services.
(k)	Services based on <u>specific payment instruments that can only be used in a limited way and to acquire goods or services only-</u>
(i)	<u>allow the holder to acquire goods or services only in or on the issuer's premises; or</u>
(ii)	<u>are issued by a professional issuer and allow the holder to acquire goods or services only under a commercial agreement with the issuer, either within a limited network of service providers which have direct commercial agreements with the issuer; or for a limited range of goods or services;</u>
(iii)	<u>may be used only to acquire a very limited range of goods or services; or</u>
(iv)	<u>are valid only in a single EEA State, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer,</u>
and for these purposes the "issuer" is the person who issues the instrument in question.	
(l)	<u>Payment transactions, initiated through a provider of electronic communications networks or services, where such initiation is in addition to electronic communications services for a subscriber to the network or service- 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-</u>
(i)	<u>for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or</u>
(ii)	<u>performed from or via an electronic device and charged to the related bill</u>

	<u>within the framework of a charitable activity or for the purchase of tickets,</u>
	<u>provided that the value of any single payment transaction does not exceed 50 euros , and the cumulative value of payment transactions for an individual subscriber in a month does not exceed 300 euros;</u>
(m)	Payment transactions carried out between payment service providers, or their agents or branches, for their own account.
(n)	Payment transactions <u>and related services</u> between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than an undertaking belonging to the same group.
(o)	<del>Cash withdrawal services provided through Services by providers to withdraw cash by means of automated teller machines, where acting on behalf of one or more card issuers, which are not party to the framework contract with the customer withdrawing money from a payment account, where no other payment service is conducted by the provider-;</del>
	(i) <u>is acting on behalf of one or more card issuers;</u>
	(ii) <u>is not party to the framework contract with the customer withdrawing money from a payment account; and</u>
	(iii) <u>does not conduct any other payment service.</u>

## **Appendix 2**

# **Non-Handbook directions for excluded providers**

## **Direction under regulation 38 of the Payment Services Regulation 2017 (Notification of use of limited network exclusion)**

### **Purpose and statutory context**

Under regulation 38 of the Payment Services Regulations 2017 (“PSRs 2017”), if a person (a “service provider”) provides services of the type falling within paragraph 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017 (activities involving limited network payment instruments which do not constitute payment services) and the total value of the payment transactions executed through such services in any period of 12 months exceeds €1million, the service provider must

- (a) notify the Financial Conduct Authority (“FCA”), and
- (b) include with such notification a description of the service and the exclusion by virtue of which the services are not payment services.

The purpose of this document is to direct the form in which the information required by regulation 38 of the PSRs 2017 must be submitted to the FCA and the manner in which it must be verified.

The provisions of paragraph 2(k)(i) – (iii) of Schedule 1 to the PSRs 2017, read alongside the definition of “payment service” in regulation 2(1) of the PSRs 2017, are referred to as the “limited network exclusion” in this direction.

### **The direction**

The FCA directs that a service provider to which regulation 38 of the PSRs 2017 applies must provide the information required by that regulation in the form, at the time and verified in the manner described below.

This direction may be amended by further direction to all service providers, to a class of service providers or an individual service provider. For the avoidance of doubt, such amendments are likely to be made only where necessary in exceptional circumstances.

### **Powers exercised**

The FCA makes this direction in exercise of the following powers under the PSRs 2017:

- Regulation 38(4); and
- Regulation 109(1).

## **Background to this direction**

The revised Payment Services Directive ("PSD2") entered into force on 12 January 2016. PSD2 seeks to update the regulation of payment services in Europe and departs from the original Payment Services Directive 2007 in a number of ways, including changing the scope of the exclusions and introducing notification and registration requirements for certain excluded providers. PSD2 has been transposed into UK law through the PSRs 2017.

The FCA is the authority with responsibility for monitoring and enforcing compliance with the majority of the provisions of the PSRs 2017.

## **Who does this direction apply to?**

This direction concerns a person who provides services that are:

*"based on specific payment instruments that can be used only in a limited way and—*

- (i) allow the holder to acquire goods or services only in the issuer's premises;*
- (ii) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or*
- (iii) may be used only to acquire a very limited range of goods or services..."*

A payment transaction that falls within this category does not constitute a payment service to which the prohibition in regulation 138 of the PSRs 2017 (Prohibition on provision of payment services by persons other than payment service providers) applies. The service provider in question may or may not be authorised or registered by the FCA in respect of other services or activities. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5) for further information about the scope of the limited network exclusion.

## **Assessing the €1 million threshold**

Service providers that provide services falling into the limited network exclusion above must carry out ongoing assessments to determine whether the total value of payment transactions executed through such services exceeds €1 million over any period of 12 months.

In calculating the total value of the payment transactions, a service provider should:

- include all of those services that are provided in the UK and are considered by the service provider to fall within the limited network exclusion; and
- exclude services that are regulated as either electronic money or payment services (under the Electronic Money Regulations 2011 or PSRs 2017 respectively).

For service providers that carry out transactions in currencies other than the euro, the FCA's view is that it would be reasonable to use the Commission's monthly

accounting rate of the euro<sup>1</sup> (“Commission calculator”) when calculating whether the transactions exceed the €1 million limit. The Commission calculator provides historical market rates on a month-by-month basis as quoted by the European Central Bank. We would expect service providers to apply the euro exchange rate on a month by month basis (although more frequent application would be acceptable).

### **What information is required?**

A person who provides services falling within the limited network exclusion at paragraph 2(K)(i) – (iii) of Schedule 1 to the PSRs 2017, where the total payment transaction value of the services exceeds €1 million over any 12 month period must submit a notification to the FCA including:

- a description of the services provided in the UK that are considered to fall within the limited network exclusion; and
- the exclusion by virtue of which the services are not payment services.

We have set out in full the information required to be provided in Connect, which can be accessed [here](#)<sup>2</sup>.

### **When is the notification required?**

*The first notification:*

If the conditions for notification are met on the 13 January 2018 (i.e. if the total value of payment transactions executed through relevant services exceeds €1 million in the preceding 12 month period), the service provider must submit the notification by 10 February 2018, which is 28 days after the 13 January 2018.

If a service provider wishes to submit a services notification before the 10 February 2018 deadline then the service provider may do so at any time after 13 October 2017.

From the 13 January 2018, service providers must submit their first notification no later than 28 days from the date on which the conditions for notification in regulation 38(1) were met.

*Subsequent notifications:*

- (a) Unless (c) applies, service providers must submit an annual notification to cover the period of 12 months beginning on the day after the end of the 12 month period to which the previous notification related. Such notifications must be submitted no later than 28 days from the end date of the 12 month period to which it relates.
- (b) If, at the end of the 12 month period following the last notification, the service provider determines that the conditions for notification are no longer met (i.e. the total value of the payment transactions over the preceding 12

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<sup>1</sup> [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

<sup>2</sup> [link to copy form]

months falls below €1 million) the service provider must notify the FCA using the same regulation 38 form in [Connect](#)<sup>3</sup>.

- (c) If, at any time after the service provider has submitted a notification in accordance with (b) above, the service provider determines that the notification conditions in regulation 38(1) are met again, the service provider must submit a new regulation 38 notification no later than 28 days from the date on which the conditions for notification were met.

### **The form of the notification**

A service provider must use [Connect](#)<sup>4</sup> to submit the notification in the format specified [here](#)<sup>5</sup>.

### **The FCA's powers and responsibilities**

In accordance with its obligations under 38(4), the FCA will assess each notification to determine whether the notified services fall within paragraph 2(k)(i) to (iii) of Schedule 1 to the PSRs 2017.

If the FCA considers that any part of the notified services do not fall within the exclusion, it will notify the service provider. If the service provider disagrees with the FCA's determination it may refer the matter to the Upper Tribunal.

The FCA may take such action as it considers appropriate in the circumstances if it determines (by way of the notification or otherwise):

- that any of the services provided by the service provider do not fall within the limited network exclusion; or
- that the service provider has breached any of the conduct of business rules set out in the Electronic Money Regulations 2011, the Payment Services Regulations 2009 or the PSRs 2017 (as applicable).

In accordance with regulation 4(1) of the PSRs 2017, the FCA will maintain a register of persons that provide services that fall within the limited network exclusion and have submitted a notification pursuant to regulation 38. The register will be publicly available and will display the following information about each service provider: name, registered address, a description of the services that fall within the limited network exclusion and the specific exclusion by virtue of which the services are not payment or e-money services.

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<sup>3</sup> [link to Connect]

<sup>4</sup> [link to Connect]

<sup>5</sup> [link to copy form]

## Notification of the use of the limited network exclusion under the Payment Services Regulation 2017 (a regulation 38 notification)

Legal name of service provider

### **Important information you should read before completing this form**

For the purposes of complying with the Data Protection Act 1998, any personal information provided to us will be used to discharge our functions under the Payment Services Regulations 2017 as amended and other relevant legislation; it may be disclosed to third parties for those purposes and/or where there is an applicable gateway permitting disclosure (i.e. specific circumstances in which the FCA is permitted to disclose confidential information to a third party).

**It is important that you provide accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence.**

### **Using this form**

This form is for information purposes only. The data set out in this form can be submitted using the [Connect Portal](#) [not yet live].

### **Terms in this form**

In this form the FCA uses the following terms:

- 'FCA', 'we', 'our', or 'us' refers to the Financial Conduct Authority
- 'limited network exclusion' refers to the provisions of paragraph 2(k)(i)-(iii) of Schedule 1 to the PSRs 2017 when read alongside the definition of "payment service" in regulation 2(1) of the PSRs 2017
- 'PSR's 2017' refers to the Payment Services Regulations 2017
- 'regulation' refers to the relevant provision of the PSRs 2017 unless otherwise specified
- 'service provider' refers to the business or entity notifying the FCA that it is providing services of a type falling within the limited network exclusion

### **Purpose of this form**

This notification form sets out the information that must be submitted by a service provider that is providing services of the type falling within paragraph 2(k)(i) to (iii) of Schedule 1 of the PSRs 2017 and is required under regulation 38 to submit a notification of such services. Further instructions on completing and submitting this form are available online in the Direction relating to this notification. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5) for further information about the scope of the limited network exclusion.

**If the FCA determines that the notified services fall within the limited network exclusion, the information provided in this notification will form the basis of the entry on the FCA public register as per regulation 4(1)d of the PSRs 2017. This information will also be notified to the EBA as per regulation 4(6)d.**



**1.6 Is the service provider authorised and regulated by the FCA or another regulator to provide e-money / payment services or other financial services?**

- No  
 Yes ▶ Please provide details below

Regulator	
FRN number or equivalent	

**1.7 Has the service provider previously submitted a notification of the use of the limited network exclusion to a competent authority in another member state?**

- No  
 Yes ▶ Please provide details below

Date submitted

		/			/				
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Member State

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Competent authority

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**1.8 Has the service provider previously submitted a regulation 38 notification to the FCA?**

- Yes ▶ Continue to Question 1.9  
 No ▶ Please complete Section 2 (Transaction value) and Section 3 (Description of services offered and the exclusion under which the services are carried out)

**1.9 Is this a notification that the conditions in regulation 38 are no longer met (e.g. that the total value of payment transactions falling within the limited network exclusion and executed in the previous 12 month is less than €1 million)?**

- No ▶ Continue to Question 1.10  
 Yes ▶ Please complete Section 2 (Transaction value) only

**1.10 Have the services changed since the last notification to the FCA?**

- No ▶ Please complete Section 2 (Transaction value)  
 Yes ▶ Please explain how the services have changed since the last notification and complete Section 2 (Transaction value) and Section 3 (Description of services offered and the exclusion under which the services are carried out)

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# 2

## Transaction value

**2.1 Please provide the total value of payment transactions executed through the services that fall within the limited network exclusion in the previous 12 month period.**

Please refer to the Direction relating to this notification for further detail on how the total value should be calculated

**Period (mm/yyyy)**

From

<input type="text"/>	<input type="text"/>	/	<input type="text"/>				
----------------------	----------------------	---	----------------------	----------------------	----------------------	----------------------	----------------------

To

<input type="text"/>	<input type="text"/>	/	<input type="text"/>				
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**Transaction value**

€ <input type="text"/>
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# 3 Description of services offered and the exclusion under which the services are carried out

Providers should describe the services that are provided in the UK.

## 3.2 How many products offered by the service provider are considered to fall within the limited network exclusion?

### Services Form

Please complete section 3 in respect of each of the products and services that are considered to fall within the limited network exclusion.

**Name of the payment product, as it is known / appears to the customer**

**Which of the following options best describes the payment instrument issued?**

- Payment card or other physical payment device
- Virtual payment card
- Mobile application
- Other 'personalised set of procedures' ▶ Please describe below

**Please briefly describe the service based on the specific payment instrument, e.g. prepaid gift card used to purchase cinema tickets**

This will be entered in the FCA public register as per regulation 4(1)d of the PSRs 2017

**Choose the exclusion that best applies to the service provider's service (2(k)(i), 2(k)(ii) or 2(k)(iii))**

Services based on specific payment instruments that can be used only in a limited way and:

- 2(k)(i) – allow the holder to acquire goods or services only in the issuer's premises
- 2(k)(ii) – are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer
- 2(k)(iii) – may be used only to acquire a very limited range of goods or services

**Please explain how the product or service falls within the limited network exclusion specified, including details of the following where relevant:**

- the payment instrument;
- where and how the payment instrument can be used;
- where the customers or users are based;
- the service provider's role in the flow of funds (if any), e.g. at what point the service provider come into possession of the funds, where funds are received from and where funds are transferred to;
- How transactions are acquired;
- the merchants that accept payment for goods and services via the payment instrument and the contractual relationship between the service provider and the merchant(s);
- the type of goods and/or services that can be purchased using the payment instrument;
- any limitations on the use of the instrument (and how this limitation is imposed, e.g. through the technical functionality of the instrument or through the terms and conditions attaching to the instrument); and
- any other features of the payment instrument that are relevant to the limited network exclusion.

## **Direction under regulation 39 of the Payment Services Regulation 2017 (Notification of use of electronic communications networks exclusion)**

### **Purpose and statutory context**

Under regulation 39 of the Payment Services Regulations 2017 (“PSRs 2017”), if a person (a “service provider”) provides, or intends to provide, a service for payment transactions falling within paragraph 2(l) of Schedule 1 to the PSRs 2017 (activities involving electronic communications networks which do not constitute payment services), the service provider must

- (a) notify the Financial Conduct Authority (“FCA”), including with such notification a description of the service; and
- (b) provide an annual audit opinion testifying that the transactions for which the service is provided comply with the limits mentioned in paragraph 2(l) of Schedule 1 to the PSRs 2017.

The purpose of this document is to direct the form in which the information required by regulation 39 of the PSRs 2017 must be submitted to the FCA and the manner in which it must be verified.

The provisions of paragraph 2(l) of Schedule 1 to the PSRs 2017, read alongside the definition of “payment service” in regulation 2 (1) of the PSRs 2017, are referred to as the “electronic communications networks exclusion” in this Direction. References to activities falling within the electronic communications networks exclusion in this Direction include activities carried on before 13 January 2018 if such activities would fall within the exclusion if they were carried out after the 13 January 2018.

### **The direction**

The FCA directs that a service provider to which regulation 39 of the PSRs 2017 applies must provide the information required by that regulation in the form, at the time and verified in the manner described below.

This direction may be amended by further direction to all service providers, to a class of service providers or an individual service provider. For the avoidance of doubt, such amendments are likely to be made only where necessary in exceptional circumstances.

## **Powers exercised**

The FCA makes this direction in exercise of the following powers under the PSRs 2017:

- Regulations 39(3) and (4); and
- Regulation 109(1).

## **Background to this direction**

The revised Payment Services Directive (“PSD2”) entered into force in January 2016. PSD2 seeks to update the regulation of payment services in Europe and departs from the original Payment Services Directive 2007 in a number of ways, including changing the scope of the exclusions and introducing notification and registration requirements for certain excluded providers. PSD2 has been transposed into UK law through the PSRs 2017.

The FCA is the authority with responsibility for monitoring and enforcing compliance with a majority of the provisions of the PSRs 2017.

## **Who does this direction apply to?**

This direction concerns a person who provides, or intends to provide, a service that relates to the following type of payment transaction:

*“Payment transactions, initiated through a provider of electronic communications networks or services, where such initiation is in addition to electronic communications services for a subscriber to the network or service—*

*(i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill; or*

*(ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets,*

*provided that the value of any single payment transaction does not exceed 50 euros, and the cumulative value of payment transactions for an individual subscriber in a month does not exceed 300 euros.”*

A payment transaction that falls within this category does not constitute a payment service to which the prohibition in regulation 138 of the PSRs 2017 (Prohibition on provision of payment services by persons other than payment service providers) applies. The service provider in question may or may not be authorised or registered by the FCA in respect of other services or activities. Please refer to the FCA’s Perimeter Guidance Manual 15.5 for further information about the scope of the electronic communications networks exclusion.

## **What information is required?**

A person who provides or intends to provide a service falling within the electronic communications networks exclusion must submit the following information to the FCA:

- a notification including a description of that service (“services notification”); and
- an annual audit opinion testifying that the transactions for which the service is provided comply with the applicable financial limits (“audit opinion”).

## **The form of the services notification**

A service provider must use [Connect](#)<sup>1</sup> to submit a services notification in the format specified [here](#)<sup>2</sup>.

## **The timing of the services notification**

*Persons providing a service before 13 January 2018 that would fall within the electronic communications networks exclusion and who continue to do so afterwards*

A person who provides a service falling within the electronic communications networks exclusion prior to 13 January 2018 must submit the services notification on or before 13 January 2018 in accordance with regulation 39(2)(a) of the PSRs 2017. If a service provider wishes to submit a services notification before the deadline then the service provider may do so at any time after 13 October 2017.

*Persons providing a service falling within the electronic communications networks exclusion only on or after 13 January 2018*

If a person intends to begin providing a service falling within the electronic communications networks exclusion on or after 13 January 2018 then the service provider must submit the services notification before the commencement of the service in accordance with regulation 39(2)(b) of the PSRs 2017.

## **The audit opinion**

A person who provides a service falling within the electronic communications networks exclusion must also submit to the FCA an annual audit opinion testifying that the transactions for which the service is provided comply with the limits mentioned in paragraph 2(1) of Schedule 1 to the PSRs 2017.

## **The form of the audit opinion**

The audit opinion must:

- be prepared by an independent auditor with the skills, resources and experience commensurate with the nature, scale and complexity of the service

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<sup>1</sup> [link to Connect]

<sup>2</sup> [link to copy form]

- provider's business and that is eligible for appointment as an auditor under the applicable law;
- confirm whether, in the auditor's opinion, the transactions for which the service is provided comply with the limits mentioned in paragraph 2(1) of Schedule 1 to the PSRs 2017;
  - specify the period to which the opinion relates, the information and records on which the opinion was based and (where relevant) the industry standards or methodology used;
  - set out any assumptions, limitations, caveats, or explanations as necessary; and
  - be signed on behalf of the audit firm by the individual with primary responsibility for the audit opinion and in that individual's own name.

Service providers and auditors are reminded that sections 341 (Access to books etc.) to 346 (Provision of false or misleading information to auditor or actuary) of the Financial Services and Markets Act 2000 apply to the preparation and submission of the annual audit opinion under regulation 39(3) (see paragraph 6 of Schedule 6 of the PSRs 2017).

For service providers that carry out transactions in currencies other than the euro, the FCA's view is that it would be reasonable to use the Commission's monthly accounting rate of the euro<sup>3</sup> ("Commission calculator") for the purposes of the audit opinion when calculating whether the transactions comply with the euro denominated limits. The Commission calculator provides the historical market rates on a month-by-month basis as quoted by the European Central Bank. We would expect the audit opinion to take account of the euro exchange rate on a monthly basis to identify outliers for the purposes of preparing the audit opinion (although more frequent application would be acceptable).

### **The timing of the audit opinion**

In this Direction, "accounting reference date" means (a) in relation to a company incorporated in the United Kingdom under the Companies Acts, the accounting reference date of that company determined in accordance with section 391 of the Companies Act 2006; (b) in relation to any other body, the last day of its financial year.

A person who provides a service falling within the electronic communications networks exclusion must submit an annual audit opinion to the FCA from 13 January 2018.

*Persons providing a service before 13 January 2018 that would fall within the electronic communications networks exclusion and who continue to do so afterwards*

- (a) Unless (b) applies, the service provider must submit the first audit opinion to the FCA no later than 3 months after its accounting reference date that immediately follows 13 January 2018.

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<sup>3</sup> [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

- (b) If the service provider has an accounting reference date that falls less than three months after the 13 January 2018, it must submit the first audit opinion to the FCA no later than 3 months after the next accounting reference date i.e. the accounting reference date that immediately follows the accounting reference date in early 2018.

In either case, the first audit opinion must cover the entire period from 13 January 2018 until the relevant accounting reference date.

- (c) Unless (d) applies, the service provider must submit further audit opinions to the FCA no later than three months after each subsequent accounting reference date. The audit opinions must cover consecutive periods beginning on the day after the end of the period to which the previous audit opinion related and ending on the next accounting reference date.
- (d) The service provider is not required to continue to submit annual audit opinions if it has ceased to carry out any transactions in respect of which it relies on the electronic communications networks exclusion and all such transactions have been the subject of an earlier audit opinion submitted to the FCA. A service provider that has ceased to carry out any transactions in respect of which it relies on the electronic communications networks exclusion should notify us in accordance with the provisions below.

*Persons providing a service falling within the electronic communications networks exclusion only on or after 13 January 2018*

- (a) Unless (b) applies, a person who first begins providing a service falling within the electronic communications networks exclusion on or after 13 January 2018 must submit the first audit opinion to the FCA no later than three months after its accounting reference date that immediately follows the commencement of the service.
- (b) If the service provider has an accounting reference date that falls less than three months after the date on which it began to provide the service, it must submit the first audit opinion to the FCA no later than three months after the next accounting reference date i.e. the accounting reference date that immediately follows the accounting reference date that fell within three months of the commencement of the service.

In either case the first audit opinion must cover the entire period from the date on which the service commenced until the relevant accounting reference date.

- (c) Unless (d) applies, the service provider must submit further audit opinions to the FCA no later than three months after each subsequent accounting reference date. The audit opinions must cover consecutive periods beginning on the day after the end of the period to which the previous audit opinion related and ending on the next accounting reference date.
- (d) The service provider is not required to continue to submit annual audit opinions if it has ceased to carry out any transactions in respect of which it relies on the electronic communications networks exclusion and all such transactions have been the subject of an earlier audit opinion submitted to the FCA.

### *How to submit the audit opinion*

The annual audit opinion must be submitted electronically via [Connect](#)<sup>4</sup>. Service providers must provide certain information in respect of the audit opinion. For reference purposes, we have set out in full [here](#)<sup>5</sup> the information required to be provided in Connect when submitting the audit opinion.

### **Notification when ceasing to provide services**

If a person is registered with the FCA as a provider of services falling within the electronic communications networks exclusion and ceases to provide such services, it must notify the FCA:

- using Connect; and
- no later than 10 business days after the date on which it ceased to provide the excluded services. T

On receipt of such notification, the FCA will update the register of service providers accordingly (see below).

### **The FCA's powers and responsibilities**

In accordance with regulation 4(1) of the PSRs 2017, the FCA will maintain a register of service providers falling within the electronic communications networks exclusion that have submitted a notification pursuant to regulation 39 and this direction. The register will be publicly available and will display the following information about each service provider: name, registered address and a brief outline of the services provided / the applicable exclusion.

The EBA will also maintain a register which includes the information covered in our public register, together with information provided by the competent authorities in other EEA Member States. This will be available free of charge on the EBA's website.

If (on the basis of the notification or otherwise) the FCA determines that the service provider has exceeded the applicable limits or is not eligible for the exclusion for any other reason it may take such action as it considers appropriate in the circumstances.

If the FCA considers that a service provider is obliged to submit a notification under regulation 39, but has not done so, the FCA may rely on its powers of enforcement set out in Part 9 of the PSRs 2017 (which apply to excluded providers as well as authorised payment service providers). For example, the FCA may publish a statement that the service provider has contravened the relevant requirement imposed by the PSRs 2017, may impose a financial penalty or may apply to court for an injunction.

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<sup>4</sup> [Link to Connect]

<sup>5</sup> [Link to copy form]

## Notification of the use of the electronic communications networks exclusion under the Payment Services Regulation 2017

Legal name of service provider

### **Important information you should read before completing this form**

For the purposes of complying with the Data Protection Act 1998, any personal information provided to us will be used to discharge our functions under the Payment Services Regulations 2017 as amended and other relevant legislation; it may be disclosed to third parties for those purposes and/or where there is an applicable gateway permitting disclosure (i.e. specific circumstances in which the FCA is permitted to disclose confidential information to a third party).

**It is important that you provide accurate and complete information and disclose all relevant information. If you do not, you may be committing a criminal offence.**

### **Using this form**

This form is for information purposes only. The data set out in this form can be submitted using the Connect Portal [not yet live].

### **Terms in this form**

In this form the FCA uses the following terms:

- 'electronic communications networks exclusion' refers to the provisions of paragraph 2(I) of Schedule 1 to the PSRs 2017, read alongside the definition of "payment service" in regulation 2(1) of the PSRs 2017;
- 'FCA', 'we', 'our', or 'us' refers to the Financial Conduct Authority
- 'PSR's 2017 ' refers to the Payment Services Regulations 2017
- 'regulation' refers to the relevant provision of the PSRs 2017 unless otherwise specified
- 'service provider' refers to the business or entity notifying the FCA that it is providing payment services of a type falling within the electronic communications networks exclusion
- 'you' refers to the individual completing this notification form who has the authority to do so on behalf of the service provider

### **Purpose of this form**

This notification form sets out the information that must be submitted by a service provider that is providing or is intending to provide services for payment transactions falling within paragraph 2(I) of Schedule 1 of the PSRs 2017. Further instructions on completing and submitting this form are available online in the Direction relating to this notification. Please refer to the FCA's Perimeter Guidance Manual (PERG 15.5) for further information about the scope of the electronic communications networks exclusion.

**If the FCA determines that the notified service fall within the electronic communications network exclusion, information provided in this notification will form the basis of the entry on the FCA public register as per regulation 4(1)d of the PSRs 2017. This information will also be notified to the EBA as per regulation 4(6)d.**

## 1

**About the service provider****1.1 Name of service provider**

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**1.2 Registered office (if applicable) or head office address**

Head office address	
Postcode	

**1.3 Place of incorporation or formation**

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**1.4 Company registration number if applicable (if registered outside of the UK give the equivalent reference number)**

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**Contact for this application****1.5 Details of the person the FCA should contact in relation to this notification**

Title	
First names	
Surname	
Position	
Phone number (including STD code)	
Email address	

**1.6 Is the service provider authorised and regulated by the FCA or another regulator for financial services?**

- No  
 Yes ▶ Please provide details below

Regulator	
FRN number or equivalent	

**1.7 Has the service provider previously submitted a notification of the use of the electronic communications networks exclusion to a competent authority in another member state?**

- No  
 Yes ▶ Please provide details below

Date submitted

		/			/				
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Member State

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Competent authority

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**1.8 Has the service provider previously submitted a services notification (detailing the types of services provided) to the FCA?**

- No ▶ Continue to Section 2. Note that if this is your first services notification you do not need to complete Section 3 (Audit opinion). Please refer to the Direction relating to this notification for guidance on when the audit opinion becomes due.  
 Yes

**1.9 Is an audit opinion being submitted with this notification?**

- No  
 Yes ▶ Please continue to Question 1.11

**1.10 Is this a notification that the service provider has ceased to provide services falling within the electronic communications networks exclusion (and should be removed from the register)?**

- No  
 Yes ▶ When did the provider cease to provide the services? (dd/mm/yyyy)

		/			/				
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You do not need to complete any further sections if this is a notification that the service provider has ceased to provide services.

**1.11 Have the services changed in any material respect since the last notification?**

- No ▶ Please complete Section 3 (Audit opinion)  Yes ▶ Please give details of the change(s) below and complete Section 2 (Description of electronic communication network service(s)) (in respect of the new or changed services only) and, where relevant, Section 3 (Audit opinion)

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# 2

## Description of electronic communication network service(s)

**2.1 Please select the type of service(s) that the service provider provides**

'Electronic communication networks' as defined in Article 2(a) of Directive 2002/21/EC<sup>1</sup>

'Electronic communication services' as defined in Article 2(c) of Directive 2002/21/EC

Other ▶ Please provide a description of the service provider's main business activities.

**2.2 Name of the payment product, as it is known/appears to the customer**

**2.3 Are the payment transactions to which this notification relates for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content, and charged to the related bill?**

No

Yes ▶ Provide a brief description of what those goods or services are under the relevant headings

**Digital content**

**Voice based services**

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<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0021>

**2.4 Are the payment transactions to which this notification relates performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets?**

No

Yes ▶ Provide a brief description of what those goods or services are under the relevant headings

**Charitable activities**

**Tickets**

**2.5 Is the service provider already providing the services?**

Yes

No ▶ Please specify the date on which it expects to begin providing the services (dd/mm/yyyy)

		/			/				
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**2.6 Please briefly set out the grounds on which the service provider is able to rely on the electronic communications networks exclusion (including details of the payment transactions that are carried out)**

## 3

**Auditor's opinion on transaction values**

This section should be completed by service providers that are submitting an audit opinion and have already notified the FCA of the services that they provide that fall within the electronic communications networks exclusion.

**3.1 Accounting reference date of service provider (dd/mm/yyyy)**

□	□	/	□	□	/	□	□	□	□
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**3.2 Name of auditor**

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**3.3 Period to which the audit opinion applies (dd/mm/yyyy)**

From

□	□	/	□	□	/	□	□	□	□
---	---	---	---	---	---	---	---	---	---

To

□	□	/	□	□	/	□	□	□	□
---	---	---	---	---	---	---	---	---	---

**3.4 Please confirm that you have provided an audit opinion with this form that meets the requirements set out in the Direction**
 Attached
**3.5 Did the audit opinion contain any information to suggest that the transactions to which the service relates do not comply with the limits mentioned in paragraph 2(I) Schedule 1 of the PSRs 2017?**
 Yes

 No

Give details below

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