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# Minutes

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**Minutes of the meeting of the  
2EMD STAKEHOLDER LIAISON GROUP**

**Held on 27 January 2011, 9:00 – 10:30**

**At Committee Room B, FSA**

Present:	Brian Garcia (BG) – HMT	FSA:	Jean Cooper (JC) – Chair
	David Bainbridge (DB) – Financial Ombudsman Service		John Hood-Leeder (JHL)
	Leon Isaacs (LI) – IAMTN		John Burns (JB)
	Veronica Studsgaard (VS) – IAMTN		Jody Whitehorn (JW)
	Hamish MacLeod (HM) – MBG		Alison Donnelly (AD)
	Chris Reddish (CR) – PIF		Muji Balogun (MB)
	Robert Courtneidge (RC) – PIF		Catherine Batchelor (CB)
	Andrew Johnson (AJ) – UKGCVA		Heenal Vasu (HV)
	Dominic Peachey (DP) – EMA		Caroline Gardener (CG)
	Deirdre Synnott (DS) – UKGCVA		Clive Gordon (CG1)
			Elizabeth Selzer (ES)
			Nick Daniel (ND)
			Alan Drainer (AD1)
			Nicola Williams (NW)
			Karen Wells (KW) – Minutes

Apologies: Thaer Sabri  
Andrew Hopkins  
Paul Smee  
Paul Larkin  
Rosalind Sellers

<b>Minute No</b>		<b>Action</b>
1.	<b>Introductions</b>	
	JC welcomed everyone to the meeting which began with introductions.	
2.	<b>Minutes from the previous meeting</b>	
	The draft minutes of the previous meeting held on 26 July were approved. AD thanked members for providing comments on the industry survey and for circulating to members. All other matters arising were covered on the agenda.	
3.	<b>HMT update</b>	
	BG presented a handout of slides (see attachment).	



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PROJECTS-THEMES\E

BG said that there were few changes to the Electronic Money Regulations 2011 (EMRs) from the consultation version. There had been a lot of comment on the boundaries of the **limited network** exemption but, even if it were written into UK law, it could still be challenged. The Treasury will ask the FSA to consider developing case studies with the e-money industry that can be reflected in guidance.

RC asked what approach would be taken if a business strayed into the regulated boundary accidentally; he sought assurances that such a business would be dealt with sympathetically and suggested that there should be FSA staff assigned to this area that understand the complexities. CG1 said that the enforcement approach would be the same as that taken under FSMA. JC said that our approach will be consistent with our current approach which is to prioritise according to the potential for consumer detriment and risk. There will continue to be staff across the relevant sections of the FSA who are familiar with e-money. JB said that we are willing to discuss business models with companies and have had a number of discussions already. JC said we prefer to be approached by the company to discuss rather than find a complaint has been raised in the media or elsewhere.

BG outlined the Treasury's view on the **redemption** rules. He said they recognise the impact this has on the industry, particularly on those with models that rely on breakage. It is reasonable for a contract to include provision for redemption fees more than 12 months after the contract has ended in accordance with the EMRs. The Treasury estimate that this will take care of 95% of funds and minimise the impact in practice. The EMRs introduce a long stop of six years after the end of the contract for making a request to redeem e-money. In other member states the long stop can be as long as 20 to 30 years. Treasury feel they have done everything they can to mitigate the impact of redemption while keeping to the spirit of the directive.

JB said that the EMRs also include a provision for existing fixed term contracts that are not reloadable to ease the transition across to the new regime.

RC asked whether the local law in another member state overrides the home state rule for the long stop. JW indicated that, in general, with respect to the conduct of business requirements the local rules apply in relation to agents and branches conducted under the right of establishment. It appears the limitation period doesn't need to be written

into the contract.

BG said that in relation to **small electronic money institutions** (EMIs) they had decided to depart from the treatment of small businesses under the Payment Services Regulations (PSRs). The EMRs provide for capital requirements for some small EMIs, a fit and proper test and that the FSA can take spent criminal convictions into account. This is because of the recent experience with smaller businesses, such as the small payment institution Crown Currency, and is particularly important because the EMRs allows EMIs to do mixed business and grant credit and there is no limit on the amount of e-money they can issue on a device.

There will not be a flat capital requirement as proposed (because this limits pilots and new businesses from starting up) but there will be a 2% requirement for small EMIs that issue more than €500,000.

There was a lot of resistance from stakeholders involved in child protection and resisting terrorist financing to raising the exemption from carrying out **customer due diligence checks** from €250 to €500 for national payment transactions. Treasury felt that the low threshold is a bar to the development of new services and will raise the due diligence exemption to €500.

There was opposition to the proposal to extend **FSCS cover** to e-money issued by banks from the banks (because of the expense) and the other electronic money issuers (because they felt it would create an unlevel playing field). Treasury still believes there is a problem so will seek clarification in the deposit guarantee directive and will look consider again at the 2EDM review stage.

There was little or no support for voluntary codes as a solution to improving the safeguards for consumers in the **unregulated sector**. The Treasury has asked the Office of Fair Trading to advise on the prepaid market and the effectiveness of self regulation for protecting consumers. Treasury is concerned that there are significant risks attached to schemes with high values such as salary cards and those that look like saving schemes.

#### 4. **FSA update**

AD advised the meeting that we had had 11 responses to our consultation paper and that we hope to be in a position to publish the Policy Statement on 10 February 2011.

JC explained that the Policy Statement had to be published later than expected as the FSA have to wait until the regulations come into force which is expected to be on 9 February 2011.

Respondents commented on the need for greater clarity in the **perimeter**

**guidance**, particularly on the limited network exemption. The perimeter guidance chapter has been amended and new questions and answers have been added.

We will not continue with the proposed **large exposure reporting return** in response to respondents' views. Some respondents commented on having to return their reports by email rather than through the GABRIEL system; however, the costs of changing the systems to make this possible are disproportionate and would be a cost that would have to be recovered from the small population of EMIs. Changes were also being made to the reporting returns for small EMIs to reflect the changes made to the EMRs regarding capital requirements.

Respondents were generally supportive of the **dispute resolution** changes although the costs were questioned. AD said that the approach outlined in the Enforcement chapter of the consultation paper has been amended because the EMRs do not give the FSA the **disciplinary powers** to suspend and impose restrictions that we expected. AD said that a respondent suggested that there may be reason to allow small EMIs to use the FSA logo if there are more requirements for small EMIs than small payment institutions but as the proposed approach is designed to avoid consumer confusion the policy has not been changed.

5. **Update on the application process and grandfathering**

JHL gave updated the meeting that the application process is still a work in progress. He hopes the application forms will be on the FSA website shortly. There are two categories of applications – registration and authorisation. Authorisation applications will be acknowledged within seven days. The FSA will also send the name of the case officer assessing the application together with the acknowledgement. There will also be dedicated e-mail boxes to handle queries. JHL also said that the time it would take to process the application will depend on its quality. It is anticipated that complete applications for authorisations will be processed within three months. Applications for registration will not be acknowledged but should be processed more quickly.

ND advised that they will contact existing firms about making the transition to the new regime. It should be possible for the ELMIs to be grandfathered into the new regime by 30 April although they have until 1 July to provide the information required.

JB explained that under the current e-money regime it is not necessary to register agents. However the firms that grandfather in to the new regime will now need to register their agents and notify the FSA of any of their distributors. RC queried the difference between agent and distributor under the e-money regime. JB clarified that agents need to appear on the register; the distinction is that the agents are the persons who provide

payment services on behalf of the issuer whereas distributors do not provide payment services.

**6. Review of the draft E-money Approach Document**

JC advised that the Approach Document for E-money would be kept separate from the PSD one. The aim is to make any consequential changes in the PSD Approach Document within weeks of the publication of the E-money Approach Document.

JB requested that people should get in touch should they have any queries. We hope to have a draft of the Approach Document on the website next week for comments and we will advise by email when this is available.

AD mentioned that Chapter 6 – on Passporting – is to follow together with Chapter 17 – which relates to Transitional Provisions.

JB asked if it would be useful to provide further guidance on our approach to taking enforcement action in respect of those not authorised or registered to issue e-money in the Enforcement chapter.

JC requested that those who had responded to our consultation paper should review our draft Approach Document in light of the specific concerns they raised and provide us with any additional comments they may have. It is our intention that our Approach Document includes guidance which is as clear as possible for the industry and other stakeholders. Our Approach Document will be under review and we hope to publish a second edition of the Approach Document in early summer.

**7. AOB**

JC asked whether this would be last meeting of the SLG or would attendees prefer to have another one just prior to the new regime. JC said it would be useful to have some feedback. JC thank the attendees for their responses to the consultation and for their attendance today.

The meeting closed.