



Financial Services Authority

# The FSA's role under the Electronic Money Regulations 2011

Our approach

March 2011



# Preface



The second Electronic Money Directive (2EMD) will be implemented in the UK on 30 April 2011 through the Electronic Money Regulations 2011 (the EMRs). The Financial Services Authority (FSA) is the regulator for the regime.

This document aims to help existing, potential and new electronic money issuers navigate through the EMRs and our relevant rules, directions and guidance. It explains our general approach to electronic money regulation and how electronic money issuers will interact with us.

Like the Payment Services Approach Document, this is a 'live' document that will be updated as necessary to take into account queries we have received and our experience in dealing with applications for authorisation and registration and supervising electronic money issuers. I trust it answers your questions about how we will approach our responsibilities under the EMRs. To ensure this document meets businesses' needs we have sought comments from the E-money Stakeholder Liaison Group and have published a draft version on our website. I would like to thank all who have taken time to give us their input.

We would be pleased to receive comments and queries on our approach.

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**Any comments or suggestions for future versions of this E-money Approach Document should be e-mailed to: [electronicmoney@fsa.gov.uk](mailto:electronicmoney@fsa.gov.uk).**

# 1 Introduction

- 1.1 This document describes our approach to interpreting and applying the Electronic Money Regulations 2011 (the EMRs) and the small number of electronic money-related rules, directions and guidance in our Handbook. It gives readers links to the information they need for a comprehensive picture of the new regulatory regime and is primarily aimed at businesses that are currently issuing or considering issuing electronic money (e-money). It also provides guidance to give a practical understanding of the new requirements, our regulatory approach and how businesses will experience regulatory supervision depending on the type of electronic money issuer they are. It follows broadly the same structure as the Payment Services Approach Document.
- 1.2 We use a number of similar terms with distinct meanings in this document. The glossary of terms, abbreviations and acronyms at the end provides a full list but the main ones to be aware of are the following:
- **Electronic money issuers** are all persons entitled to issue e-money;
  - **ELMIs and small e-money issuers** are persons authorised or registered to issue e-money before 30 April 2011; and
  - **Electronic money institutions (EMIs)** are persons authorised or registered to issue e-money after 30 April 2011 (authorised EMIs or small EMIs).
- 1.3 This chapter provides an overview of the new e-money regulatory regime and the key dates.

## **The new e-money regulatory regime**

- 1.4 The new regulatory regime implements the second Electronic Money Directive (2EMD), which was adopted by the European Parliament and the Council of the

European Union in September 2009. The full text of 2EMD can be found on the [European Commission's website](#).<sup>1</sup>

## The main changes made by 2EMD

1.5 2EMD replaces an earlier e-money directive (1EMD)<sup>2</sup> and seeks to remove barriers to market entry and facilitate the taking up of the business of issuing e-money. It introduces a few new conduct requirements for all electronic money issuers, and new authorisation/registration and prudential standards for electronic money institutions (EMIs). The main changes are summarised below.

- Electronic money issuers<sup>3</sup> will no longer be able to set a time limit on the e-money holder's right to redeem (although a proportionate fee can be charged in certain circumstances). They will also no longer be allowed to refuse to redeem e-money if the e-money to be redeemed is worth less than €10. (See Chapter 8 for more information.)
- Electronic money issuers will not be allowed to grant interest or other benefits related to the length of time e-money is held. (See Chapter 8 for more information.)
- The 1EMD restriction on business activities is removed so that EMIs will be able to provide payment services that are unrelated to the issuing of e-money without additional authorisation/registration and engage in other business activities, subject to relevant EU and UK law.
- There are differences in the criteria for exemption. (See [Chapter 3A](#) of the Perimeter Guidance manual for further detail)
- The initial and minimum ongoing capital requirement for authorised EMIs has been reduced. The government has decided to introduce initial and minimum ongoing capital requirements for some small EMIs. (See Chapter 9 for more information.)
- 2EMD requires authorised EMIs to safeguard funds received from customers for e-money so that, if there is an insolvency event, the e-money issued would be protected from other creditors' claims and can be repaid to customers. The government has also decided to require small EMIs to safeguard funds received from customers for e-money. (See Chapter 10 for more information.)

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1 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance).

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

3 See Chapter 2 for a full list of bodies defined by the EMRs as electronic money issuers.



## The changes made to our regulatory regime

- 1.6 2EMD and the Payment Services Directive (PSD) are so closely interlinked that, for consistency, the government decided to also implement 2EMD through regulations – the EMRs.
- 1.7 This means that, when the transition to the new regulatory regime is complete, EMIs will be authorised or registered to issue e-money and undertake payment services under the EMRs rather than under the Financial Services and Markets Act 2000 (FSMA) (see Chapter 17 for details of the transitional provisions). However, it has been decided to keep issuing e-money as a regulated activity under article 9B of the Regulated Activities Order 2001 for credit institutions<sup>4</sup>, credit unions and municipal banks (which means that they will continue to be authorised to issue e-money under a Part 4 permission under FSMA).
- 1.8 Most electronic money issuers are required to be either authorised or registered by us and to comply with certain rules about issuing e-money. The rules are set out in the EMRs, the Payment Services Regulations (PSRs) and parts of the Handbook.
- 1.9 The EMRs set out:
- the definition of e-money and the persons that must be authorised or registered under the EMRs when they issue e-money;
  - standards that must be met by EMIs for authorisation or registration to be granted;
  - capital requirements and safeguarding requirements for EMIs;
  - rules relating to issuing and redeeming e-money for all electronic money issuers; and
  - our powers and functions in relation to supervision and enforcement in this area.
- 1.10 The PSRs contain conduct of business rules that are applicable to most electronic money issuers for the payment services part of their business.
- 1.11 The Handbook sets out, among other relevant material:
- the requirements for certain electronic money issuers to submit returns;
  - complaints handling procedures that electronic money issuers must have in place;
  - the right of certain customers to complain to the Financial Ombudsman Service (the ombudsman service);
  - our policy and procedures for taking decisions relating to enforcement action and when setting penalties;
  - our ongoing fees; and
  - levies for the ombudsman service and the Money Advice Service.
- 1.12 Annex 1 contains a list of the documents, with hyperlinks where possible, in which the requirements for e-money regulation can be found.

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<sup>4</sup> Banks and building societies.

## Key dates

1.13 The key dates for the new regulatory regime are listed below.

Date	Event
9 February 2011	Parts of the EMRs come into force including the sections that give us the power to determine applications for authorisation and registration and to prosecute certain offences.
30 April 2011	The EMRs come into force in full. All electronic money issuers, including electronic money institutions using the transitional provisions, must be compliant with the conduct of business requirements in Part 5 of the EMRs from this date (except for existing fixed-term contracts relating to e-money that fall within regulation 77).
1 July 2011	Last date for ELMIs (electronic money institutions with Part 4 permission under FSMA to issue e-money and which have issued e-money in accordance with that permission before 30 April 2011) to notify us whether they wish to become an authorised EMI or small EMI and to provide us with the information we require from them to be moved into the new regulatory regime (regulation 74).
30 October 2011	Transitional period ends for ELMIs to be grandfathered into the new regime.
30 January 2012	Last date for small e-money issuers (those certified by us under article 9C of FSMA (Regulated Activities Order 2001(d)) that have issued e-money before 30 April 2011) taking advantage of the transitional provisions to submit an application to become an authorised EMI or a small EMI in time for 30 April 2012 (providing the application is complete).
30 April 2012	Transitional period ends for small e-money issuers.

## The FSA Register

- 1.14 The FSA Register is designed to be a public record of those firms that are, or have been, authorised, registered or regulated by us.
- 1.15 From 1 May 2011, authorised EMIs, details of the e-money issuance and payment services that they provide, their agents and any EEA branches will be on the e-money section of the FSA Register.
- 1.16 Small EMIs will also be on the e-money section of our Register along with details of the e-money issuance and payment services that they provide and their agents.
- 1.17 ELMIs will remain on the financial firm section of our Register until they have fully transitioned to the new regime or their authorisation has been cancelled.
- 1.18 Small e-money issuers will remain on a separate list on the e-money section of our Register until they have fully transitioned to the new regime or until 30 April 2012.
- 1.19 Banks, building societies, credit unions and municipal banks with Part 4 permission to issue e-money under FSMA will be on the financial firm section of our Register.
- 1.20 If the National Savings Bank issues e-money it will be included on our Register.

## The E-money Approach Document

- 1.21 This guidance is given under regulation 60 of the EMRs. We intend this E-money Approach Document to be a ‘live’ document. It will be updated as we progress in regulating e-money under the new requirements and as we receive feedback from electronic money issuers, trade associations and other stakeholders on additional issues they would like covered, or guidance that needs to be clarified. Where we propose major changes to the document, we will consult with our E-money Stakeholder Liaison Group (see Annex 3 for the list of members of this group). We will also publish a draft on our website. Anyone who wishes to receive updates should register on our [website](#).
- 1.22 The chapters relevant to each type of electronic money issuer are indicated in the table below.

### **Status of guidance**

- 1.23 This document is supporting guidance material on the legal requirements, which are contained in the documents described below. It is essential to refer to the EMRs, the PSRs or relevant parts of the Handbook for a full understanding of the obligations imposed by the regime.
- 1.24 Guidance is not binding on those to whom the EMRs and rules apply, nor does it have ‘evidential’ effect. It need not be followed in order to achieve compliance with the relevant regulation or other requirement. An electronic money issuer cannot incur disciplinary liability merely because it has not followed guidance. Nor is there any presumption that departing from guidance is indicative of a breach of the relevant regulation.
- 1.25 Guidance is generally designed to throw light on a particular aspect of regulatory requirements, not to be an exhaustive description of an electronic money issuer’s obligations.
- 1.26 The FSA will not take action against someone where we consider that they have acted in accordance with general guidance in the circumstances contemplated by that guidance.
- 1.27 The Decision Procedure and Penalties manual ([DEPP](#)) in the Handbook sets out in 6.2.1G(4) how we take into consideration guidance and other published materials when deciding to take enforcement action. Businesses should also refer to [Chapter 2 of the Enforcement Guide \(EG\)](#) for further information about the status of Handbook guidance and supporting materials.
- 1.28 Rights conferred on third parties (such as an electronic money issuer’s clients) cannot be affected by our guidance. Guidance on the EMRs or other requirements represents our view, and does not bind the courts, for example in relation to an action for damages brought by a private person for breach of a regulation. A person may need to seek his own legal advice.

## Using this document

1.29 The table below indicates the chapters that are most relevant according to categories of electronic money issuer.

	Authorised EMIs	Small EMIs	EEA authorised EMIs	Credit institutions, credit unions and municipal banks with Part 4 permission to issue e-money under FSMA	Electronic money issuers that do not require authorisation or registration	ELMIs and small e-money issuers
Ch 1 – Introduction	✓	✓	✓	✓	✓	✓
Ch 2 – Scope	✓	✓	✓	✓	✓	✓
Ch 3 – Authorisation and registration	✓	✓				
Ch 4 – Changes in circumstances of authorisation or registration	✓	✓				
Ch 5 – Appointment of agents and use of distributors	✓	✓				
Ch 6 – Passporting	✓		✓	✓		
Ch 7 – Status disclosure and use of the FSA logo	✓	✓	✓			
Ch 8 – Conduct of business requirements	✓	✓	✓	✓	✓	✓
Ch 9 – Capital resources and requirements	✓	✓				
Ch 10 – Safeguarding	✓	✓		✓		
Ch 11 – Financial crime	✓	✓	✓	✓	✓	✓
Ch 12 – Complaint handling	✓	✓	✓	✓	✓	✓
Ch 13 – Supervision	✓	✓	✓	✓	✓	✓
Ch 14 – Reporting	✓	✓		✓	✓	
Ch 15 – Enforcement	✓	✓	✓	✓		✓
Ch 16 – Fees	✓	✓	✓	✓	✓	✓
Ch 17 – Transitional provisions for businesses issuing e-money before 30 April 2011			✓	✓		✓

## Contacting us

- 1.30 We hope this document will answer all your questions. However, if you have any questions or comments regarding:
- this document please email [electronicmoney@fsa.gov.uk](mailto:electronicmoney@fsa.gov.uk); or
  - any aspect of the EMRs please contact the Customer Contact Centre.
- 1.31 Our contact details and that of the ombudsman service can be found in Annex 2.



# 2 Scope

- 2.1 This chapter sets out in summary what and who is covered by the EMRs and where to find further information on scope issues.

## How do the EMRs define e-money?

- 2.2 Regulation 2 defines e-money as monetary value represented by a claim on the issuer that is:
- stored electronically, including magnetically;
  - issued on receipt of funds for the purpose of making payment transactions (see regulation 2 of the PSRs);
  - accepted as a means of payment by persons other than the issuer; and
  - is not excluded by regulation 3 of the EMRs (see paragraphs 2.4–2.6 below).
- 2.3 Examples of e-money include prepaid cards that can be used to pay for goods at a range of retailers, or virtual purses that can be used to pay for goods or services online.

## Exclusions

- 2.4 There are two express exclusions in regulation 3 of the EMRs. Our Perimeter Guidance manual (PERG) Chapters [3A](#) and [15](#) provide more information as noted below.
- 2.5 The first covers monetary value stored on instruments that may be used to purchase goods and services only in or on the issuer's premises or under a commercial agreement with the issuer within a **limited network** of service providers or for a **limited range of goods or services**. (See PERG 3A, Q26 and Q27 and PERG 15, Q40 and Q41, which deal with the same term for the purposes of the PSRs.)
- 2.6 The second covers monetary value used to make payment transactions executed by 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 only act as an intermediary between the user and the supplier. (See PERG 15 Q23 for guidance on what **acting only as an intermediary** might include and Q28 of PERG 3A.)

## **How do the EMRs define ‘electronic money issuers’?**

2.7 Electronic money issuers are defined in the EMRs as any of the following persons when they issue e-money.

### **Electronic money institutions (EMIs):**

- authorised EMIs; and
- small EMIs.

### **European Economic Area (EEA) authorised EMIs:**

- persons authorised in an EEA state other than the UK to issue e-money and provide payment services who exercise passport rights to issue, distribute or redeem e-money or provide payment services in the UK in accordance 2EMD.

### **Electronic money issuers who require Part 4 permission under FSMA:**

- credit institutions;
- credit unions; and
- municipal banks.

### **Other electronic money issuers:**

- the Post Office Limited;
- the Bank of England, the European Central Bank and the national central banks of EEA states other than the UK, when not acting in their capacity as a monetary authority or other public authority;
- government departments and local authorities when acting in their capacity as public authorities; and
- the National Savings Bank.

2.8 PERG 3A gives guidance for businesses that are unsure whether their activities fall within the scope of the EMRs.



## **EMIs**

- 2.9 Authorised EMIs are subject to the full regulatory regime, including the capital, safeguarding and conduct of business requirements. Authorised EMIs may provide payment services that are not related to the issuing of e-money (unrelated payment services). Authorised EMIs must, however, notify us of the types of payment services they wish to provide.
- 2.10 Businesses are eligible to be small EMIs only if they have average outstanding e-money that does not exceed €5m.<sup>5</sup> The registration process is cheaper and more straightforward than authorisation, but there are no passporting rights. Some small EMIs are subject to capital requirements and all are subject to the safeguarding and conduct of business requirements. Small EMIs can provide unrelated payment services but only if the average monthly total of payment transactions does not exceed €3m, on a rolling 12-month basis (see Chapter 3). Small EMIs must notify us of the types of payment services they wish to provide.

## **Agents**

- 2.11 EMIs may distribute and redeem e-money and provide payment services through agents, subject to prior registration of the agent by us. Chapter 5 gives details of the process to be followed.

## **Distributors**

- 2.12 EMIs may engage distributors to distribute and redeem e-money. A distributor does not provide payment services, so does not have to be registered by us – but applicants will have to identify their proposed use of distributors.

## **EEA authorised EMIs**

- 2.13 Persons authorised in other EEA states to issue e-money and provide payment services may exercise passport rights to issue, distribute or redeem e-money or provide payment services in the UK in accordance with 2EMD. The competent authority of the home state is responsible for prudential regulation and we will be responsible for conduct of business regulation (see Chapter 6).

## **Electronic money issuers with Part 4 permission under FSMA**

- 2.14 Credit institutions, credit unions and municipal banks do not require authorisation or registration under the EMRs but if they propose to issue e-money they must have Part 4 permission under FSMA for the activity of issuing e-money. When issuing

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<sup>5</sup> Average outstanding e-money is defined as the average total amount of financial liabilities related to e-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 (regulation 2).

e-money, they are subject to the provisions on issuance and redeemability of e-money in the EMRs and to the relevant conduct of business requirements of the PSRs (see Chapter 8).

## **Other electronic money issuers**

2.15 The following persons do not need to apply for authorisation or registration under the EMRs but they must give us notice if they issue or propose to issue e-money:

- the Post Office Limited;
- the Bank of England, the European Central Bank and the national central banks of EEA states other than the UK, when not acting in their capacity as a monetary authority or other public authority;
- government departments and local authorities when acting in their capacity as public authorities; and
- the National Savings Bank.

2.16 They will be subject to the conduct of business requirements of the EMRs, the conduct of business requirements of the PSRs for the payment service aspect, and they will have to report to us their average outstanding e-money on a half-yearly basis. Certain customers will have access to the ombudsman service.

# 3 Authorisation and registration

- 3.1 This chapter sets out how we will apply the provisions of the EMRs dealing with:
- becoming an authorised EMI (Part I);
  - becoming a small EMI (Part II); and
  - the decision-making process we will use for both types of application (Part III).
- 3.2 In general, a UK business or a UK branch of a business with its head office outside the EEA that intends to issue e-money (as defined in the EMRs) has to be either an authorised EMI or a small EMI or have Part 4 permission to issue e-money under FSMA (see Chapter 2 for further detail on the types of electronic money issuer and those that do not need to be authorised or registered to issue e-money).
- 3.3 In accordance with regulation 32 of the EMRs, EMIs are permitted to provide payment services without having to be separately authorised or registered under the PSRs.
- 3.4 Credit institutions, credit unions and municipal banks that want to issue e-money must have Part 4 permission under FSMA for the activity of issuing e-money.

## **Requests for further information (regulations 5(4) and 12(4))**

- 3.5 At any time after receiving an application for authorisation or registration (or a variation of either of these) and before determining it, we can require the applicant to provide such further information as we reasonably consider necessary to enable us to determine the application. Where an application is incomplete, applicants will have to provide the information requested promptly to avoid delay to consideration of their application (see ‘Timing’ in Part III of this chapter).

## **Duty to advise of material changes in an application (regulation 17)**

- 3.6 We attach considerable importance to the completeness and accuracy of the information provided to us. If there is any material change, deficiency or inaccuracy in the information provided in connection with an application before we have issued our decision on it, the applicant must notify us. This applies equally if it becomes apparent to the applicant that a deficiency or inaccuracy in the application or a material change is likely to arise. The requirements also apply to material changes to supplementary information provided due to an earlier material change. If an applicant fails to provide accurate and complete information it will take longer to assess the application. In some cases, it could lead to the application being rejected.
- 3.7 The notification must include details of the change, the complete information or a correction of the inaccuracy (as the case may be) and must be made without undue delay. In the case of an anticipated material change that has not yet taken place, the applicant must provide details of the likely change as soon as they become aware of it.
- 3.8 Applicants for authorisation as an authorised EMI, or variation of an authorisation, should notify the case officer assigned to the application (the case officer will be in contact with an applicant soon after receipt of the application). Applicants for registration as a small EMI, or variation of a registration, should notify us using the following email address: [emd-semi@fsa.gov.uk](mailto:emd-semi@fsa.gov.uk)

## **Part I: Becoming an authorised EMI**

- 3.9 Anyone wishing to become an authorised EMI has to complete an application form and submit it to us along with the required information and the appropriate application fee. The information requirements can be found in Schedule 1 to the EMRs. The conditions for authorisation are in regulation 6.

## **Making an application for authorisation**

- 3.10 Application forms are available on the [e-money section](#) of our website.
- 3.11 We will acknowledge receipt of the application and the case officer assigned to deal with it will be in contact soon after. If necessary, they will ask for more information in support of the application.
- 3.12 The application fee to become an authorised EMI is £5,000. We will not begin processing the application until the full fee is received. The fee is non-refundable and must be paid by cheque.
- 3.13 The application must be signed by the person(s) responsible for making the application on behalf of the applicant business. The appropriate person(s) depend(s) on the applicant's type, as follows.

Type of applicant	Appropriate signatory
Company with one director	The director
Company with more than one director	Two directors
Limited liability partnership	Two members
Limited partnership	The general partner or partners

## Assessment of the application

- 3.14 Authorisation will not be granted unless we are satisfied in relation to the ‘conditions for authorisation’ specified in regulation 6.
- 3.15 This section explains the information that must be supplied with the application and the conditions that must be satisfied. Unless stated otherwise, the requirements come from Schedule 1 to the EMRs. While the format of the information to be provided is not prescribed, applicants should consider whether the overall content is likely to demonstrate to our satisfaction that the conditions are met. This does not necessarily mean that full copies of all the relevant procedures and manuals have to be enclosed with the applications; a summary of what is covered by them might be sufficient, as long as the manuals and procedures themselves are available if we wish to investigate further.

### *Programme of operations (paragraph 1 of Schedule 1)*

- 3.16 We will ask applicants to identify the main activity or activities of the business (which may or may not be issuing e-money) and select the types of e-money to be issued and the types of payment services that they intend to provide.
- 3.17 Our assessment of the application will consider if the systems and controls described in the other information supplied are adequate and appropriate to the e-money to be issued and the payment services to be provided.

### *Business plan (paragraph 2 of Schedule 1)*

- 3.18 The business plan has to explain how the applicant intends to carry out its business. It should provide enough detail to show that the proposal has been carefully thought out and that the adequacy of financial and non-financial resources has been considered.
- 3.19 The plan must include a forecast budget for the first three financial years. The budget has to demonstrate that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly, and that it will be able to continue to meet the initial capital requirements and the ongoing capital (own funds) requirements as outlined below.
- 3.20 The business plan should also include, but not be limited to, the following:
- background to the application;
  - a description of the e-money issuance and payment services business;

- location of the business, including any intention to ‘passport’ (see Chapter 6);
  - sources of funding;
  - target markets; and
  - a marketing plan.
- 3.21 If the applicant intends to provide unrelated payment services then a separate business plan for these, covering the information required above, should also be submitted.
- 3.22 In accordance with regulation 7(4), where an applicant wishes to carry out business activities other than issuing e-money and the provision of payment services and we feel that the carrying on of this business will, or is likely to, impair our ability to supervise the business or its financial soundness, we can require the applicant to form a separate legal entity to issue e-money and provide payment services.
- 3.23 Authorised EMIs are inherently reliant on IT systems so, to ensure they operate soundly, we will assess IT systems during the approval process. Applicants must satisfy us that their overall IT strategies and systems are proportionate to the nature, scale and complexity of the business and are sufficiently robust to facilitate, on an ongoing basis, their compliance with the conditions of authorisation.

*Initial capital (regulation 6(3) and paragraph 3 of Schedule 1)*

- 3.24 The applicant must provide evidence that they hold initial capital at the level required by Part 1 of Schedule 2 to the EMRs. The level of initial capital required is at least €350,000. The applicant should evidence that they have such capital already in place or provide satisfactory evidence that it will be in place prior to authorisation. Authorisation cannot be granted without the required initial capital.
- 3.25 The evidence that should be provided will depend on the type of business and its source of funding. For example, if an applicant is a limited company and using paid-up share capital, we would expect to see a copy of the SH01 form submitted to Companies House and a bank statement, in the business name, showing the monies being paid in. If an applicant has already been trading and has sufficient reserves to meet the initial capital requirement, then a copy of the last year-end accounts may be sufficient (or interim accounts if appropriate). Businesses may wish to capitalise nearer to the time of authorisation, so this evidence can be provided at a later date but will be required before authorisation is granted. For an application to be complete we need to be satisfied that the initial capital will be in place immediately before authorisation.
- 3.26 Applicants that intend to provide unrelated payment services should note that there is no additional initial capital requirement.

*Ongoing capital (regulation 19)*

- 3.27 As well as the requirements for initial capital, the EMRs require authorised EMIs to maintain adequate own funds on an ongoing basis. At the time of authorisation we

will also assess the financial information supplied in the business plan to see if it shows that own funds are likely to be maintained on an ongoing basis. Before authorising an applicant, we expect to be provided with evidence that it has the systems, resources and procedures to be able to maintain its own funds to meet the maximum ongoing capital requirement projected for its first year of operation.

- 3.28 There are ongoing capital requirements that apply to authorised EMIs in respect of e-money issuance (method D) as well as unrelated payment services (if applicable). If an applicant intends to provide unrelated payment services, the assessment will cover the method (method A, B or C) we direct the applicant to use (taking into account the applicant's preference). Please note that authorised EMIs that provide unrelated payment services will have to hold the combined total of capital requirements described above.
- 3.29 More detailed information is given in Chapter 9.

*Safeguarding measures (paragraph 4 of Schedule 1)*

- 3.30 To help protect customers' funds while they are held by the authorised EMI, it must implement one of two specified safeguarding measures. The two measures are:
- immediately segregate the relevant funds (funds received in exchange for e-money or for payment services) from others and, when held at the end of the business day following the day on which they were received, place them in an account with an authorised credit institution or in assets held by an authorised custodian; or
  - arrange for the relevant funds to be covered by an insurance policy or by a comparable guarantee from a UK or EEA authorised insurer, bank or building society.
- 3.31 Applicants must describe the safeguarding measures they intend to use to satisfy regulation 20. If a guarantee or insurance policy is to be used, a copy of the guarantee or policy must be provided.
- 3.32 Funds received for unrelated payment services have to be safeguarded separately. Applicants that intend to provide unrelated payment services must describe the safeguarding measures they intend to use to satisfy regulation 19 of the PSRs as modified by regulation 20(6) of the EMRs.
- 3.33 There is more information in Chapter 10, including guidance on what we would expect to see by way of organisational arrangements.

*Governance arrangements, internal controls, risk management and money laundering controls (regulation 6(5) and (7), paragraphs 5 and 6 of Schedule 1)*

- 3.34 Applicants are required to provide descriptions of the governance arrangements, internal control mechanisms, risk management procedures and money laundering controls they will use when issuing e-money and providing payment services.

We will assess if the arrangements, controls and procedures are appropriate, sound and adequate, taking account of a number of factors, such as the:

- types of e-money to be issued and payment services to be provided;
- nature, scale and complexity of the business;
- diversity of its operations, including geographical diversity;
- volume and size of its transactions; and
- degree of risk associated with each area of its operations.

### Governance arrangements

3.35 Governance arrangements are the procedures used in the decision-making and control of the business that provide its structure, direction and accountability.

3.36 The description of the governance arrangements must include a clear organisational structure with well-defined, transparent and consistent lines of responsibility (regulation 6(5)(a)). If applicable, this should cover the unrelated payment services business as well as the e-money business. We would also expect to receive information on:

- decision-making procedures;
- reporting lines;
- internal reporting and communication processes;
- the arrangements for regular monitoring of internal controls and procedures; and
- measures that would be taken to address any deficiencies.

### Risk management

3.37 The description of the risk management procedures provided in the application should show how the business will effectively identify, manage, monitor and report any risks to which the applicant might be exposed (regulation 6(5)(b)). Such risks may include risks in relation to both the e-money business and any payment services business:

- settlement risk (settlement of a payment transaction does not take place as expected);
- operational risk (loss from inadequate or failed internal processes, people or systems);
- counterparty risk (that the other party to a transaction does not fulfil its obligations);
- liquidity risk (inadequate cash flow to meet financial obligations);
- market risk (risk resulting from the behaviour of the entire market); and
- financial crime risk (see Chapter 11); and
- foreign exchange risk (fluctuation in exchange rates).



- 3.38 Depending on the nature and scale of the business and any payment services being provided, it may be appropriate for the authorised EMI to operate an independent risk management function. Where an independent risk management function is not appropriate, the authorised EMI should nevertheless be able to demonstrate that the risk management policies and procedures it will adopt are effective. In any case, it will have to appoint a money laundering reporting officer.

### Internal controls

- 3.39 Internal controls are the systems, procedures and policies used to safeguard the business from fraud and error, to ensure the authorised EMI's compliance with legal requirements, and to ensure accurate financial information (regulation 6(5)(c)). They should include sound administrative and accounting procedures that will enable the applicant to deliver to us, in a timely manner, financial reports that reflect a true and fair view of its financial position and that will enable the applicant to comply with the requirements of the EMRs in relation to its customers.
- 3.40 Where the applicant wishes to engage distributors and/or agents we would expect the internal controls to ensure the applicant meets its responsibilities for these entities.

### Money laundering controls

- 3.41 Applicants for authorisation are required to provide a description of the internal control mechanisms they will establish to comply with the Money Laundering Regulations 2007 and the EC wire transfer regulation<sup>6</sup> (paragraph 6, Schedule 1 to the EMRs).
- 3.42 In particular, we expect information on the risk-sensitive policies, procedures and internal controls related to:
- customer due diligence checks;
  - the ongoing monitoring of business relationships;
  - the reporting of suspicions, both within the business and to the Serious Organised Crime Agency;
  - assessment of money laundering risks and the application of enhanced measures in higher risk situations;
  - record-keeping;
  - monitoring compliance with procedures;
  - internal communication of policies and procedures; and
  - staff awareness and training on money laundering matters.
- 3.43 Applicants must also provide us with the name of the person nominated to receive disclosures under Part 7 of the Proceeds of Crime Act 2002 and referred to in regulation 20(2) (d)(1) of the Money Laundering Regulations 2007 (the money

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<sup>6</sup> Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

laundering reporting officer). Where different, applicants must also provide us with the name of the individual appointed under regulation 20(5A) of the Money Laundering Regulations 2007.

- 3.44 We will also monitor authorised EMIs' compliance with Schedule 7 to the Counter-Terrorism Act 2008. We expect the description of the applicant's governance arrangements and internal control mechanisms to explain how they propose to meet their obligations under this legislation.
- 3.45 There is more information on what adequate and risk-sensitive policies and procedures entail in Chapter 11.

#### *Structural organisation (paragraph 7 of Schedule 1)*

- 3.46 We will require a description of the applicant's structural organisation, which is the plan for how the work of the business will be organised. We expect this to be in the form of an organisational chart. The information must also include, where applicable, a description of the intended use of agents, distributors and branches, its outsourcing arrangements (if any), and its participation in a national or international payment system. The description of the structural organisation should also cover the provision of unrelated payment services, if applicable.

#### *Outsourcing (regulation 26)*

- 3.47 The EMRs make specific provisions in relation to the outsourcing to third parties of 'important' operational functions, which mirror provisions in the PSRs. These provisions are:
- the outsourcing is not undertaken in such a way as to impair:
    - the quality of internal control; or
    - our ability to monitor the authorised EMI's compliance with the EMRs or PSRs;
  - the outsourcing does not result in any delegation by the senior management of responsibility for complying with the EMRs or PSRs;
  - the relationship and obligations of the authorised EMI towards its e-money holders under the EMRs or payment service users under the PSRs is not substantially altered;
  - compliance with the conditions which the authorised EMI must observe in order to be authorised and remain so is not adversely affected; and
  - none of the other conditions of the authorised EMI's authorisation requires removal or variation.
- 3.48 We will take these factors into consideration when assessing an authorisation application where the business intends to outsource important operational functions. See 'Outsourcing arrangements' in Part II of Chapter 4, for guidance on what constitutes an 'operational function'.

3.49 Regulation 26(3) indicates what is considered an ‘important operational function’. In summary, it is a function which, if it failed or was defective, would materially impair an authorised EMI’s ability to comply with the EMRs or PSRs, its financial performance, or soundness or continuity of its e-money issuance or provision of payment services. In practice, which operational functions of an authorised EMI are important will vary, according to the nature and scale of its business.

*Qualifying holdings (regulation 6(6)(a), paragraph 8 of Schedule 1)*

3.50 A condition for authorisation under regulation 6(6)(a) is that the applicant must satisfy us that any persons having a qualifying holding in it are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of the authorised EMI. This comprises two elements:

- an assessment by the applicant as to which persons have a qualifying holding; and
- an assessment of the fitness and propriety of those persons.

3.51 A ‘qualifying holding’ is defined in the EMRs by reference to Article 4(11) of the Banking Consolidation Directive (BCD).<sup>7</sup> The definition in the BCD is a: ‘direct or indirect holding in an undertaking that represents 10% or more of the capital or of the voting rights or that makes it possible to exercise a significant influence over the management of that undertaking’. We refer to a person with a qualifying holding as a ‘controller.’

3.52 In relation to an authorised EMI, a controller is, broadly, an individual or business that does one of the following:

- holds 10% or more of the shares in or capital of the applicant business (or 10% or more of shares in/capital of a parent of the applicant);
- has a shareholding of any size in the applicant business or a parent and is able to exercise significant influence over the management of the applicant;
- is entitled to control or exercise control of 10% or more of the voting power in the applicant business (or 10% or more of the voting power in a parent of the applicant); or
- is able to exercise significant influence over the management of the applicant business through their voting power in it or a parent.

3.53 Limited liability partnership (LLP) applicants should note that some (or sometimes all) individual members may be controllers of the LLP. Usually this will depend on the number of members and the terms of the membership agreement, especially regarding voting power or significant influence. For example, in an 11-person LLP where all have equal voting power and equal contributions to capital, it might appear that none of the members will be a controller (as no individual member will have 10% or more of the voting power or capital). However, one or all of the members may still exercise significant influence. For example, if the membership agreement required significant decisions to be taken unanimously by the members,

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<sup>7</sup> Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

a dissenting member could exercise significant influence over the business's management despite having less than 10% of the voting power. Applicants should have this in mind when considering whether a member with less than 10% voting power could exercise significant influence over the management.

- 3.54 Regulation 6 of the EMRs requires the applicant to satisfy us that its controllers are fit and proper having regard to the sound and prudent conduct of the affairs of the applicant.
- 3.55 Paragraph 8 of Schedule 1 sets out the information that must be provided to us about the applicant's controllers. For each controller in the applicant, an authorisation application must contain the following information:
- the size and nature of the qualifying holding; and
  - evidence of the suitability of each controller taking into account the need to ensure the sound and prudent management of an authorised EMI.
- 3.56 Schedule 1 to the EMRs refers to evidence about the 'suitability' of controllers and regulation 6 to their 'fitness and propriety'. Although these terms are different, they incorporate the same essential factors, namely the controller's:
- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness.
- 3.57 While it is impossible to list every fact or matter that would be relevant to the fitness and propriety of a controller, the following are examples of factors that we will consider.
- Any convictions for criminal offences whenever they occurred and including spent convictions.<sup>8</sup> Of particular relevance are any offences involving dishonesty, fraud, or financial crime.
  - Whether the controller has been investigated or prosecuted for any criminal offence even if that investigation or prosecution did not result in a conviction.
  - Whether the controller has been the subject of any adverse finding or any settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a business, particularly an EMI.
  - Whether the controller has been the subject of adverse findings or any settlement in regulatory proceedings conducted by us or other regulatory bodies including a previous regulator, clearing houses and exchanges, professional bodies, or government bodies or agencies such as HM Revenue & Customs (HMRC), the Serious Organised Crime Agency and the Serious Fraud Office. This could include where the controller has received a fine for misconduct of some kind or has been warned that disciplinary measures may be imposed even if the warning was private.

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8 We can, from 30 April 2011, ask questions about and consider all convictions, whether or not they are spent.

- Whether the controller has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by us or other regulatory bodies including a previous regulator, clearing houses and exchanges, professional bodies, or government bodies or agencies such as HM Revenue & Customs (HMRC), the Serious Organised Crime Agency and the Serious Fraud Office. This could include where the controller has been required to produce documents or has been the subject of a search (with or without a warrant).
- Whether the controller has been refused membership, registration or authorisation of a professional organisation or if registration, authorisation, membership or licence has been revoked, withdrawn or terminated, or if the person has been expelled by a regulatory or government body.
- Whether the controller has been a director, partner, or concerned in the management of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.
- Whether, in the past, the controller has been candid and truthful in all his or her dealings with any regulatory body, government agency or similar and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the EMRs and regulatory system generally and with other legal, regulatory and professional requirements and standards.

3.58 Importantly, we will also consider the fitness and propriety of any person linked to the controller, for example, any person who has, or who appears to have, a relevant family or business relationship with the controller. This will include previous firms of which the controller has been a director, partner, or otherwise concerned in the management if the relevant event has occurred within one year of the controller's involvement in that business.

3.59 The details of any qualifying holdings should be submitted on the appropriate Qualifying Holding form, which is available on the [e-money section](#) of our website. We will use the information provided to assess the suitability and fitness and propriety, as required by the EMRs.

3.60 Non-disclosure of matters which we consider relevant, even if the applicant considers the matter to be irrelevant or immaterial, may impugn the fitness and propriety of the applicant and is likely to result in a delay of the processing of the application and could result in the application being refused on those grounds. Full and candid disclosure is similarly treated as positive evidence of fitness and propriety.

*Directors and persons responsible for the management of the authorised EMI and the activities of issuing e-money and payment services (regulation 6(6)(b), paragraph 9 of Schedule 1)*

3.61 A condition for authorisation under regulation 6(6)(b) is that the applicant must satisfy us that all directors and all persons who are or will be responsible for the management of the e-money business and payment services business are of good repute and possess the appropriate knowledge and experience.

- 3.62 In order to meet this condition, the applicant is required under Schedule 1 to provide the following information:
- the identity of all members of the management board (for example, the directors (if the applicant is a company) or the members (if the applicant is an LLP));
  - the identity of all persons responsible for the management of the e-money business and payment services business where other individuals perform these activities in addition to the directors/members; and
  - evidence that these individuals are of good repute and that they possess the appropriate knowledge and experience to issue e-money and perform payment services.
- 3.63 In the case of an applicant that only issues e-money and provides payment services, this will mean the applicant is likely to be required to complete the relevant EMD Individual forms for all senior management of the applicant. In the case of a hybrid authorised EMI that carries on business activities other than e-money issuance and payment services, the applicant only has to provide the information set out above in relation to persons responsible for the management of its e-money business or payment services business. The individuals that the applicant tells us are responsible for the management of the e-money issuance and payment services activities of the applicant are referred to as ‘EMD Individuals’.
- 3.64 Where the applicant is a company, it is likely that all the directors will be EMD Individuals. However, the applicant should carefully consider whether senior managers with day-to-day responsibility for running the firm should also be included. All individuals with responsibility for the management of the e-money business and payment services business are subject to the test of ‘good repute’ above. If the applicant is in doubt as to whom should be included then it would be advisable to submit an EMD Individual form.

#### Assessing reputation – fitness and propriety

- 3.65 The first stage in the assessment process is the completion of the EMD Individual form. We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required. The questions on the form are indicative of the matters we consider are likely to be relevant and of which we expect to have notice. However, they are not exhaustive and the form contains ample space for other issues to be disclosed even if there is not a specific question on the form which covers that issue.
- 3.66 Non-disclosure of matters which we consider to be relevant, even if the applicant or EMD Individual considers the matter to be irrelevant or immaterial, may impugn the fitness and propriety of the applicant, is likely to result in a delay of the processing of the application and could result in the application being refused on those grounds. Full and candid disclosure is similarly treated as positive evidence of fitness and propriety.

- 3.67 Regulation 6(6)(a) requires the applicant to satisfy us as to the reputation, knowledge and experience of the EMD Individual. We consider this test to comprise the same essential factors as the term ‘fitness and propriety.’ In considering the extent to which we can be satisfied as to the EMD Individual’s reputation, we will therefore assess:
- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness.
- 3.68 If a matter comes to our attention that suggests the person might not be fit and proper, we will take into account the above factors when determining how relevant or material that information is to our assessment. It is important for applicants to note that we must be able to take account of all matters in order to make an informed assessment.
- 3.69 It should therefore be clear to applicants that it is for us (and not the applicant or EMD Individual) to make an assessment of the relevance and materiality of a particular fact. **If the applicant or EMD Individual is in any doubt whatsoever as to the relevance or materiality of a particular matter, it should be set out in full in the EMD Individual form.** The questions on the form are broad and varied but they are simply an indication of the matters we consider to be relevant and/or material to its assessment.
- 3.70 During the application process, we may discuss the assessment of the candidate’s fitness and propriety informally with the applicant and may retain any notes of those discussions. We may also conduct formal, recorded interviews.
- 3.71 Examples of the matters which we consider might be relevant to each particular aspect of fitness and propriety are set out further below. However, it is not possible to list all the matters that would be relevant to a particular application or individual. Again, if there is any doubt whatsoever about whether a matter is relevant or material it must be included in the EMD Individual form.

#### Honesty, integrity and reputation

- 3.72 In determining the honesty, integrity and reputation of the EMD Individual we have set out below examples of matters that we consider relevant and of which we expect disclosure in the EMD Individual form. This list is not exhaustive.
- 3.73 Importantly, we will also consider the fitness and propriety of any person linked to the EMD Individual, for example, any person who has, or who appears to have, a relevant family or business relationship with the EMD Individual. Further, we will take account of the matters below in the context of previous firms of which the EMD Individual has been a director, partner, or otherwise concerned in the management if the relevant event has occurred within one year of the EMD Individual’s involvement in that business. So for example, where a firm of which the EMD Individual was previously a senior manager has been investigated by HMRC for money laundering during or within one year of the EMD Individual’s



involvement, we would expect to be informed of this by the EMD Individual or the applicant and would take it into account in our assessment.

3.74 Examples of matters that are likely to be relevant to our assessment of honesty, integrity and reputation are listed below.

- Any convictions for criminal offences (including spent convictions<sup>9</sup>), whenever they occurred. Particularly relevant are any offences involving dishonesty, fraud, or financial crime including serious tax offences and money laundering.
- Any investigations or prosecutions for any criminal offence even if that investigation or prosecution did not result in a conviction.
- Any adverse findings or any settlements in civil proceedings, particularly in connection with investment or other financial business, market abuse, insolvency, insurance, misconduct, fraud or the formation or management of a business, particularly an EMI. This is deliberately broad and could include everything from employment tribunal findings to orders freezing assets or applications for such orders.
- Any adverse findings or any settlements in regulatory proceedings conducted by us or other regulatory bodies. The term 'regulatory bodies' should be interpreted broadly and includes bodies such as HMRC, the Serious Organised Crime Agency, the Serious Fraud Office etc. We would expect to be told about fines for misconduct as well as warnings about potential disciplinary measures, even if the warning was private.
- Any ongoing or historical investigations or disciplinary proceedings, by us or other regulatory bodies (including HMRC, the Serious Organised Crime Agency, the Serious Fraud Office etc) or previous employers. For example, this could include a requirement to produce documents, a previous disciplinary investigation into alleged misconduct at work or being interviewed whether compelled or voluntary. For the purposes of this information, it is irrelevant whether any such investigations or proceedings resulted in action against the EMD Individual or against an associated business.
- Any refusals of membership, registration or authorisation of a professional organisation or any revocations, terminations, expulsions or withdrawals of registration, authorisation, membership or licence. This could include not only action taken by regulatory bodies but the dismissal of an agent by a principal firm.
- Involvement as a director, partner, or manager, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection.
- General conduct including whether the EMD Individual has been or is candid and truthful in all his dealings with any regulatory body, government agency or similar and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the EMRs and regulatory system generally and with other legal, regulatory and professional requirements and standards.

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<sup>9</sup> We can, from 30 April 2011, ask questions about and consider all convictions, whether or not they are spent.



- Information (including relevant shareholdings) relevant for assessing potential conflicts of interest with another entity.
- 3.75 We will consider matters that may have arisen in the UK or elsewhere.
- 3.76 The applicant should tell us of all matters which are or could be relevant and should disclose where there is any possible doubt. We will consider the materiality of the circumstances in relation to the requirements and standards of the EMRs. For example, a conviction for a criminal offence will not necessarily automatically mean an application is rejected. We treat each individual's application on a case-by-case basis, taking into account:
- the seriousness of, and the circumstances surrounding, the offence;
  - the explanation offered by the convicted individual;
  - the relevance of the offence to the proposed role;
  - the passage of time since the offence was committed; and
  - evidence of the individual's rehabilitation.
- 3.77 If an applicant is not sure whether something may have an impact on an individual's fitness and propriety, the information should be disclosed. The non-disclosure of material facts is taken very seriously by us as it could indicate deliberately dishonest conduct. If in doubt, an applicant should disclose.

### Competence and capability

- 3.78 In determining an individual's competence and capability, we will consider whether the individual has the:
- knowledge;
  - experience; and
  - training
- to be able to perform the activity of issuing e-money and all relevant payment services.
- 3.79 The level of experience, knowledge and training should be proportionate to the nature, complexity and scale of risk inherent in the business activity. Of specific concern is likely to be where the EMD Individual has little or no experience of running a company or operating a business in the UK or appears to have little understanding of the relevant requirements. We will expect to be told about positive steps an EMD Individual has taken to improve his or her competency or understanding and this will be taken into account in our assessment.
- 3.80 Part of assessing an EMD Individual's capability is the amount of time that individual dedicates to the applicant business. Therefore, time spent regularly out of the country or on other business matters will be considered in order to assess whether such matters are likely to impugn the ability of the individual to manage the e-money business and payment services business in accordance with the relevant requirements and standards.

## Financial soundness

- 3.81 In determining good repute, we will take into account an individual's financial soundness and we will consider any factors including, but not limited to the following.
- Whether the EMD Individual has been the subject of any judgment debt or award in the UK or elsewhere that remains outstanding or was not satisfied within a reasonable period. We will also take into account any judgment debt or award that has been made against a firm with which the EMD Individual is or was involved, particularly where that debt was not satisfied within a reasonable period.
  - Whether the individual has made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been an adjudged bankrupt, been the subject of a bankruptcy restriction order (including an interim bankruptcy restriction order), offered a bankruptcy restriction undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.
  - Whether any firm with which the EMD Individual is or was involved, has been put into liquidation, wound up (whether compulsorily or voluntarily), ceased trading, had a receiver or administrator appointed or entered into any voluntary arrangement with its creditors.
- 3.82 We expect to be informed of all such matters and may ask for further information including a description of the EMD Individual's conduct in relation to such matters.
- 3.83 We will not normally require the individual to supply a statement of assets and liabilities. The fact that an individual may be of limited financial means will not usually, in itself, affect his or her suitability to issue e-money and provide unrelated payment services activities.

### *Auditors and audit arrangements (paragraph 13 of Schedule 1)*

- 3.84 Where an authorised EMI would be required under any UK legislation (in particular company legislation) to appoint an auditor, the name and contact details must be included in the application form.
- 3.85 The applicant must provide a description of the audit and organisational arrangements that have been set up in relation to the safeguarding measures, governance arrangements, risk management procedures, internal control mechanisms and organisational structure described in the application. These should show that the applicant is taking all reasonable steps to protect the interests of its customers and to ensure continuity and reliability in the performance of the issuance of e-money and payment services activities.
- 3.86 Depending on the nature, scale and complexity of the business, to comply with the requirement of the EMRs for sound accounting procedures and adequate internal control mechanisms, it may be appropriate for an authorised EMI to maintain an internal audit function that is separate and independent from the other functions

and activities of the authorised EMI. We would expect the internal audit function to have the following responsibilities:

- establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the business's systems, internal control mechanisms and arrangements;
- issue recommendations based on the result of work carried out;
- verify compliance with those recommendations; and
- report in relation to internal audit matters to senior personnel and/or a separate supervisory function (for example, a supervisory board in a two-tier board structure or non-executive committee in a one-tier structure).

*Location of offices (regulation 6(4), paragraph 12 of Schedule 1)*

3.87 The applicant must be either:

- a body corporate (for example, a limited company or LLP) constituted under the law of a part of the UK and must have its head office and, where relevant, its registered office in the UK; or
- a body corporate which has a branch that is located in the UK and whose head office is situated in a territory that is outside the EEA.

3.88 An applicant that is a body corporate with a branch located in the UK and whose head office is situated in a territory that is outside the EEA may only provide payment services that are related to the issuing of e-money, and will not be able to exercise passport rights in another EEA state. We will notify the European Commission of all authorisations for branches of authorised EMIs having their head office outside of the European Community (Article 8 (2) of 2EMD).

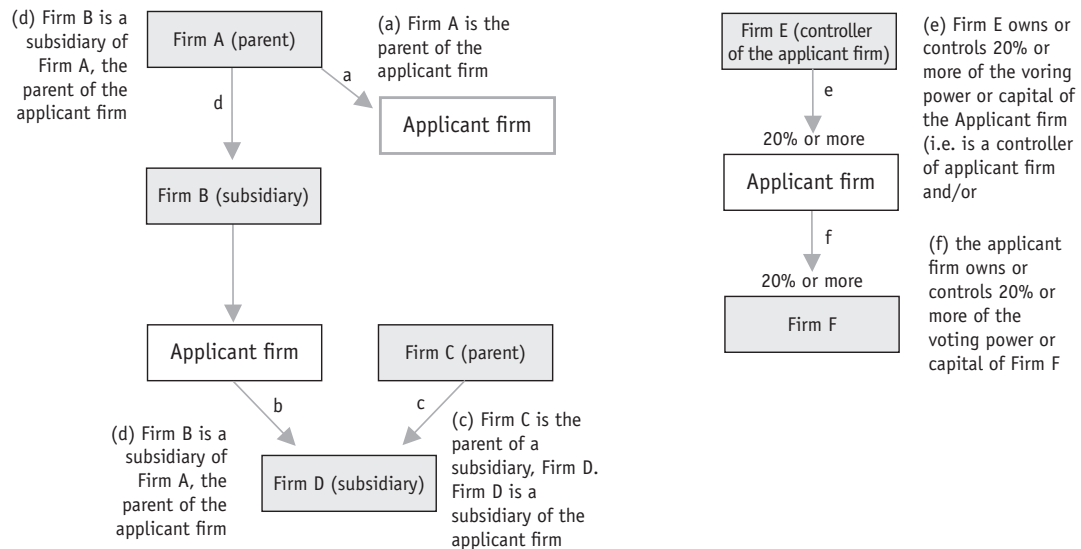
*Close links (regulation 6(8) and (9))*

3.89 An applicant must satisfy us that any 'close links' it has are not likely to prevent the effective supervision of the authorised EMI or, where a close link is located outside of the EEA, the laws of the foreign territory would not prevent effective supervision.

3.90 A close link is defined as:

- a parent undertaking of the applicant;
- a subsidiary undertaking of the applicant;
- a parent undertaking of a subsidiary undertaking of the applicant;
- a subsidiary undertaking of a parent undertaking of the applicant;
- an owner or controller of 20% or more of the capital or voting rights in the applicant; or
- an entity of which the applicant owns or controls 20% or more of the capital or voting rights.

- 3.91 The application should include details of any persons meeting the above criteria, as set out in the form. We will then assess the nature of the relationship against the conditions for authorisation. If an EMD Individual form is to be submitted for a person that has a qualifying holding, a controller form will not be required in relation to that person.
- 3.92 The following diagram sets out the types of relationships between businesses and individuals that we consider to be close links. Shaded boxes are all close links of the relevant applicant.



### *Money laundering registration (regulation 6(7))*

- 3.93 Authorised EMIs will have to submit an Annex 1 registration application along with their application for authorisation. Copies are available on the [e-money section](#) of our website.

## **Decision-making**

- 3.94 We will make a decision to either approve or reject the application once we have received all the required information. The decision-making process is described in Part III.

## **Part II: Becoming a small EMI**

- 3.95 Businesses whose total business activities generate average outstanding e-money that does not exceed €5m<sup>10</sup> may apply to be registered as small EMIs. Small EMIs may provide unrelated payment services, but only on the same basis as a small payment institution; that is, the monthly average, over a period of 12 months, of the total amount of relevant payment transactions must not exceed €3m.

<sup>10</sup> As defined in footnote 5.

## Making an application for registration

- 3.96 Application forms are available on the [e-money section](#) of our website. We will aim to acknowledge a small EMI application within five business days of receipt, and following this the case officer responsible for assessing it will contact you. Please email any queries on submitted applications to our dedicated email address: [emd-semi@fsa.gov.uk](mailto:emd-semi@fsa.gov.uk)
- 3.97 An application for registration as a small EMI has fewer information and assessment requirements than an authorisation application.
- 3.98 The application fee for applying for registration as a small EMI is £1,000. No work will be done on processing the application, until the full fee is received. The fee is non-refundable and must be paid by cheque.
- 3.99 The application must be signed by the person(s) responsible for making the application on behalf of the applicant. The appropriate person(s) depend(s) on the applicant's type, as follows.

Type of applicant	Appropriate signatory
Company with one director	The director
Company with more than one director	Two directors
Limited liability partnership	Two members
Limited partnership	The general partner or partners

## Assessment of the application

- 3.100 Registration will not be granted unless we are satisfied in relation to the 'conditions for registration' specified in regulation 13.
- 3.101 This section explains the information that must be supplied with the application and the conditions that must be satisfied. While the format of the information to be provided is not prescribed, applicants should consider whether the overall content can demonstrate to our satisfaction that the conditions are met. This does not mean that full copies of all the relevant procedures and manuals have to be enclosed with the applications; a summary of what is covered by them may be sufficient, as long as the manuals and procedures themselves are available if we wish to investigate further.

### *Business plan (regulation 13 (7) (b) and paragraph 2 of Schedule 1)*

- 3.102 The business plan has to explain how the applicant intends to carry out its business. It should provide enough detail to show that the proposal has been carefully thought out and that the adequacy of financial and non-financial resources has been considered.
- 3.103 The plan must include a forecast budget for the first three financial years. The budget has to demonstrate that the applicant is able to employ appropriate and proportionate systems, resources and procedures to operate soundly, and that it will be able to continue to meet the initial capital requirements and the ongoing capital (own funds) requirement, if applicable.

- 3.104 The business plan should also include, but not be limited to, the following:
- background to the application;
  - a description of the e-money issuance and payment services business;
  - sources of funding;
  - target markets; and
  - a marketing plan.
- 3.105 As small EMIs are inherently reliant on IT systems to ensure they operate soundly, we intend to assess IT systems during the approval process. Applicants must satisfy us that their overall IT strategy is proportionate to the nature, scale and complexity of the business and is sufficiently robust to facilitate, on an ongoing basis, their compliance with the conditions of registration.
- 3.106 If the applicant intends to provide unrelated payment services then a separate business plan for these, covering the information required above, should also be submitted.

*Limits on business activities (regulation 13(3) and (4))*

- 3.107 Businesses should only apply to become small EMIs if their total business activities immediately before registration do not generate average outstanding e-money that exceeds €5m.<sup>11</sup>
- 3.108 If the business plans to undertake payment services not connected with the issuing of e-money (unrelated payment services), then the monthly average of relevant payment transactions over the 12-month period preceding the application must not exceed €3m.
- 3.109 Where an applicant to become a small EMI provides payment services that are not related to the issuing of e-money or carries out other business activities and the amount of outstanding e-money is unknown in advance, the applicant may make an assessment of average outstanding e-money for the purposes of the registration condition in regulation 13(3). This should be done on the basis of a representative proportion assumed to be used for issuing e-money, provided that the representative proportion can be reasonably estimated on the basis of historical data and to our satisfaction.
- 3.110 Also, where an applicant to become a small EMI has not completed a sufficiently long period of business to compile historical data adequate to make that assessment, the applicant must make the assessment on the basis of projected outstanding e-money as evidenced by its business plan, subject to any adjustments to that plan required by us.
- 3.111 Paragraphs 3.109 and 3.110 apply equally to a small EMI in relation to their unrelated payment transactions for the purposes of regulation 13(4).

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11 As defined in footnote 5.

- 3.112 Small EMIs will have to take account of changes in exchange rates where they carry out transactions in different currencies. In our view it would be reasonable for small EMIs to use the European Commission's monthly accounting rate for the euro when calculating turnover in euro for a particular calendar month. Current and historical rates can be found on the [InforEuro website](#).

*Initial capital (regulation 13(5))*

- 3.113 By the time of registration, the applicant must provide evidence that it holds initial capital at the level required by Part 1 of Schedule 2 to the EMRs. The level of initial capital required varies according to the average value of outstanding e-money:
- where the business activities of an applicant generate average outstanding e-money of €500,000 or more, the capital requirement is at least equal to 2% of the average outstanding e-money of the institution; and
  - where the business activities of an applicant generate average outstanding e-money of less than €500,000, there is no capital requirement.
- 3.114 Where an applicant to become a small EMI has not completed a sufficiently long period of business to compile historical data adequate to make that assessment, the applicant must make the assessment on the basis of projected outstanding e-money as evidenced by its business plan, subject to any adjustments to that plan required by us.
- 3.115 The evidence that should be provided will depend on the type of business and its source of funding. For example, if an applicant is a limited company and using paid-up share capital, we would expect to see a copy of the SH01 form submitted to Companies House and a bank statement, in the business name, showing the monies being paid in. If an applicant has already been trading and has sufficient reserves to meet the initial capital requirement, then a copy of the last year-end accounts may be sufficient (or interim accounts if appropriate). Businesses may wish to capitalise nearer to the time of registration, so this evidence can be provided at a later date but will be required before registration is granted. For an application to be complete we must be satisfied that the initial capital will be in place immediately before registration.

*Ongoing capital (regulation 19)*

- 3.116 Small EMIs that are required by the EMRs to hold initial capital are also required to maintain adequate own funds on an ongoing basis, by reference to paragraph 14 of Schedule 2. (See Chapter 9 for more information.)
- 3.117 Applicants will be required to provide evidence of how this condition will be met.

*Governance arrangements and risk management controls (regulation 13(6))*

- 3.118 Applicants are required to provide descriptions of the governance arrangements and risk management procedures they will use when issuing e-money and providing payment services. We will assess whether the arrangements, controls and procedures are appropriate, sound and adequate, taking into account a number of factors, such as the:

- types of payment services and e-money envisaged;
- nature, scale and complexity of the business;
- diversity of its operations, including geographical diversity;
- volume and size of transactions; and
- degree of risk associated with each area of the operations.

### Governance arrangements

3.119 Governance arrangements are the procedures used in the decision-making and control of the business that provide its structure, direction and accountability.

3.120 The description of the governance arrangements must include a clear organisational structure with well-defined, transparent and consistent lines of responsibility (regulation 13(6)(a)). If applicable, this should cover the unrelated payment services business as well as the e-money business. We would also expect to receive information on:

- decision-making procedures;
- reporting lines;
- internal reporting and communication processes;
- the arrangements for regular monitoring of internal controls and procedures; and
- measures that would be taken to address any deficiencies.

### Risk management

3.121 The description of the risk management procedures provided in the application should show how the business will effectively identify, manage, monitor and report any risks to which the applicant might be exposed (regulation 13(6)(b)). Such risks may include risks in relation to both the e-money business and any payment services business:

- settlement risk (settlement of a payment transaction does not take place as expected);
- operational risk (loss from inadequate or failed internal processes, people or systems);
- counterparty risk (that the other party to a transaction does not fulfil its obligations);
- liquidity risk (inadequate cash flow to meet financial obligations);
- market risk (risk resulting from the behaviour of the entire market);
- financial crime risk (see Chapter 11); and
- foreign exchange risk (fluctuation in exchange rates).



3.122 Depending on the nature and scale of the business and any payment services being provided, it may be appropriate for the small EMI to operate an independent risk management function. Where this is not appropriate, the small EMI should nevertheless be able to demonstrate that the risk management policies and procedures it will adopt are effective.

*Qualifying holdings (regulation 12(1), paragraph 4 of Schedule 3)*

3.123 Applicants must identify those persons that have a qualifying holding (a ‘controller’) in the applicant. Although we will not assess the fitness and propriety of these persons as part of the applicant’s registration, we need information about the identity of the person(s) as well as the size and nature of the qualifying holding(s) for our ongoing monitoring of the small EMI. Small EMIs should be aware that the same ongoing requirements relating to ‘changes in control’ apply in respect of them as apply in relation to authorised EMIs.

3.124 A qualifying holding is defined in the EMRs by reference to Article 4(11) of the Banking Consolidation Directive (BCD). The definition in the BCD is a: ‘direct or indirect holding in an undertaking that represents 10% or more of the capital or of the voting rights or that makes it possible to exercise a significant influence over the management of that undertaking.’

3.125 In relation to an EMI, a person with a qualifying holding is, broadly, an individual or business that does one of the following:

- holds 10% or more of the shares in or capital of the applicant business (or 10% or more of shares in/capital of a parent);
- has a shareholding of any size in the applicant business or a parent and is able to exercise significant influence over the management of the applicant business;
- is entitled to control or exercise control of 10% or more of the voting power in the applicant business (or 10% or more of the voting power in a parent); or
- is able to exercise significant influence over the management of the applicant business through their voting power in it or a parent.

3.126 LLP applicants should note that some (or sometimes all) individual members may be controllers of the LLP. Usually this will depend on the number of members and the terms of the membership agreement, especially regarding voting power or significant influence. For example, in an 11-person LLP where all have equal voting power and equal contributions to capital, it might appear that none of the members will be a controller (as no individual member will have 10% or more of the voting power or control). However, one or all of the members may still exercise significant influence. For example, if the membership agreement required significant decisions to be taken unanimously by the members, a dissenting member could exercise significant influence over the business’s management despite having less than 10% of the voting power. Applicants should have this in mind when considering whether a member with less than 10% voting power could exercise significant influence over the management.

*Directors and persons responsible for the management of the small EMI and the activities of issuing e-money and payment services (regulation 13(7)(a))*

- 3.127 Under regulation 13(7)(a), we must be satisfied that the applicant's directors and (where different) those persons who are or will be responsible for the management of the e-money business or payment services business carried on by the small EMI are of good repute and possess appropriate knowledge and experience.
- 3.128 This incorporates two elements, firstly identification by the applicant of those with responsibility for the e-money business and payment service business. All such individuals must be included in the application (such an individual is referred to as an 'EMD Individual'). Secondly the applicant, together with the EMD Individual, must provide full and complete information to us about all EMD Individuals in order to satisfy us as to the reputation, knowledge and experience of these individuals.
- 3.129 We expect to be provided with the following information:
- the identity of all members of the management board (for example, the directors (if the applicant is a company) or the members (if the applicant is an LLP));
  - the identity of all persons responsible for the management of the e-money business or payment services business where other individuals perform these activities in addition to the directors/members; and
  - evidence that these individuals are of good repute (in order to satisfy the fitness and propriety test).
- 3.130 In the case of an applicant that only issues e-money and provides payment services, this will mean the applicant is likely to be required to complete the relevant EMD Individual forms for each and every senior manager of the applicant. In the case of a hybrid small EMI that carries on business activities other than e-money issuance or payment services, the applicant only has to provide the information set out above in relation to persons responsible for the management of its e-money business or payment services business.
- 3.131 Where the applicant is a company, it is likely that all the directors will be EMD Individuals. However, the applicant should carefully consider whether senior managers with day-to-day responsibility for running the firm should also be included. All individuals with responsibility for the management of the e-money business and payment services business are subject to the test of 'good repute' above. If the applicant is in doubt as to whom should be included then it would be advisable to submit an EMD Individual form.

### Assessing fitness and propriety

- 3.132 The first stage in the assessment process is the completion of the EMD Individual form. We will assess the fitness and propriety of an individual on the information provided in the application form and other information available to us from our own and external sources. We may ask for more information if required.

- 3.133 In accordance with our overall approach to implementing the EMRs, we will take a risk-based and proportionate approach when making our assessment. We will take into consideration the nature and size of the e-money business and any payment services the applicant is seeking to provide.
- 3.134 If a matter comes to our attention which suggests that the person might not be fit and proper, we will take into account the above factors when determining how relevant that information is.
- 3.135 During the application process, we may discuss the assessment of the candidate's fitness and propriety informally with the applicant and may retain any notes of those discussions.
- 3.136 The factors that we will consider when making the fit and proper assessment are:
- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness.
- 3.137 Examples of the matters we will consider for each factor are set out below. However, it is not possible to list all the matters that would be relevant to a particular application or individual.

### Honesty, integrity and reputation

- 3.138 In determining the honesty, integrity and reputation of an individual, the matters that we will consider include, but are not limited to:
- convictions (including spent convictions<sup>12</sup>) or whether the individual has been arrested or charged with any criminal offence or has been or is the subject of any investigation relating to any criminal offence;
  - relevant civil or administrative cases;
  - relevant disciplinary action (including disqualification as a company director or bankruptcy);
  - whether the individual has been a director or senior manager in an entity that has been put into liquidation, wound up or is or has been the subject of an investigation by an inspector under company or any other legislation; and
  - information (including relevant shareholdings) relevant for assessing potential conflicts of interest with another entity.
- 3.139 We will consider matters that may have arisen in the UK or elsewhere.
- 3.140 The 'relevant' matters we refer to above will include offences under legislation relating to companies, banking or other financial services, serious tax offences or other dishonesty, insolvency, insurance, money laundering, market abuse, misconduct or fraud.

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12 We can, from 30 April 2011, ask questions about and consider all convictions, whether or not they are spent.

3.141 The applicant should tell us of all relevant matters, but we will consider the circumstances in relation to the requirements and standards of the EMRs. For example, a conviction for a criminal offence will not automatically mean an application is rejected. We treat each individual's application on a case-by-case basis, taking into account:

- the seriousness of, and the circumstances surrounding, the offence;
- the explanation offered by the convicted individual;
- the relevance of the offence to the proposed role;
- the passage of time since the offence was committed; and
- evidence of the individual's rehabilitation.

3.142 If an applicant is not sure whether something may have an impact on an individual's fitness and propriety, the information should be disclosed. The non-disclosure of material facts is taken very seriously by us as it is seen as evidence of current dishonesty. If in doubt, an applicant should disclose.

### **Competence and capability**

3.143 In determining an individual's competence and capability, we will consider whether the individual has the:

- knowledge;
- experience; and
- training

to be able to perform the activity of issuing e-money and providing all relevant payment services.

3.144 The level of experience, knowledge and training should be proportionate to the nature, complexity and scale of risk inherent in the business activity.

### *Financial soundness*

3.145 In determining good repute, we will take into account an individual's financial soundness and we will consider any factors including, but not limited to:

- whether the individual has been the subject of any judgement debt or award in the UK or elsewhere that remains outstanding or was not satisfied within a reasonable period; and
- whether the individual has made any arrangements with their creditors, filed for bankruptcy, had a bankruptcy petition served on them, been an adjudged bankrupt, been the subject of a bankruptcy restriction order (including an interim bankruptcy restriction order), offered a bankruptcy restriction undertaking, had assets sequestrated, or been involved in proceedings relating to any of these.

3.146 We will not normally require the individual to supply a statement of assets and liabilities. The fact that an individual may be of limited financial means will not, in itself, affect his or her suitability to issue e-money and provide unrelated payment services.

#### *Safeguarding measures (regulation 13(7)(c))*

3.147 To help protect customers' funds that have been received in exchange for e-money, a small EMI must implement one of two specified safeguarding measures. The two measures are:

- immediately segregate the relevant funds received and, when held at the end of the business day following the day on which they were received, place them in an account with an authorised credit institution or in assets held by an authorised custodian; or
- arrange for the relevant funds to be covered by an insurance policy or by a comparable guarantee from a UK or EEA authorised insurer, bank or building society.

3.148 Applicants must describe the safeguarding measures they intend to use to satisfy regulation 20 and, if using the insurance or guarantee method, provide a copy of the relevant insurance policy or guarantee.

3.149 Small EMIs that provide unrelated payment services may choose to safeguard funds received for the execution of payment transactions that are not related to the issuance of e-money. Where they choose to comply, the requirements are the same as those for an authorised EMI or authorised payment institution.

3.150 There is more information in Chapter 10, including guidance on what we would expect to see by way of organisational arrangements.

3.151 The application pack for registration as a small EMI asks the applicant how they will be complying with the safeguarding arrangements. This information will also be required in their annual reporting return (see Chapter 14).

#### *Convictions by management (regulation 13(8))*

3.152 We ask the applicant to confirm on the application form that none of the individuals responsible for the management of the small EMI has been convicted (including spent convictions<sup>13</sup>) of offences relating to money laundering, terrorist financing or other financial crimes. This includes offences involving fraud or dishonesty, offences under FSMA or under the EMRs or PSRs, and includes acts or omissions that would be an offence if they took place in the UK.

#### *Head office (regulation 13(9))*

3.153 The applicant must be a body corporate (for example, a limited company or LLP) and have its head office situated in the UK.

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13 We can, from 30 April 2011, ask questions about and consider all convictions, whether or not they are spent.

### *Money laundering controls (regulation 13(6))*

- 3.154 Small EMIs must submit an Annex 1 registration application along with their application for registration. Copies are available on the [e-money section](#) of our website.
- 3.155 Applicants for registration are required to provide a description of the internal control mechanisms that they will establish in order to comply with the Money Laundering Regulations 2007 and the EC wire transfer regulation<sup>14</sup> (regulation 12(1) of the EMRs).
- 3.156 In particular, we expect information on the risk-sensitive policies, procedures and internal controls related to:
- customer due diligence checks;
  - the ongoing monitoring of business relationships;
  - the reporting of suspicions, both within the business and to the Serious Organised Crime Agency;
  - assessment of money laundering risks and the application of enhanced measures in higher risk situations;
  - record-keeping;
  - monitoring compliance with procedures;
  - internal communication of policies and procedures; and
  - staff awareness and training on money laundering matters.
- 3.157 Applicants must also provide us with the name of the person nominated to receive disclosures under Part 7 of the Proceeds of Crime Act 2002 and referred to in regulation 20(2) (d)(1) of the Money Laundering Regulations 2007 (the Money Laundering Reporting Officer). Where different, applicants must also provide us with the name of the individual appointed under regulation 20(5A) of the Money Laundering Regulations 2007.
- 3.158 We will also monitor small EMIs' compliance with Schedule 7 to the Counter-Terrorism Act 2008. We expect the description of the applicant's governance arrangements and risk management procedures to explain how they propose to meet their obligations under this legislation.
- 3.159 There is more information on what adequate and risk-sensitive policies and procedures entail in Chapter 11.

### **Decision-making**

- 3.160 We will make a decision to either approve or reject the application once we have received all the required information. The decision-making process is described in Part III.

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<sup>14</sup> Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

### **Part III: Decision-making process**

- 3.161 Having assessed all the information provided, we will make a decision to either approve or reject the application for authorisation or registration. The applicant will be notified of the decision, along with instructions for the appeal process, if relevant.

#### *Timing (regulation 9(1) and (2) and regulation 15)*

- 3.162 We have to make a decision on a complete application within three months of receiving it. An application is complete when we have received all the information and evidence needed for us to make a decision. We will let the applicant know if we need more information.
- 3.163 In the case of an incomplete application, we must make a decision within 12 months of receipt. If discussions with the applicant have not resulted in us receiving all the information we need to make our decision, it is likely that an incomplete application will result in a refusal. This is because it is unlikely we will have been able to satisfy ourselves that the applicant has met the authorisation/registration requirements.
- 3.164 We maintain service standards for processing times for other activities that we regulate, which are generally shorter than those required under the EMRs. However, as our processes have not yet been fully developed or tested under normal operating conditions, we are unable to make such commitments at this stage. We will publish our EMRs service standards and update this document when these become available.

#### *Withdrawal by the applicant (regulation 9(3) and regulation 15)*

- 3.165 An application may be withdrawn by giving us written notice at any time before we make a decision.

#### *Approval (regulation 9(4) and (5) and regulation 15)*

- 3.166 If we decide to grant an application we will give the applicant notice of that decision, including, for authorised EMIs that wish to provide unrelated payment services, a direction on which capital calculation method they must use.
- 3.167 The EMRs allow us to include in the authorisation/registration a requirement for the EMI to take a specified action or refrain from taking specified action (for example, not to deal with a particular category of customer). The requirement may be imposed by reference to the person's relationship with its group or members of its group. We may also specify the time that a requirement expires (regulations 7 and 15). For example, we may require that the EMI refrains from providing specified unrelated payment services because we consider that the EMI does not have adequate systems and controls in place to manage the risks of the unrelated payment services.
- 3.168 We will update the online e-money section of our Register as soon as practicable after granting the authorisation or registration. It will show the contact details of the EMI, the activity of issuing e-money and the payment services it is permitted to undertake, and the names of any agents. It will also show if an authorised EMI has taken up passporting rights to issue e-money and provide payment services in another EEA state.



*Refusal (regulation 9(6) to (9) and regulation 15)*

- 3.169 We can refuse an application when the information and evidence provided does not satisfy the requirements of the EMRs. When this happens we are required to give the applicant a warning notice setting out the reason for refusing the application and allowing 28 days to make a representation on the decision.
- 3.170 Applicants can make oral or written representations. If the applicant chooses to make an oral representation, we should be notified within two weeks of the warning notice, so that arrangements can be made for a meeting within the 28-day deadline.
- 3.171 If no representations are made or, following them, we still decide to refuse the application, we will give the applicant a decision notice. If an EMI wishes to contest the decision, they may refer the matter to the Upper Tribunal (the Tribunal), an independent judicial body. If no referral has been made within 28 days we will issue a final notice. If the matter is referred to the Tribunal, we will take action in accordance with any directions given by it (including to authorise/register the EMI) and then issue the final notice.
- 3.172 On issuing the final notice, we are required to publish such information about the matter to which a final notice relates as we consider appropriate. However, we may not publish information if we believe it would be unfair to the business or prejudicial to the interests of consumers.



# 4 Changes in circumstances of authorisation or registration

- 4.1 This chapter describes the notifications that authorised EMIs and small EMIs must make to us as part of their ongoing authorisation or registration.
- 4.2 Credit institutions, credit unions and municipal banks with Part 4 permission to issue e-money may apply to vary their permission under the FSMA process. Information on this process can be found in the Handbook.

## **Introduction**

- 4.3 EMIs must provide us with two types of information while they are being regulated – we categorise these as ‘reporting’ and ‘notifications’.
- 4.4 Reporting information is the information we need on a regular and periodic basis to comply with our supervisory responsibilities and EU reporting obligations. Reporting requirements are discussed in Chapter 14.
- 4.5 The subject of this chapter is ‘notifications’. Notifications are what EMIs must send us when there is a change in any information they have already provided.
- 4.6 There are specific notification requirements in relation to an EMI’s agents, in respect of payment services provided (for both authorised EMIs and small EMIs), and passporting (authorised EMIs only). These are covered in Chapters 5 and 6.

## **Types of notifications and timing**

- 4.7 The EMRs contain requirements in relation to notifications of specific changes in circumstances, as well as a general requirement in regulation 37.
- 4.8 The general requirement is that an EMI must provide us with details without undue delay where it becomes apparent that there is, or is likely to be, a significant change in circumstances that is relevant to the matters listed below. We would generally consider ‘without undue delay’ to mean within 28 days of the change occurring at the latest.
- 4.9 The matters to which a significant change in circumstances is relevant are listed below.

### *Authorised EMI*

- Its fulfilment of the conditions for authorisation (including any significant change that is relevant to the items of information set out in Schedule 1 to the EMRs) or the requirement to maintain own funds.
- The issuance, distribution or redemption of e-money or the payment services it provides in exercise of passport rights.

### *Small EMI*

- Its fulfilment of the conditions for registration (including the information a small EMI must provide under regulation 12).

### *Use of an agent to provide payment services*

- The matters referred to in regulation 34(6)(b) and (c).

4.10 Regulation 37 also requires that, in the case of a substantial change that has not yet taken place, the EMI must provide details of the change a reasonable period before the change takes place. A ‘substantial change’ is, in our view, one that could affect either the EMI’s ability to meet the conditions for remaining authorised or registered, or the way we would supervise the EMI. We will need to assess substantial changes against the initial conditions for authorisation or registration. To give us time to do this, we consider that a period of 28 days before the change takes place would generally be ‘a reasonable period’. However, the notification period will depend on the circumstances of the change and EMIs should make efforts to notify us as soon as possible.

### **How to notify us**

4.11 Notifications must be made using the Standing Data form, which will be available on the e-money section of our website from 30 April 2011 or, where a change is not covered by this form, by written confirmation to our Customer Contact Centre.

### **Different notifications for authorised EMIs and small EMIs**

4.12 Not all notification requirements apply to both authorised EMIs and small EMIs. Although most of the notification requirements that apply to a small EMI also apply to an authorised EMI, some do not. To help EMIs identify the notification requirements that apply to them, the remainder of this chapter is divided into three parts:

- Part I describes the notification requirements that apply to all EMIs;
- Part II describes the notification requirements that only apply to authorised EMIs; and
- Part III describes the notification requirements that only apply to small EMIs.

## **Part I: Notifications applicable to all EMIs**

4.13 Changes in the following information will require a notification to us.

### **Name, contact details and standing data (including business name and contact details)**

4.14 EMIs should give us reasonable advance notice of changes to their name and contact details, which includes:

- registered name;
- trading name (if applicable);
- head office;
- registered office;
- accounting reference date;
- primary compliance contact; and
- website and email address.

4.15 The notification should include the details of the proposed change and the date on which the EMI intends to implement the change.

### **Changes to the types of e-money issued or payment services provided**

4.16 If an EMI wishes to change the type of e-money issued or payment services provided (either by increasing or decreasing the range) it should notify us. We consider that a change of this sort is likely to be a substantial change in circumstances for the purposes of regulation 37 and details of the change should be provided to us a reasonable period before the change takes place. Please refer to paragraph 4.10 for guidance on what we consider to be a reasonable period. If we consider the proposed change to the types of e-money issued or payment services provided to have an adverse affect on the EMI's fulfilment of the conditions for authorisation or registration (for example, if we do not consider that the EMI has effective procedures to identify, manage, monitor and report the risks that the provision of a new type of payment service may present), we have the power under regulation 11 and regulation 15 to vary the EMI's authorisation or registration by imposing such requirements as we consider appropriate, for example a requirement that the EMI must refrain from carrying on the new type of e-money issuance or the new type of payment service.

### **Application for variation of authorisation or registration**

4.17 Regulations 5 and 12 require an application for variation in authorisation or registration (respectively) to:

- contain a statement of the desired variation;
- contain a statement of the e-money issuance and payment services business that the applicant proposes to carry on if the authorisation/registration is varied; and

- contain, or be accompanied by, such other information as we may reasonably require.
- 4.18 Applicants should complete and submit the Variation of EMRs Authorisation/Registration form, which will be available on the e-money section of our website from 30 April 2011. This will set out the information that must be provided. However, we may ask for more information if we feel it is necessary to enable us to determine the application.
- 4.19 The process for determining a variation is the same as for initial authorisation/registration (see Chapter 3) and the time allowed for us to do this is three months. However, we expect to be able to process complete applications for variation quicker than an initial authorisation/registration, and our expected turnaround times will in most cases be quicker than this.

### **Cancellation of authorisation/registration**

- 4.20 EMIs can request to cancel their authorisation or registration (regulation 10 and 15, respectively) by using the Cancellation of Authorisation or Registration form, which will be available on the e-money section of our website from 30 April 2011. We will remove the EMI from the e-money section of our Register once we have established that there are no outstanding fees to either ourselves or the ombudsman service, that any liabilities to customers have either been paid or are covered by arrangements explained to us and that there is no other reason why the EMI should remain on the e-money section of our Register.
- 4.21 Our fee year runs from 1 April until 31 March so, if an EMI applies to cancel once the fee-year has commenced after 31 March, full annual fees will become payable as there are no pro-rata arrangements or refunds of fees.

### **Change in legal status**

- 4.22 A change in legal status (for example, LLP to limited company) will mean that the authorisation/registration will have to be cancelled and the business will have to apply for authorisation/registration as the new legal entity. The Change of Legal Status form will be available on the e-money section of our website from 30 April 2011.

### **Directors and persons responsible for the management of the issuing of e-money and any payment services**

#### *Appointment/removal*

- 4.23 Changes to the directors or persons responsible for managing the issuing of e-money or any payment services are regarded as significant changes. Appointments should be notified to us before the change takes place, and removals no later than seven working days after the event.
- 4.24 Notification of a new appointment should be on the EMD Individual form, which is available on the e-money section of our website, and should include all the information required for us to assess the individual against the requirements in

regulation 6(6)(b) or 13(7)(a) (as appropriate) to be of good repute and possess appropriate knowledge (see Chapter 3).

- 4.25 An EMI must also notify us of any changes in the details of existing individuals, such as name changes and matters relating to fitness and propriety (see below). It should do this using the Amend an EMD Individual form, which will be available on the e-money section of our website from 30 April 2011.
- 4.26 If we consider the proposed change to have an adverse impact on the EMI's fulfilment of the conditions for authorisation or registration, we will advise it of our concerns. In these circumstances, we have the power under regulations 11 and 15 to vary the EMI's authorisation or registration by imposing such requirements as we consider appropriate. If the change then goes ahead and we believe that any of the relevant conditions of regulation 10 relating to cancellation of authorisation/registration are met, we may take action to cancel the authorisation/registration of the EMI and remove it from the e-money section of our Register.
- 4.27 Information about the removal of 'directors/persons responsible' should include the reason for the departure and provide further information if the individual was dismissed for reasons relating to criminal or fraudulent activities.
- 4.28 Notification must be made on the Remove an EMD Individual form, which will be available on the e-money section of our website from 30 April 2011. For more information on the fit and proper requirement for directors and persons responsible for management of the EMI see Chapter 3.

### *Changes affecting the fitness and propriety of individuals*

- 4.29 Where an EMI becomes aware of information that may impact on the fit and proper condition applying to 'directors/persons responsible', it should notify us using the Amend an EMD Individual form, as detailed above. We will examine the information, assess it against the fitness and propriety requirements explained in Chapter 3, and notify the EMI of the action that we intend to take.

### **Acquisitions of, or increases in, control**

- 4.30 In accordance with paragraph 4 of Schedule 3 to the EMRs, the change in control provisions of FSMA (Part 12) apply (with certain modifications) to a person who decides to acquire, increase or reduce control or to cease to have control over an EMI. Our approach to changes in control over EMIs will be similar to our approach to changes in control over firms authorised under FSMA.<sup>15</sup> Chapter 11 of the Supervision manual (in particular, SUP 11.3 and SUP 11 Annex 6G) provide guidance on the change in control provisions of FSMA.
- 4.31 Section 178(1) of FSMA (as modified by Schedule 3 to the EMRs) requires a person to notify us in writing if he/she decides to acquire or increase control over an EMI. This notice is referred to as a 'section 178 notice'. Section 191D(1) of FSMA

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<sup>15</sup> The application of the change in control regime under the EMRs is an important difference between the EMRs and the PSRs.

(as modified) provides that a person who decides to reduce or cease to have control over an EMI must give us notice.

- 4.32 Our approval is required before any acquisition of or increase in control can take place. We have 60 working days (which can be interrupted and put on hold for up to another 30 working days) to decide whether to approve, approve with conditions or object to the proposed changes.<sup>16</sup>
- 4.33 When considering a proposed acquisition or increase in control, we must consider the suitability of the person and the financial soundness of the acquisition of the qualifying holding (or control) to ensure the continued sound and prudent management of the EMI.<sup>17</sup> We must also consider the likely influence that the person will have on the EMI but we cannot consider the economic needs of the market (see Chapter 3).
- 4.34 We may only object to an acquisition of or increase in control if there are reasonable grounds for doing so based on the criteria in section 186 of FSMA, or if the information provided by the person proposing to acquire or increase control is incomplete.
- 4.35 If we consider that there are reasonable grounds to object to the proposed change, we may issue a warning notice, which may be followed by a decision notice and final notice. There is a process for making representations and/or referring the matter to the Tribunal.
- 4.36 Persons that acquire or increase control without prior approval, or in contravention of a warning, decision or final notice, may have committed a criminal offence. We may prosecute and if found guilty the person may be liable to an unlimited fine or even given a prison sentence.
- 4.37 The form of a section 178 notice that must be given by a person who decides to acquire or increase control over an EMI, and the information that must be included in the notice and the documents that must accompany it, will be the same as apply to a section 178 notice in respect of an acquisition of or increase in control over an authorised person under FSMA. A section 178 notice given to us by a person who decides to acquire or increase control over an EMI must contain the information and be accompanied by such documents as are required by the relevant FSA controllers form. A link to this form will be available on the [e-money section](#) of the website from May.
- 4.38 A notice given to us by a person who is reducing or ceasing to have control over an EMI should be in writing and provide details of the extent of control (if any) which the controller will have following the change in control.

### **Significant changes to the programme of operations or business plan**

- 4.39 We expect to be notified of any significant changes to the EMI's business. This may include proposed restructuring, reorganisation or business expansion that could have a significant impact on its risk profile or resources.

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16 See section 178 to 191 of FSMA

17 Also see regulation 6(6)(a) of the EMRs

- 4.40 We would also expect to be advised of any proposed action that would result in an EMI being unable to meet its capital requirements, including but not limited to:
- any action that would result in a material change in the EMI's financial resources or financial resources requirement;
  - a material change resulting from the payment of a special or unusual dividend or the repayment of share capital or a subordinated loan;
  - significant trading or non-trading losses (whether recognised or unrecognised); and
  - failures in governance arrangements and internal control mechanisms.
- 4.41 An EMI should notify the Customer Contact Centre of any significant failure in its systems or controls, including those reported to the EMI by its auditor (if applicable).

### **Changes in method of safeguarding**

- 4.42 Recital 14 of 2EMD makes it clear that, given the crucial importance of safeguarding, it is necessary that we are informed in advance of any material change, such as a change in the method of safeguarding, a change in the credit institution where safeguarded funds are deposited, or a change in the insurance undertaking or credit institution that insured or guaranteed the safeguarded funds.

### **Change to the money laundering reporting officer**

- 4.43 When an EMI becomes aware that a change to the money laundering reporting officer has occurred or will occur, it should notify us without undue delay.

## **Part II: Notifications applicable only to authorised EMIs**

- 4.44 This part gives examples of changes that are likely to impact the conditions for authorisation of an authorised EMI. As noted in the introduction, the duty to notify changes in circumstances is general and we will expect authorised EMIs to notify us of any significant change in circumstances, including one not mentioned here, which is relevant to the continued fulfilment of the conditions for authorisation.

### **Outsourcing arrangements**

- 4.45 An authorised EMI must inform us when it intends to enter into an outsourcing contract where it will be relying on a third party to provide an 'operational function relating to the issuance, distribution or redemption of e-money or the provision of payment services (outsourcing)' (regulation 26(1)).
- 4.46 In our view, 'operational functions relating to the issuance, distribution or redemption of e-money or the provision of payment services' does not include providing services that do not form part of these services (for example, legal advice, training or security) or the purchase of standardised services, including market information services.

- 4.47 A proposed outsourcing arrangement that is classified as ‘important’ under regulation 26(2) and (3) is more likely to be relevant to an authorised EMI’s compliance with the authorisation conditions than one that is not ‘important’. Where an authorised EMI changes its important outsourcing arrangements without entering into a new outsourcing contract, it will need to consider whether the change is relevant to the conditions for authorisation and so needs to be notified under regulation 37.
- 4.48 Notification on changes to outsourcing requirements should be made to the Customer Contact Centre. Depending on the nature of the arrangement, we may request further information.

### **Auditors**

- 4.49 Where an authorised EMI becomes aware that a vacancy in the office of auditor will arise or has arisen, it should:
- notify us of the date, without delay, giving the reason for the vacancy;
  - appoint an auditor to fill any vacancy in the office of auditor that has arisen;
  - ensure that the replacement auditor can take up office at the time the vacancy arises or as soon as is reasonably practicable after that; and
  - notify us of the appointment of an auditor, giving us the name and business address of the auditor appointed and the date from which the appointment has effect.
- 4.50 Notifications on changes to auditors should be made to the Customer Contact Centre.

## **Part III: Notifications applicable only to small EMIs**

### **Change in status of a small EMI (regulation 16)**

- 4.51 If a small EMI no longer fulfils the conditions for registration outlined in regulation 8(2)(c) or (d) (as applied by regulation 15) it must, within 30 days of becoming aware of the change in circumstances, apply to become an authorised EMI if it intends to continue issuing e-money in the UK.



# 5 Appointment of agents and use of distributors

- 5.1 This chapter explains the difference between agents and distributors and describes the application procedure that authorised EMIs and small EMIs must go through to register agents with us.
- 5.2 Regulation 36(2) makes EMIs responsible for anything done or omitted by an agent or distributor. EMIs are responsible to the same extent as if they had expressly permitted the act or omission. We will therefore expect EMIs to have appropriate systems and controls in place to effectively oversee their agents' and distributors' activities.

## **Differentiating agents and distributors**

- 5.3 Regulation 33 provides that an EMI may distribute or redeem e-money through an agent or a distributor. EMIs may not issue e-money through an agent or distributor. Agents must, under regulation 34, be included on the Register, but there is no requirement to register distributors. It is therefore important to understand the difference between the two.
- 5.4 EMIs may engage agents to provide payment services both related and unrelated to issuing e-money (see the definition of agent in regulation 2(1)). EMIs may also distribute or redeem e-money through agents.
- 5.5 EMIs may engage distributors to distribute and redeem e-money but not to provide payment services. In our view, a person who simply loads or redeems e-money on behalf of an EMI would, in principle, be considered to be a distributor.

## **Authorised EMIs that passport**

- 5.6 An authorised EMI wanting to use a passport to provide payment services and distribute or redeem e-money in another EEA state may use an agent, established in either the UK or the host state, to provide those services (an EEA agent), subject to additional notification requirements (see Chapter 6).

- 5.7 An authorised EMI may engage a distributor to distribute or redeem e-money in another member state and may engage a distributor in the exercise of its passporting rights, subject to regulation 28.

## **Applying to register an agent**

- 5.8 The application form for registering agents, Add EMD agent, will be available on the [e-money section](#) of our website.
- 5.9 In general, the information required for the registration of an agent is:
- the name and address of the agent;
  - a description of the anti-money laundering internal control mechanisms; and
  - if applicable, the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons.

## **Name and address details**

- 5.10 We require details of the agent, and if applicable, its ‘directors/persons responsible’ to enable us to identify all parties and to meet our supervisory and register requirements.

## **Anti-money laundering internal control mechanisms**

- 5.11 We require a description of the internal control mechanisms that will be used to comply with the Money Laundering Regulations 2007 and the Proceeds of Crime Act 2002 or, in the case of an EEA agent, the Third Money Laundering Directive. The factors that we expect EMIs to include in their internal controls with agents are the same as those we describe in relation to the money laundering controls, which are set out in Chapter 3. Where agents are based in another EEA state, authorised EMIs must ensure agents’ anti-money laundering systems and controls comply with any applicable local legislation and regulation which implements the Third Money Laundering Directive.
- 5.12 The description of internal control mechanisms only has to be supplied once if an authorised EMI applies the same controls to all their agents based in the same EEA jurisdiction and it has not changed from previous appointments. If the authorised EMI has previously supplied this information it should indicate this in the appropriate question on the agent application form.
- 5.13 The EMI should take reasonable measures to satisfy itself that the agents’ anti-money laundering internal controls mechanisms remain appropriate throughout the agency relationship.

## **Directors and persons responsible for the management of the agent**

- 5.14 Regulation 34(3)(a)(iii) requires that the application must also provide:
- the identity of the directors and persons responsible for the management of the agent; and
  - evidence that they are fit and proper persons.
- 5.15 We expect to be provided with details of all the individuals who are board members in applications for incorporated agents. Applications for unincorporated agents should provide details of the partners or sole trader. In each case, the application should also include details of any other person, in addition to the partners, sole trader or directors of the agent, that has day-to-day responsibility for the management of the agent.
- 5.16 To verify identity, the form asks for the name, date of birth and national insurance number or, for non-UK residents, passport details.
- 5.17 The EMI should carry out its own fitness and propriety checks on its agents, on the basis of a ‘due diligence’ enquiry. We ask that this is certified on the form for each person and any adverse information is disclosed. The assessment should be proportionate to the nature, complexity and scale of risk inherent in the distribution, redemption, payment services or other activities being carried out by the agent.
- 5.18 As with the assessment of EMD Individuals, we expect the EMI to consider the same factors when making a fit and proper assessment of the directors and persons responsible for the management of the agent:
- honesty, integrity and reputation;
  - competence and capability; and
  - financial soundness.
- 5.19 For more information on the types of checks we expect EMIs to make when assessing against these factors, please see the information on the fit and proper assessment in Chapter 3.

## **Additional information and changes to information supplied**

- 5.20 At any time after receiving an agent application and before determining it, we may require the EMI to provide us with such further information as we reasonably consider necessary to determine the application (regulation 34(5)).
- 5.21 Once an application has been submitted, both before the application has been determined and on an ongoing basis, the duty to notify significant changes in circumstances relevant to the fitness and propriety of an agent’s management or to matters relating to money laundering or terrorist financing applies. EMIs must notify us of such changes without undue delay (regulation 37(1)(c)).

## Decision-making

- 5.22 We are required to make a decision on registering an agent within a reasonable period from the date on which we receive the information required to make the application complete. We will aim to process the majority of UK applications within ten days provided the application is complete. However, where an agent application forms part of the EMI's application for authorisation or registration, it will be determined in accordance with the timetable for that application. In the case of an EEA agent, host state competent authorities are required to tell us of any suspicions of money laundering or terrorist financing and so our decision will take into account any such suspicions reported by the host state competent authority, as required when passporting (see Chapter 6).

## Approval

- 5.23 Where we decide to approve the agent application we will update the e-money section of our Register, usually the next business day. We will not acknowledge successful agent applications as we believe doing so would add unnecessary costs to the process given the large volume of agents and high turnover. EMIs should check the e-money section of our Register to ensure that the agent has been registered. If, after ten days (see above), the agent does not appear the EMI should contact the Customer Contact Centre. EMIs cannot provide payment services through an agent until that agent is included on the e-money section of our Register.

## Refusal

- 5.24 Regulation 34(6) of the EMRs allows us to refuse to include the agent in the e-money section of our Register only where:
- we have not received all the information required in the application (see 'Making an application' above) or such information we have reasonably required or we are not satisfied that such information is correct;
  - we are not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons; or
  - we have reasonable grounds to suspect that, in connection with the provision of services through the agent:
    - money laundering or terrorist financing within the meaning of the Money Laundering Directive is taking place, has taken place or been attempted; or
    - the provision of services through the agent could increase the risk of money laundering or terrorist financing.
- 5.25 The refusal process for agents is the same as for authorisation and registration (see Chapter 3).

## **Cancelling agents (regulation 35)**

- 5.26 To cancel the registration of an agent the EMI should complete the Remove EMD agent form, which will be available in May on the [e-money section](#) of our website. We will update the e-money section of our Register to show that the agent is no longer registered to act for the EMI once we have finished processing the notification. Our aim is to update the e-money section of our Register within ten days of notification. If after this time the agent still shows as registered, the EMI should contact the [Customer Contact Centre](#).
- 5.27 If an agent is being used to perform payment services in another EEA state, the authorised EMI may also have to amend the details of the passport, and must then submit a Change in Passport Details form (see Chapter 6).

## **Changes to agent details**

- 5.28 The EMI must use the Amend EMD agent form, to amend the details of an agent. This form will be available in May on the [e-money section](#) of our website. The form will set out the information that must be provided.
- 5.29 We will assess the impact of the change against the agent registration requirements. If the change is approved, we will update the e-money section of our Register (if required) as soon as possible. If we need further information we will contact the EMI and, if the change is not approved, we will follow the refusal process set out above.



# 6 Passporting

- 6.1 This chapter describes the process that authorised EMIs must go through if they wish to issue, distribute or redeem e-money or provide payment services in another EEA state. It also tells EMIs authorised in another EEA state how we will deal with notifications to issue, distribute or redeem e-money or provide payment services in the UK that we receive from their home state regulator.

## Introduction

- 6.2 Passporting is the exercise of the right of a firm to conduct activities and services regulated under EU legislation in another EEA state on the basis of authorisation in its home state. The activities can be conducted through an establishment in the host state (using its right of establishment) or on a cross-border services basis without using an establishment in the host state (a ‘services’ passport). A branch established in another EEA state by a UK-authorised EMI is referred to as an ‘EEA branch’.
- 6.3 Passporting rights under 2EMD are available only to authorised EMIs (except authorised EMIs whose head office is situated outside the EEA). Passporting rights are not available to small EMIs.
- 6.4 A UK-authorised EMI can provide payment services in another EEA state through an agent established in the UK or an agent established in another EEA state, subject to the requirements in the EMRs. A UK-authorised EMI may also engage an agent or a distributor to distribute or redeem e-money in another EEA state in the exercise of its passport rights. An EMI may not, however, issue e-money through a distributor or an agent.
- 6.5 Where an EMI wishes to distribute e-money in another state by engaging one or more distributors, it must follow the normal notification procedures and provide us with a list of all distributors, to include name, address and (in the case of natural persons) date of birth. We will then communicate this information to the host state competent authority.
- 6.6 Further guidance on when we consider a passport notification needs to be made is available in [Chapter 3A](#) of our Perimeter Guidance (PERG).

## Making an application

### Notice of intention

- 6.7 Where an authorised EMI intends to issue, distribute or redeem e-money or provide payment services, either on a cross-border services basis or on an establishment basis into another EEA state, regulation 28 requires the authorised EMI to notify us of its intention to do so (a notice of intention). Notice of intention forms are available on the [e-money section](#) of our website.
- 6.8 The notice of intention form requires details of the activities (issuing, distributing or redeeming e-money or types of payment services) the authorised EMI wishes to undertake in the specified EEA state(s). Where the authorised EMI is exercising its right of establishment, the notice of intention requires the names of the people responsible for managing any proposed EEA branch and details of that branch's organisational structure, including its address. The notice of intention form also requires the identification of any distributors that the authorised EMI intends to engage to distribute or redeem e-money in exercising its passport rights in those EEA states (by giving the name and address of each distributor and, in the case of natural persons, their date of birth). The authorised EMI must also include in the notice of intention a description of the anti-money laundering procedures to be adopted by the EMI, agent or distributor in the host state to comply with local anti-money laundering requirements in the host state.
- 6.9 We must tell the host state competent authority within one month from the date on which we receive the notice of intention.
- 6.10 If the business intends to use an EEA agent to provide services in another EEA state, then regulation 34 requires us to inform the host state competent authority and take account of its opinion (if it is given to us within a period we specify as reasonable<sup>18</sup>). The notification would provide the same information as if the agent were a branch.
- 6.11 If the authorised EMI's proposed passported activities include using an EEA agent that is not already registered, then the authorised EMI must also submit an agent registration application form. The registration of the agent will be subject to the requirements explained in Chapter 5, but will also be subject to the views expressed by the host state competent authority. To speed up the approval of the passport, we will process the agent application simultaneously, but the passport must be approved before the agent can be registered and the notification made.

### Notification process

- 6.12 Once we have received the notification form with the required information, we will check that the services the applicant intends to provide in the other EEA state are within the scope of its UK-authorised activities and then forward the information to the host state competent authority as soon as possible.

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18 We expect further guidance to be given on this in the Passporting Guidelines that will be published on the European Commission's website.



### *Service passports – not involving an EEA agent*

- 6.13 Where an authorised EMI has applied for a services passport that it will be using directly (that is, not through an EEA agent), we will let it know once the host state competent authority has been notified and update the e-money section of our Register to show the details of the passport.

### *Branch passports and/or use of EEA agents*

- 6.14 Where an authorised EMI seeks to establish a branch, or provide services through an EEA agent (either exercising its right of establishment or using a services passport) we intend to assess the fitness and propriety of the management of the branch or EEA agent before making the notification to the host state competent authority.
- 6.15 Appointing an agent is subject to the directors and persons responsible for the management of the agent being fit and proper. We will carry out the checks described in Chapter 5 on these persons. We will also extend these checks to the persons identified as being responsible for managing the branch.
- 6.16 When we have carried out our checks, we will notify the relevant host state competent authority. If the application is for a new passport, or changes to the services of an existing passport, then we will let the authorised EMI know that this has been done. We are expecting a high turnover of EEA agents, so to keep the costs to firms down we will not acknowledge notifications of changes in EEA agents.
- 6.17 Regulation 29 of the EMRs states that, if the FSA, having taken into account any information received from the host state competent authority, ‘has reasonable grounds to suspect that, in connection with the establishment of an EEA branch by an authorised EMI (a) money laundering or terrorist financing ...is taking place, has taken place or been attempted, or (b) the risk of such activities taking place would be increased, the Authority may refuse to register the EEA branch or cancel any registration already made and remove the branch from the register’.
- 6.18 If the host state’s competent authority responds with no concerns, or we receive no response within a month of receiving the authorised EMI’s notice of intention, and our own assessment shows no reasonable grounds to suspect money laundering or terrorist financing, or an increased risk of such activities, then we will approve the agent and update the e-money section of our Register with the passport details. In the case of a new passport application, we will inform the authorised EMI and the host state competent authority when we do this. The authorised EMI may then start providing services in the host EEA state through its branch or agent. If an agent is being added to an existing passport, then in accordance with our policy on the appointment of agents, authorised EMIs should, where necessary, check the e-money section of our Register to confirm that the agent has been approved. If after one month (see above), the agent does not appear on the e-money section of our Register, the EMI should contact the Customer Contact Centre.
- 6.19 If the host state competent authority responds within that month with suspicions concerning money laundering or terrorist financing, or with information suggesting that the risk of money laundering or terrorist financing would be increased, we will

consider the information supplied to us and make a decision on what action we will take. Under regulation 29(1) we may refuse to register the branch or, under regulation 34(6), the EEA agent. In addition to the power to refuse registration, we can cancel existing registrations of branches under regulation 29(1) and of EEA agents under regulation 35(1). We also have powers under regulation 7 to impose requirements on the authorised EMI's authorisation. If we decide not to approve the passport application as requested by the firm, we will follow a decision-making process equivalent to that described in Chapter 3.

- 6.20 It may also be the case that the host state competent authority responds with concerns, or new information raises concerns, after we have approved any agent and recorded the passport on the e-money section of our Register. In this case, we will consider the information supplied to us and may decide to de-register the passport and/or agent.

### *Using EEA distributors*

- 6.21 Where an authorised EMI seeks to exercise its right of establishment or freedom to provide services by engaging a distributor(s) located in another EEA state, we will communicate the information contained in the notice of intention relating to the distributor to the relevant host state competent authority and take account of any adverse information received from that authority, relating to money laundering or terrorist financing, in connection with the intended engagement of the distributor.

### **Making changes**

- 6.22 As required under regulation 37, we should be notified of any significant proposed changes in circumstances relevant to issuing, distributing or redeeming e-money, or providing payment services that an authorised EMI seeks to carry on under passporting rights, a reasonable time before the change takes place. We consider a reasonable period to be at least one month before the authorised EMI wishes the change to take effect. Such changes may include:

- changes to the name or address of the authorised EMI or agent or distributor engaged in another EEA state;
- adding/removing an agent or distributor;
- adding/removing passporting rights to particular EEA states;
- changes to the activities being conducted;
- changes to the persons responsible for the management of the proposed EEA branch or agent; and
- changes to the organisational structure of the branch or agent.

- 6.23 Approval of changes is subject to a similar review process as for new passport applications, so in the case of changes in agents being used or the management of a

branch, registration will be subject to the fitness and propriety checks described above, in relation to branch passports and/or use of EEA agents.

## **Incoming EEA authorised EMIs**

- 6.24 EMIs that are authorised in another EEA state and who wish to issue, distribute or redeem e-money or provide payment services in the UK should refer to their home state competent authority for instructions on making a passport notification. These authorised EMIs (EEA EMIs) will appear in the register of their home state, but not our Register.
- 6.25 When we receive a passport notification from the home state competent authority for an EMI intending to establish a branch in the UK or use a UK agent, we are entitled to review the notification for suspicions of money laundering and terrorist financing involvement as outlined above. Where we have concerns, we will notify the home state competent authority and they will decide what action to take.
- 6.26 Changes to an EEA authorised EMI's passport should be notified to its home state competent authority who will notify us, as appropriate.
- 6.27 In our view, an EEA authorised EMI's passport entitles it to carry on in the UK only issuing, distributing and redeeming e-money and payment services notified to us by the home state competent authority. If an EEA authorised EMI wishes to carry on other activities in the UK, it may need to seek other appropriate authorisation, registration or make use of another passport (for example, to provide investment services under the Markets in Financial Instruments Directive).

## **Supervision of EEA authorised EMIs**

- 6.28 We are responsible for supervising compliance by an FSA-authorized EMI with its capital requirements obligations, regardless of where it issues, distributes or redeems e-money or provides payment services within the EEA, but we are not responsible for supervising compliance with capital requirements by an EEA authorised EMI.
- 6.29 We are responsible for supervising compliance with the conduct of business, anti-money laundering and counter-terrorist financing requirements of authorised EMIs in relation to services being provided from an establishment in the UK (for example, by an EEA authorised EMI exercising its right of establishment), but not for those provided on a cross-border basis from an establishment outside the UK (for example, under a services passport).
- 6.30 We will exchange information about authorised EMIs and EEA authorised EMIs with other competent authorities. In particular, we are obliged to provide relevant competent authorities with all relevant or essential information relating to exercising passport rights by authorised EMIs, including information on breaches or suspected breaches of money laundering and terrorist financing legislation.

## **Credit institutions**

- 6.31 Credit institutions that intend to issue e-money in other EEA states should follow the passporting procedures that apply to them under as set out in Chapter 13 of the Supervision manual of the Handbook. Credit institutions authorised in other EEA states who want to passport into the UK to issue e-money should contact their home state competent authority.

# 7 Status disclosure and use of the FSA logo

- 7.1 This chapter explains what EMIs may say about their regulatory status and the circumstances under which the FSA logo may be used.
- 7.2 It is likely that the status disclosure requirement in part 5 of the PSRs will apply to EMIs because they provide payment services.
- 7.3 The FSA logo and statements about regulatory status must not be used to:
- give the impression that the authorisation, registration or regulation goes beyond the particular activities for which the authorisation or registration has been granted; or
  - misrepresent the electronic money issuer's relationship with the FSA.

To do so may infringe the FSA's trademark and may constitute a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008.

## **Status disclosure sample statements**

- 7.4 The following are suggested statements for EMIs to include in their contracts and correspondence with customers. It is not mandatory to use these exact statements, but it is important that customers are made aware of the EMI's authorisation/registration status.

### *Authorised EMIs*

[Name] is authorised by the Financial Services Authority under the Electronic Money Regulations 2011 [register reference] for the issuing of electronic money.

### *Small EMIs*

[Name] is registered with the Financial Services Authority under the Electronic Money Regulations 2011 [register reference] for the issuing of electronic money.

### *EEA authorised EMIs*

Authorised by [name of Home State regulator] and regulated by the Financial Services Authority for the conduct of issuing electronic money.

### **Use of the FSA logo**

- 7.5 Guidance on the use of our logo is set out in the General Provisions sourcebook (GEN) at GEN 5 and the general licence for its use is found in GEN 5 Annex 1 of our Handbook.

### *Authorised EMI*

- 7.6 An authorised EMI may use our logo as part of a statement in a letter (or electronic equivalent such as an email) that it is authorised by us, in the same way that firms authorised by us under other legislation (such as FSMA) can. The FSA has no policy to allow the use of the FSA logo on a website or as part of advertising (as set out in GEN 5.1.4G).
- 7.7 Authorised EMIs may not use our logo (and must take all reasonable steps to ensure that their agents do not use it) in any communication with an e-money holder or payment service user other than in accordance with the general licence in GEN 5 Annex 1 or any individual licence granted by us to the authorised EMI or its representatives.

### *Agents of authorised EMIs*

- 7.8 Agents of authorised EMIs are permitted to use our logo as part of a statement in a letter (or electronic equivalent) that its principal (the authorised EMI) is authorised by us.

### *Small EMIs*

- 7.9 Small EMIs are not permitted to use our logo, either directly or through their agents or branches.

### *EEA authorised EMIs*

- 7.10 EEA authorised EMIs are not permitted to use our logo, either directly or through their agents or branches.

# 8 Conduct of business requirements

- 8.1 This chapter describes the conduct of business requirements. These apply to all electronic money issuers, including those authorised under FSMA and those using the transitional provisions (except in the case of certain pre-existing contracts that fall within regulation 77, see Chapter 17).
- 8.2 The chapter is set out as follows:
- the conduct of business requirements in the EMRs;
  - the conduct of business requirements in the PSRs; and
  - the interaction with other legislation.

## **The conduct of business requirements in the EMRs**

- 8.3 Part 5 of the EMRs sets out obligations that apply to the conduct of e-money business where it is carried out from an establishment maintained by an electronic money issuer or its agent in the UK. These are typically referred to as ‘conduct of business requirements’.
- 8.4 They relate to issuing and redeeming e-money and the prohibition on the payment of interest or other benefits linked to the length of time that e-money is held and are applicable to all electronic money issuers (see Chapter 2 for the definition of electronic money issuers).

## **Issuing e-money**

- 8.5 Regulation 39 requires electronic money issuers to issue e-money at par value (the e-money issued must be for the same amount as the funds received) when they receive the funds and without delay. It is important to recognise that if an agent of an electronic money issuer receives funds, the funds are considered to have been received by the issuer itself. It is not, therefore, acceptable for an electronic money issuer to delay in enabling the customer to begin spending the e-money because the issuer is waiting to receive funds from its agent.

## Redeeming e-money

- 8.6 Under the 1EMD FSMA regulatory regime, firms with permission to issue e-money did not have to redeem e-money if it was worth less than €10 and if this was made clear in the contract (the Electronic Money sourcebook 6.4.1R). Additionally, if provided for in the contract, the e-money could become invalid after a specified period (of not less than one year) and the e-money holder would not have the right to redeem.
- 8.7 However, under the EMRs, e-money holders have the right to redeem the monetary value of their e-money (that is the payment from the electronic money issuer to the e-money holder of an amount equivalent to the remaining balance) at any time and at par value (regulation 39). This means that, in our view, it is not acceptable to have a term in a contract with an e-money holder under which the e-money holder's right to redeem the remaining balance ceases to apply after a specified period of validity (although the contract can still provide for the e-money holder's right to use the e-money for the purpose of making payment transactions to cease after a specified period). This is qualified by regulation 43 which allows electronic money issuers to refuse a redemption request when the request is made more than six years after the date of termination in the contract.
- 8.8 The contract between the electronic money issuer and the e-money holder must, clearly and prominently, set out the conditions of redemption (or part thereof), including any fees that may be payable. These conditions must be advised to e-money holders before they are bound by the contract.

### *Redemption fees*

- 8.9 If it is agreed and transparent in the contract, electronic money issuers may charge a fee for redemption in the following circumstances:
- where redemption is requested before termination of the contract;
  - where the e-money holder terminates the contract before any agreed termination date; or
  - where redemption is requested more than one year after the date of termination of the contract.

For these purposes, references to the termination of the contract refer to the point in time when the e-money holder's right to use the e-money for the purpose of making payment transactions ceases.

- 8.10 The effect of this is that no fee for redemption may be charged to the e-money holder if he requests redemption at termination of the contract or up to one year after that date. In this chapter, we use the phrase 'dormant e-money' to describe e-money held more than one year after the termination of the contract.
- 8.11 Any fee that is charged should be proportionate and in line with the costs actually incurred by the electronic money issuer. In our view, it is reasonable, for example, for the calculation of a redemption fee to take account of costs the issuer can show



it actually incurs in retaining records of and safeguarding dormant e-money (on the basis that any such costs must relate to redemption rather than making payments). If challenged, the electronic money issuer must be able to justify the level of the fee charged by reference to costs that it has incurred, either in the act of redeeming the dormant e-money, or in retaining records of and safeguarding the dormant e-money.

- 8.12 In principle, we do not consider that it would be objectionable for an issuer to deduct from the proceeds of redemption of dormant e-money the amount of any redemption fee (as long as the electronic money issuer can demonstrate that the redemption fee is clear and prominent in the contract and reflects only valid redemption-related costs). So, if the amount of a valid redemption fee is greater than the value of the dormant e-money, in practice the proceeds of any redemption by the holder would be nil, after the fee is deducted. In these circumstances, it would be reasonable for the issuer to cease to safeguard those dormant e-money funds (as there is no utility in requiring issuers to safeguard dormant e-money funds that can no longer be spent or redeemed). The issuer would, however, have to be able to show to the e-money holder that this is how the e-money balance has been used up, in the event of the e-money holder later seeking redemption.
- 8.13 The above guidance on redemption does not apply to a person (other than a consumer) who accepts e-money (for example, a merchant who has accepted e-money in payment for goods or services). For such persons, redemption rights will be subject to the contractual agreement between the parties.

### **Prohibition of interest**

- 8.14 Electronic money issuers are not allowed to grant interest or any other benefits related to the length of time the e-money is held. In our view this would not prohibit benefits related to spending levels.

### **The conduct of business requirements in the PSRs**

- 8.15 The PSRs set out conduct of business requirements for all payment service providers, including electronic money issuers. In this context, this means requirements for information to be provided to payment service users, and specific rules on the respective rights and obligations of payment service users and providers.
- 8.16 Electronic money issuers should refer to Chapter 8 in the *Payment Services Approach Document* to consider how the requirements of the PSRs relate to their business of issuing e-money and the payment services that they provide.

### **The interaction with other legislation**

- 8.17 In addition to complying with the EMRs and PSRs, electronic money issuers have to comply with other relevant legislation. We describe below some key legislative requirements that electronic money issuers may need to take into account.

### *Consumer Credit Act 1974*

- 8.18 Under regulation 32(2), EMIs may grant credit, subject to the conditions outlined in regulation 27(2) of the PSRs and provided that the credit is not granted from the funds received in exchange for e-money, which are safeguarded. Broadly speaking, businesses that lend money to retail consumers are licensed by the Office of Fair Trading (OFT) under its consumer credit regime. Electronic money issuers that grant credit should be aware of the interaction between consumer credit legislation and the PSRs.
- 8.19 If the contract under which a payment service is provided is also a regulated agreement under the Consumer Credit Act 1974 (CCA) then:
- some of the information requirements in the PSRs do not apply (regulation 34 of the PSRs); and
  - some of the provisions of the PSRs relating to the rights and obligations of payment services providers and payment services users do not apply and are replaced by specified sections of the CCA (regulation 52 of the PSRs). These are identified in the description of the relevant regulations in Parts I and II of Chapter 8 of the *Payment Services Approach Document*.

### *Distance Marketing Directive*

- 8.20 The Distance Marketing Directive (DMD) provides protection for consumers whenever they enter into a financial services contract by distance means, including for payment services. Both the PSRs and the DMD apply to contracts for payment services.
- 8.21 For other electronic money issuers, the rules implementing the DMD in relation to the activity of issuing e-money are found in the Distance Marketing Regulations 2004.

### *Regulation 924/2009 on cross-border payments*

- 8.22 Regulation 924/2009 on cross-border payments replaced Regulation 2560/2001 on cross-border payments in euro. The regulation prohibits payment service providers, such as electronic money issuers from charging more for a cross-border payment in euro than for a corresponding domestic payment in euro. The FSA is the competent authority and the ombudsman service is the out of court redress provider for this regulation.

### *Regulation 1781/2006 on information on the payer accompanying transfers of funds*

- 8.23 Regulation 1781/2006 on information on the payer accompanying transfers of funds specifies the information on the payer to be included in a payment message (or made available on request).
- 8.24 The provisions of Regulation 1781/2006 are not affected by the implementation of the EMRs, but care should be taken that information provided to the payment service provider as a result of the requirements of Regulation 1781/2006 is passed on to the payee only where appropriate.

### *The E-Commerce Directive (2000/31/EC)*

- 8.25 The E-Commerce Directive continues to apply in addition to the provisions of the PSRs.
- 8.26 A person authorised under FSMA carrying on an e-commerce activity from an establishment in the UK for e-money must comply with the e-commerce rules relevant to its regulated activities in the Handbook.
- 8.27 For other electronic money issuers, the rules implementing the E-Commerce Directive are found in the *Electronic Commerce (EC Directive) Regulations 2002*.

### *The Unfair Terms in Consumer Contracts Regulations 1999*

- 8.28 The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) apply to contracts relating to e-money and payment services with consumers. Electronic money issuers should continue to ensure that their standard-form consumer contracts are fair and written in plain and intelligible language. Further information about the UTCCRs can be found in the Unfair Terms Regulatory Guidance on our website and on the OFT's website.
- 8.29 Electronic money issuers will have to review their current terms and conditions to ensure they comply with the conduct of business provisions of the EMRs. While doing so, they should also bear in mind compliance with the UTCCRs.

### *The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)*

- 8.30 Electronic money issuers should note that the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) apply to their e-money and payment service business with consumers. The CPRs are intended to protect consumers from unfair commercial practices by businesses. Further information about the CPRs can be found on our website and on the OFT's website.
- 8.31 In providing customers with details of their service, particularly with regard to things such as the extent of the protection given by safeguarding or the extent of FSA regulation of unregulated parts of the business, electronic money issuers must avoid giving customers misleading impressions. Advertising material or business stationery that is likely to mislead customers in these areas may potentially constitute a misleading commercial practice under the CPRs.

### **Businesses authorised under FSMA**

- 8.32 Electronic money issuers that are credit institutions or are otherwise authorised under FSMA for a separate regulated activity will also have to comply with their obligations as outlined in the Handbook. In addition to the specific legislation noted above, credit institutions should be aware of their obligations under the Principles for Businesses (PRIN) and Senior Management Arrangements, Systems and Controls sourcebook (SYSC).

- 8.33 The principles in PRIN are a general statement of the fundamental obligations of firms under the regulatory system. Electronic money issuers that are authorised under FSMA must comply with the principles in PRIN to the extent that they do not conflict with the PSRs or the EMRs.
- 8.34 The SYSC rules require a firm to take reasonable care to establish and maintain systems and controls that are appropriate to its business, including its e-money business, and to review these regularly to make sure that they remain appropriate.

# 9 Capital resources and requirements

- 9.1 This chapter describes the capital resources and requirements for authorised EMIs and small EMIs.
- 9.2 The chapter is set out as follows.
- Part I: Initial capital and ongoing capital requirements for EMIs
  - Part II: Calculating capital resources and meeting the capital requirements for EMI
  - Part III: Own funds – qualifying items for authorised EMIs and small EMIs
  - Part IV: Worked examples for authorised EMIs

## Introduction

- 9.3 The EMRs establish capital requirements for EMIs. Under the EMRs, authorised EMIs and those small EMIs whose average outstanding e-money exceeds the relevant monetary threshold are required to hold a minimum amount of capital. Capital is required to be held as a buffer, absorbing both unexpected losses that arise while the business is a going concern as well as the first losses if it is wound up. The parts of the EMRs that deal with the capital resources and requirements are regulation 19 and Schedule 2. We will monitor whether the capital requirements are being complied with as required. Our supervisory approach is described in Chapter 13.
- 9.4 The term ‘capital resources’ describes what a business holds as capital. ‘Capital requirements’ refers to the amount of capital that must be held by the business for regulatory purposes. The capital requirements established by the EMRs are initial requirements that are a condition of authorisation or registration and ongoing requirements. The items that may be used to meet the capital requirements are set out in Part II of this chapter. EMIs must hold at all times the capital amounts required, in the manner specified. The capital requirements set out in the EMRs are expressed in euro, as they are in 2EMD. It is expected that EMIs will hold sufficient capital to ensure that the capital requirements are met, even in the event of exchange rate fluctuations. Current and historical rates can be found on the European Commission’s [InforEuro](#) website.

- 9.5 EMIs can also provide unrelated payment services. There are separate capital requirements for authorised EMIs that provide unrelated payment services.
- 9.6 Additionally, EMIs can undertake activities that are not related to issuing e-money and payment services. These businesses are called ‘hybrid’ businesses. The EMRs do not impose any initial or ongoing capital requirements in relation to the business that does not involve issuing e-money or providing payment services. Any other capital requirements imposed because of other legislation – for example, if the EMI is undertaking an activity regulated under FSMA – have to be met separately and cumulatively.
- 9.7 For the purposes of calculating the capital requirements, EMIs that provide unrelated payment services or that are hybrid businesses must treat each part of the business as a separate business.

## **Part I: Initial capital and ongoing capital requirements for EMIs**

### **E-money and related payment services business**

- 9.8 The initial capital requirement is one of the conditions to be met at the application stage. The EMRs require that the EMI’s capital must not at any time fall below the prescribed levels of initial capital for its business activity. The EMRs specify the following capital requirements:
- authorised EMIs must hold at least €350,000; and
  - small EMIs whose business activities generate (or are projected to generate) average outstanding e-money of €500,000 or more must hold an amount of initial capital at least equal to 2% of their average outstanding e-money.

There is no initial capital requirement for small EMIs whose business activities generate (or are projected to generate) average outstanding e-money less than €500,000.

- 9.9 If the applicant for small EMI status does not have a sufficient period of business history to calculate average outstanding e-money then projected amounts (as outlined in their business plan) may be used, subject to any adjustments we may require.
- 9.10 The ongoing capital (own funds) requirement is to be met by the EMI’s capital resources using qualifying items as set out below. The ongoing capital held must not fall below the level of the initial capital requirement for the services provided. An authorised EMI has to work out its ongoing capital requirements using method D, which is described in detail below.
- 9.11 Small EMIs subject to an initial 2% capital requirement must continue to meet this on an ongoing basis unless their level of business falls below the threshold.

### **Unrelated payment services business**

- 9.12 If an authorised EMI chooses to provide unrelated payment services it must meet separate and additional ongoing capital requirements for the unrelated payment

services part of the business. (The authorised EMI does not have to meet any additional initial capital requirements for the unrelated payment services.)

- 9.13 The ongoing capital requirements for unrelated payment services are laid out in paragraph 13(a) of Schedule 2 to the EMRs.
- 9.14 There are three ways of calculating the ongoing capital requirement for unrelated payment services: methods A, B and C.
- 9.15 Authorised EMIs that provide unrelated payment services are asked in the application pack to indicate which calculation method they wish to use. We will direct (based on our evaluation of the authorised EMI) which method is to be used, taking into account the authorised EMI's preference.
- 9.16 Small EMIs are allowed to provide payments services not related to the issuance of e-money on the same basis as a small payment institution. There are no initial or ongoing capital requirements for small EMIs in relation to their unrelated payment services business.

## **Part II: Calculating capital resources and meeting the capital requirements**

### **Meeting initial capital requirements**

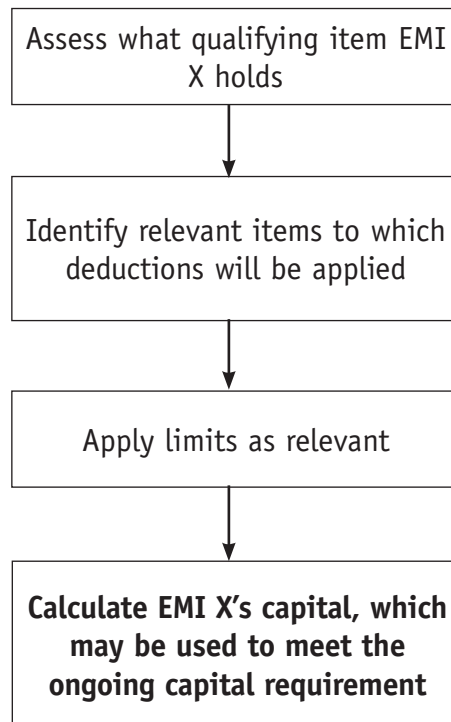
- 9.17 Qualifying items to be used to meet the initial capital requirement are:
- paid-up capital (including share premium account but excluding cumulative preference shares);
  - reserves; and
  - profit/loss.

### **Ongoing capital (own funds)**

- 9.18 The ongoing capital requirement is to be met by the EMI's capital resources using qualifying items as set out in Part III below.
- 9.19 Authorised EMIs and small EMIs with capital requirements work out ongoing capital requirements using method D for their e-money business and related payment services (see below).
- 9.20 Authorised EMIs that also provides unrelated payment services must work their cumulative ongoing capital requirements using either methods A, B or C (see below). The ongoing capital held must not fall below the level of €350,000.

### *Meeting the capital requirements*

- 9.21 An EMI (EMI X) would follow the process below to determine its ongoing capital resources for its e-money business and separately for its payment services business if applicable.



### *Deductions*

9.22 The EMRs also set out deductions that must be made from capital. In brief, the deductions from capital are:

- P**
  - the EMI's own shares held by the EMI;
  - intangible assets;
  - material losses of the current financial year;
- Q**
  - material holdings (meaning holdings of shares in credit and financial institutions in excess of 10% of their capital) as well as the undated securities, cumulative preference shares, co-operative society members' commitments held in these institutions;
  - material holdings not already deducted as above where the amount exceeds 10% of the EMI's capital calculated before deduction of the other items grouped at Q on this list;
  - participations in insurance or reinsurance undertakings or insurance holding companies (IHCs); and
  - subordinated debt issued by those insurance or reinsurance undertakings or IHCs in which a participation is held.

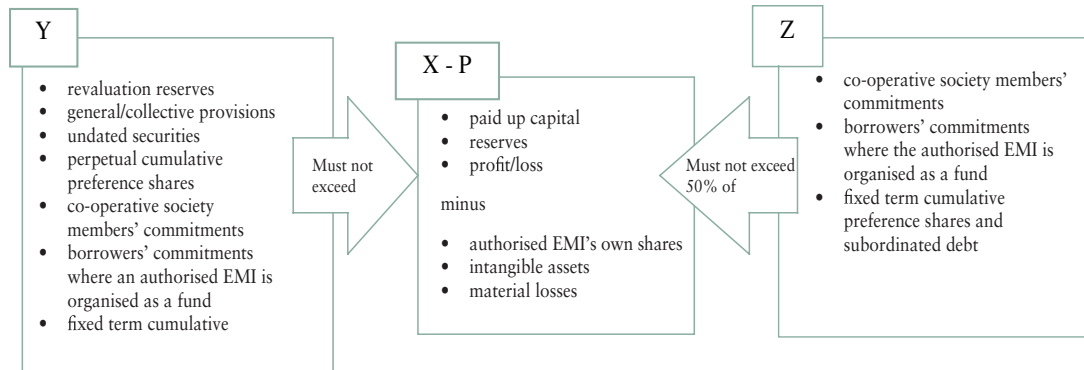
9.23 Where material holdings are held temporarily for the purpose of a financial assistance operation, designed to reorganise and save the business, we may direct that any or all of the items grouped as 'Q' are not deducted from capital.



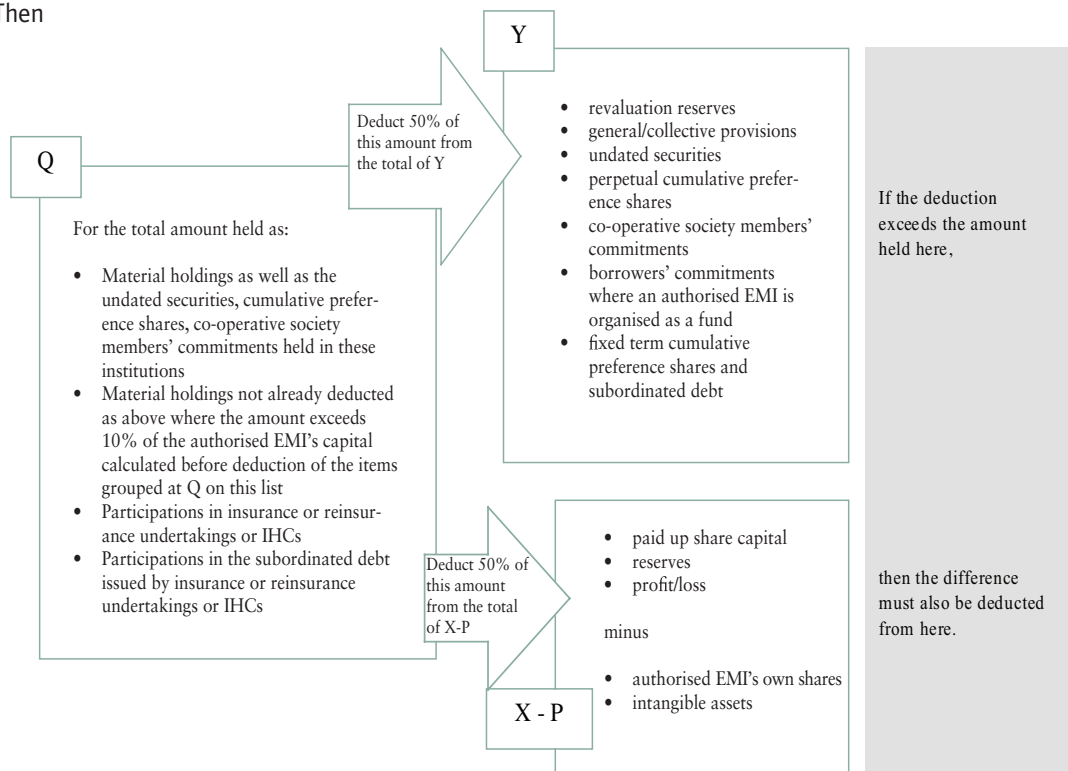
## Limits

9.24 There are also limits on qualifying items, which are set out in detail within the EMRs. Limits are to be applied as follows.

Firstly,



Then



9.25 We may in temporary and exceptional circumstances direct that an EMI may exceed one or more of these limits. An EMI must not include in its own funds calculation any item used in an equivalent calculation of own funds by an EMI, authorised payment institution, credit institution, investment firm, asset management company or insurance undertaking in the same group.

9.26 An authorised EMI that undertakes business other than issuing e-money and providing payment services must not use:

- in its calculation of own funds in accordance with methods A, B or C, any qualifying item included in its calculation of own funds in accordance with method D;
- in its calculation of own funds in accordance with method D, any qualifying item included in its calculation of own funds in accordance with methods A, B or C; or
- in its calculation of own funds in accordance with methods A, B, C or D any qualifying item included in its calculation of own funds to meet its capital requirement for any other regulated activity under FSMA or any other enactment.

### **Methods for calculating ongoing capital requirements**

- 9.27 A description of methods A, B and C (for the unrelated payment services business) and method D (for the e-money business) is below.
- 9.28 Authorised EMIs that have not completed six months of the e-money business or a financial year for the unrelated payment services business should use the projected figure submitted in their business plan in their application for authorisation (subject to any adjustments we require).
- 9.29 We may direct an authorised EMI or small EMI to hold capital up to 20% higher or permit it to hold capital up to 20% lower than the outcome of its ongoing requirement calculation for its e-money business or its unrelated payment services activities (or both), based on our evaluation of the authorised or small EMI. The evaluation may take into account risk management processes, risk loss database or internal control mechanisms (if available and as we consider appropriate). We may make a reasonable charge for this evaluation. The details are set out in paragraphs 15 to 18 in Schedule 2 of the EMRs.

#### *Method A*

- 9.30 Method A is based on the authorised EMI's fixed overheads for the payment services part of the business. The calculation is 10% of the preceding year's fixed overheads. Although, if there is a material change in the authorised EMI's unrelated payment services business since the preceding financial year, we may decide that the requirement is higher or lower. Examples of material changes include the sale of parts of the business, a business acquisition and rapid growth (typically of a new business).
- 9.31 In our view, fixed overheads are defined as including expenses that do not vary as a result of output volume or sales revenue – for example, rent, insurance and office expenses. General accounting standards should be followed when valuing the specific expenses to be taken into account. Only expenses that relate to the unrelated payment services business should be taken into account when calculating the fixed overheads of authorised EMIs that are hybrid businesses.

#### *Method B*

- 9.32 Method B is based on a scaled amount representing the authorised EMI's average monthly payment volume and then applies a scaling factor relevant to the type of

payment services carried out (see the table below for the relevant scaling factor). Under this calculation method, the authorised EMI's ongoing capital requirement is the product of this scaling factor and the scaled average monthly payment volume. The scaled average monthly payment volume is one twelfth of the total amount of the authorised EMI's payment transactions executed in the previous year, scaled in the following manner:

- a. 4% of the slice of the average monthly payment volume up to €5m; plus
- b. 2.5% of the slice of the average monthly payment volume above €5m up to €10m; plus
- c. 1% of the slice of the average monthly payment volume above €10m up to €100m; plus
- d. 0.5% of the slice of the average monthly payment volume above €100m up to €250m; plus
- e. 0.25% of the average monthly payment volume above €250m.

### *Method C*

9.33 Method C is based on the authorised EMI's unrelated payment services income over the preceding year with a scaling factor applied. The authorised EMI's income is derived by applying a multiplication factor to income described as the 'relevant indicator' in the EMRs (and PSRs). Here, the income is the sum of the authorised EMI's interest income, interest expenses, commission and fees received as well as other operating income.

9.34 We define these as:

- Interest income – interest received by the authorised EMI from the investments it has made, whether or not made from the users' funds linked to unrelated payment services.
- Interest expenses – interest payable by the authorised EMI to its creditors or users where the funds stay on their payment accounts.
- Commission and fees received – these should be expressed gross.
- Other operating income – is any other kind of income that may be linked to the unrelated payment services or ancillary services as set out at regulation 32 of the EMRs.

9.35 The multiplication factor applied to the relevant indicator is:

- 10% of income up to €2.5m;
- 8% of income between €2.5m and €5m;
- 6% of income between €5m and €25m;
- 3% of income between €25m and €50m; and
- 1.5% of income above €50m.

- 9.36 The scaling factor applied to methods B and C is based on the type of service provided, and is the higher of the following:

### Scaling factors

Payment services (from paragraph 21 of Schedule 2 of the PSRs)	Scaling factor
Money remittance.	0.5
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.	0.8
For any other payment service.	1.0

### *Method D*

- 9.37 Method D is 2% of the average outstanding e-money issued by the EMI.
- 9.38 The average outstanding e-money is the average total amount of financial liabilities related to e-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, as set out in regulation 2 of the EMRs.
- 9.39 As referred to above, EMIs that have not completed a sufficiently long period of business to calculate the amount of average outstanding e-money for these purposes should use the projected figure submitted in the business plan in their application for authorisation (subject to any adjustments that we have required).
- 9.40 If an authorised EMI provides payment services that are not related to issuing e-money or is a hybrid business and the amount of outstanding e-money is not known in advance, the authorised EMI may calculate its own funds requirement on the basis of a representative portion being assumed as e-money, as long as a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the FSA. Where an authorised EMI has not completed a sufficiently long period of business to compile historical data adequate to make that calculation, it must make an estimate on the basis of projected outstanding e-money as evidenced by its business plan, subject to any adjustments to that plan which are, or have been, required by the FSA.

### Applying accounting standards

- 9.41 Where there is a reference to an asset, liability, equity or income statement item, the authorised EMI must recognise that item and measure its value in accordance with the following (as set out in paragraph 25, Schedule 2 of the EMRs):
- Financial Reporting Standards and Statements of Standard Accounting Practice issued or adopted by the Accounting Standards Board;
  - Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the Accounting Standards Board;
  - International Accounting Standards issued by the IASB;

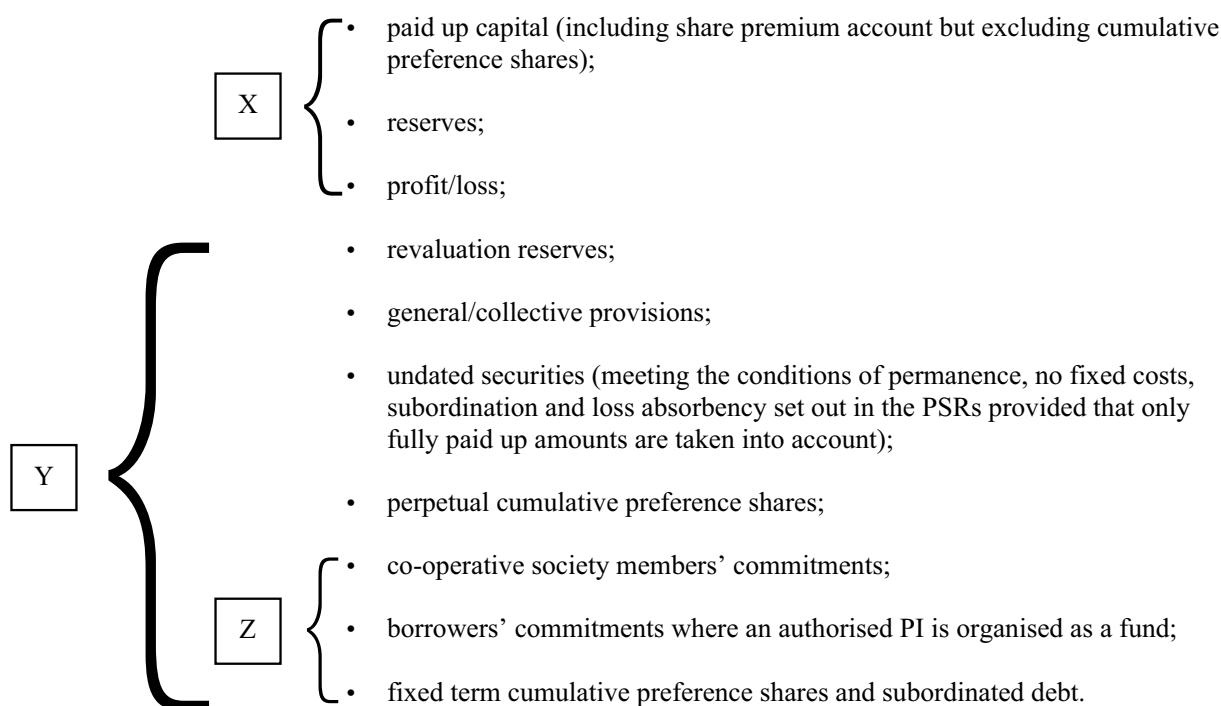
- International Standards on Auditing (UK and Ireland); and
- the Companies Act 2006.

9.42 The exception is where the EMRs or PSRs provide for a different method of recognition, measurement or valuation.

### Part III: Own funds – qualifying items for authorised EMIs and small EMIs

9.43 Qualifying items that may be used to meet the capital requirements, as well as the conditions under which these items qualify, are set out in Part 2 of Schedule 2 of the EMRs. The list of qualifying items is applicable to both the e-money businesses and unrelated payment services businesses.

9.44 In brief, these qualifying items consist of:



9.45 The full definition of each qualifying item can be found in paragraph 4 of Part 2 of Schedule 2 of the EMRs. Qualifying items are subject to deductions and limits discussed later. EMIs must take these deductions and limits into account in good time, as they will apply immediately after authorisation.

9.46 Paid-up capital, reserves, profit/loss and revaluation reserves must be available to the EMI for unrestricted and immediate use to cover risks and losses as soon as these occur. They must also be net of foreseeable tax charges or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses. Also, capital must not include guarantees provided by the Crown or a local authority to a publicly quoted EMI.

## Part IV: Worked example for authorised EMIs

- 9.47 Below is a worked example showing AEMI Y's capital resources and capital requirements. AEMI Y issues e-money and provides unrelated payment services and therefore this example demonstrates the capital requirements calculations for both types of activity. An authorised EMI that solely issues e-money and provides related payment services would only have to calculate a capital requirement in line with method D above.

<b>AEMI Y</b>			
AEMI Y issues e-money, and in addition carries out one or more of the activities specified in paragraph 1(a) to 1(e) of Schedule 1 of the PSRs.			
Therefore it will have to calculate its ongoing capital requirements for both types of activity, in accordance with the methods outlined above.			
Its average outstanding e-money for the preceding six months was £30m.			
Its payment volume for unrelated payment services in the preceding 12 months was £96m. This is for all payment transactions, not just those within the EEA.			
The current EUR to GBP exchange rate is €1 = £0.80.			
Its current balance sheet and income statement for the prior 12 months are set out below.			
<u>Current balance sheet (£,000)</u>		<u>Income statement for prior 12 months (£,000)</u>	
<b>Assets</b>			
Cash	1,000	Commissions and fees received	1,700
Property and equipment	8,000	Other operating income	300
Intangible assets	600	<b>Net income</b>	<b>2,000</b>
Investment in financial subsidiary	400	Discretionary staff bonuses	140
Other investments	1,000	Other variable expenditure	600
Other assets	1,000	Fixed overheads	1,000
<b>Total assets</b>	<b>12,000</b>	<b>Profit before taxation</b>	<b>260</b>
<b>Liabilities</b>			
Unsubordinated creditors	7,600	Taxation	60
Specific provisions	2,000	<b>Profit for the financial year</b>	<b>200</b>
10 year subordinated debt	400		
<b>Total liabilities</b>	<b>10,000</b>		
<b>Equity</b>			
Called up ordinary share capital	80		
Share premium account	40		
Perpetual cumulative preference shares	200		
Revaluation reserve	40		
Profit and loss reserves (verified)	1,640		
<b>Total equity</b>	<b>2,000</b>		

## Calculating the initial capital and meeting the initial capital requirement for AEMI Y

### Calculating the initial capital requirement

The initial capital requirement for authorised EMIs is fixed at €350,000.

$$\begin{aligned} \text{Initial capital requirement of AEMI Y in sterling} &= €350,000 * 0.8 \\ &= £280,000 \end{aligned}$$

### Meeting the initial capital requirement

Paragraph 1 of Schedule 2 sets out the items of capital, which can be included in 'initial capital' for the purposes of meeting the requirement. It only permits items grouped as X in the 'Qualifying Items' diagram above. In summary, the items that are permitted are:

- paid-up capital
- profit/loss and reserves

Using the above and the balance sheet of AEMI Y, its initial capital can be calculated as follows:

$$\begin{aligned} \text{Initial capital of AEMI Y} &= \text{called up share capital} + \text{share premium account} + \text{profit/loss} \\ &= 80,000 + 40,000 + 1,640,000 \\ &= £1,760,000 \end{aligned}$$

Paragraph 2 of Schedule 2 requires that applicants for authorisation have initial capital which exceeds the initial capital requirement. AEMI Y's initial capital of £1,760,000 exceeds its initial capital requirement of £280,000 and so it meets this requirement.

## Calculating the ongoing capital requirement and meeting the ongoing capital requirement for AEMI Y

### Calculating the ongoing capital requirement for the activity of issuing e-money

The amount of capital required for activities relating to issuing e-money is 2% the average outstanding e-money balance for the preceding six months (this is method D in the EMRs). Average outstanding e-money means the average total amount of e-money liabilities in issue at the end of each calendar day over the preceding six calendar months.

In the case of AEMI Y at this point in time, this average amounts to £30m. 2% of £30m is £600,000, which is therefore the capital requirement for the activity of issuing e-money at this point in time.

This sum should be held in addition to any ongoing capital requirement for payment services not linked to issuing e-money.

### Calculating the ongoing capital requirement for unrelated payment services

Paragraph 13 of Schedule 2 requires that authorised EMIs undertaking unrelated payment services must hold capital to meet the ongoing capital requirement for these activities which must be calculated in accordance with method A, method B or method C set out above.

#### *Method A (Paragraph 20 of Schedule 2)*

Under this method the authorised EMI's requirement is based on its prior year's fixed overheads. Using AEMI Y's prior year income statement:

Method A capital requirement:

10% of prior year's fixed overheads	$10\% * £1,000,000 = £100,000$
-------------------------------------	--------------------------------

#### *Method B (paragraph 21 of Schedule 2)*

Under method B the authorised EMI's requirement is based on its prior year's payment volume. This is the total volume of payment transactions, not just those within the EEA. AEMI Y had a payment volume of £96m in the prior 12 months and so its requirement under this method is calculated according to paragraph 21 of Schedule 2 as follows:



Method B capital requirement:

Annual payment volume converted from £ to €	$£96m \div 0.8$	= €120m
Scaling factor for the type of payment services carried out by AEMI Y	1	
Average monthly payment volume	$€120m \div 12$	= €10m
Application of the elements set out in the EMRs to the average monthly payment volume and the scaling factor	$(4\% \times €5m) + (2.5\% \times €5m) \times 1$	= €325,000
Capital requirement converted from € to £	$€325,000 \times 0.8$	= £260,000

*Method C (paragraph 22 of Schedule 2)*

Under method C, the authorised EMI's requirement is based on their income in the prior year.

Method C capital requirement:

Income in prior 12 months	£2m	
Scaling factor		
Application of multiplication factor of 10% and scaling factor to income	$(10\% \times £2m) \times 1$	£200,000

## Meeting the capital requirement

Paragraphs 4 to 12 of Schedule 2 set out the elements of capital that qualify for inclusion in capital, the limits applied to the inclusion of some of these items and the deductions that must be made. It is this definition of capital that must be used in meeting the capital requirement. Using those paragraphs, the own funds for AEMI Y will be calculated as follows.

### *Qualifying items*

Paid up share capital and share premium but excluding cumulative preference shares	80 + 40	= 120
Reserves and profit/loss		1,640
Revaluation reserves		40
Cumulative preference shares		200
Subordinated loan capital		400
Total qualifying items	£120,000 + £1,640,000 + £40,000 + £200,000 + £400,000	= £2.4m

### *Deductions*

Intangible assets		600
Holdings in the shares of financial institutions		400
Total deductions	£600,000 + £400,000	£1.0m

### *Limits on qualifying elements*

Paragraph 9 of Schedule 2 sets limits based on three separate amounts: A, B and C. These amounts are calculated as follows:

A (total of items grouped as Y above)	40 + 200 + 400	= 640
B (total of items grouped as X above less total of items grouped as P above)	120 + 1640 - 600	= 1160
C (total of items grouped as Z above)		= 400

The limits in paragraph 9 are that A must not exceed B and C must not exceed 50% of B. If the limits are exceeded, then qualifying elements of capital need to be excluded in the capital calculation. For AEMI Y, neither of these limits are exceeded.

### *Capital for AEMI Y*

Capital (qualifying items minus deductions minus amounts excluded due to limits)	(£2.4m - £1.0m) - £0m	= £1.4m
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The ongoing capital requirement for AEMI Y is the sum of £600,000 and (£100,000, £260,000 or £200,000), which in any case is greater than the initial capital requirement of £280,000 and therefore is the minimum amount of capital AEMI Y must hold.

AEMI Y therefore has capital in excess of the capital requirement calculated under method A (£100,000), B (£260,000) or C (£200,000) plus method D (£600,000).

# 10 Safeguarding

## **Introduction**

- 10.1 This chapter explains the safeguarding requirements for authorised EMIs, small EMIs and credit unions that issue e-money and their responsibility to ensure appropriate organisational arrangements are in place to protect the safeguarded funds.

## **Purpose of safeguarding**

- 10.2 The EMRs impose safeguarding requirements to protect customer funds. If a business that has safeguarded funds becomes insolvent, the claims of e-money holders or payment service users are paid from the asset pool formed from these funds above all other creditors (except for the costs of distributing the asset pool).

## **Safeguarding funds received in exchange for e-money**

- 10.3 All EMIs are required by regulation 20 to safeguard funds received in exchange for e-money that has been issued.
- 10.4 A credit union that issues e-money will have a Part 4 permission under FSMA to issue e-money but is required under the EMRs to safeguard funds received in exchange for e-money as if it were an EMI, see regulation 20(5).

## **Safeguarding funds from unrelated payment services (regulation 20(6))**

- 10.5 EMIs and credit unions are entitled to provide payment services that are unrelated to the issuance of e-money.
- 10.6 Authorised EMIs that provide unrelated payment services are subject to the safeguarding provisions of the PSRs (regulation 19 of the PSRs) as if they were authorised payment institutions.
- 10.7 Small EMIs that provide unrelated payment services are in the same position as small payment institutions with respect to safeguarding. Under the PSRs small payment institutions can choose to comply with safeguarding requirements for funds received for payment services to offer the same protection over customer funds as authorised payment institutions must provide. If a small EMI chooses to safeguard funds received

for unrelated payment services it will have to deliver the same level of protection as is expected of an authorised EMI (and authorised payment institution), as described in this chapter. We require businesses applying to become small EMIs that provide unrelated payment services to tell us if they will safeguard these funds. Those that opt to safeguard funds received for unrelated payment services will have to provide information about their safeguarding arrangements in annual reporting returns.

- 10.8 Credit unions are subject to regulation 19 of the PSRs on the same basis as small EMIs.

## **What funds have to be safeguarded and when?**

- 10.9 EMIs and credit unions must safeguard funds that have been received in exchange for e-money that has been issued (referred to as ‘relevant funds’).
- 10.10 Relevant funds received in the form of payment by a payment instrument only have to be safeguarded when they are credited to the institution’s payment account or are otherwise made available to the EMI or credit union, but must be safeguarded by the end of five business days after the date on which the e-money has been issued. This relates to e-money paid for by a payment instrument such as a credit or debit card and not e-money that is paid for by cash, even if the cash payment is received by a person acting on behalf of the EMI or credit union (such as an agent or distributor).
- 10.11 Authorised EMIs must also separately safeguard funds received in exchange for unrelated payment services. Small EMIs and credit unions may choose to safeguard funds received in exchange for unrelated payment services. Funds received in exchange for unrelated payment services and relating to a particular payment transaction only have to be safeguarded if they exceed £50 (in which case the full amount must be safeguarded, not just the amount by which the funds exceed the £50 threshold). EMIs and credit unions may, however, choose to safeguard amounts beneath this threshold, in which case the insolvency protections will apply.
- 10.12 Some EMIs will also receive funds from the public in respect of other services. An example is an EMI with a foreign exchange business. EMIs with such hybrid businesses are only required to safeguard the funds received for e-money. However, sometimes such hybrid businesses will not know the precise proportion of customer funds received for e-money or the amount may be variable. In these circumstances, an EMI may make a reasonable estimate on the basis of relevant historical data of the proportion that is likely to be for e-money and this proportion must be safeguarded. The EMI would, if asked, have to satisfy us that the proportion actually safeguarded was a reasonable estimate. Relevant data might include the proportion generally used as e-money by the customer in question or by similar customers generally.
- 10.13 In our view, an EMI that is carrying out a foreign exchange transaction independently from its payment services (see Q12 in PERG 5.2) does not have to safeguard funds received for the purpose of the foreign exchange transaction. Once the foreign exchange transaction has taken place, if the EMI pays those funds on to a third party on behalf of its client, and this is a payment service, the currency purchased in the

foreign exchange transaction becomes relevant funds and should be safeguarded as soon as it is received if appropriate. EMIs and credit unions combining payment and non-payment services in this way will have to be clear in the information they provide to customers prior to the transaction which parts of the service are regulated (and therefore funds are safeguarded) and which parts are not, to avoid breaching the Consumer Protection from Unfair Trading Regulations 2008.

- 10.14 It is important that the availability of an asset pool from which to pay the claims of e-money holders or payment service users in priority to other creditors in the event of the insolvency of an EMI is not undermined by the EMI improperly mixing funds, assets or proceeds received or held for different purposes. For example, if an account that an EMI holds with a credit institution is used not only for holding funds received in exchange for e-money but also for funds received for the execution of payment transactions not related to issuing e-money, or funds received for other activities (such as foreign exchange) this is likely to corrupt the segregation and may result in the protection for e-money holders in regulation 24 not applying. As a further illustration, an authorised EMI may safeguard funds received in exchange for e-money by covering them with an insurance policy or guarantee but if the account into which the proceeds of the insurance policy or guarantee are payable is also used for holding funds for other activities, or for holding the proceeds of another insurance policy taken out to safeguard funds received for payment transactions not related to issuing e-money, then this may mean that the proceeds are not considered to be an ‘asset pool’ subject to the special rules about the priority of creditors in the event of an insolvency.

### **How must funds be safeguarded?**

- 10.15 There are two ways in which an EMI or credit union may safeguard relevant funds:
- safeguarding option 1 – the segregation method; and
  - safeguarding option 2 – the insurance or guarantee method.

#### **Safeguarding option 1 – the segregation method**

- 10.16 The first method requires the EMI/credit union to segregate funds received in exchange for e-money (relevant funds) from any other funds it holds including its working capital and funds received for other business activities for example, foreign exchange transactions. Relevant funds must be held separately from funds received for the execution of payment transactions not related to issuing e-money. This requirement applies as soon as funds are held by the EMI/credit union and includes money received on its behalf by agents or distributors.
- 10.17 If relevant funds are still held at the end of the business day following the day the EMI/credit union received them, the EMI/credit union must:
- deposit the relevant funds in a separate account it holds with an authorised credit institution; or

- invest the relevant funds in secure and low risk assets that are approved by us as liquid (regulation 21(6)(b)) and place those assets in a separate account with an authorised custodian.
- 10.18 Regulation 21(6)(a) of the EMRs defines the assets that are considered to be secure and low risk for these purposes.<sup>19</sup> Regulation 21(6)(b) of the EMRs provides that assets are liquid if they are approved as such by us. We do not consider that all of the assets described in regulation 21(6)(a) meet the third criterion of ‘liquid.’ We have approved the assets referred to below as liquid. On this basis, assets are secure, low risk and liquid, and an EMI/credit union can invest in them and place them in a separate account with an authorised custodian in order to comply with the safeguarding requirement, if they are:
- items that fall into one of the categories set out in Table 1 of point 14 of Annex 1 to Directive 2006/49/EC(a) for which the specific risk capital charge is no higher than 0%; or
  - units in an undertaking for collective investment in transferable securities (UCITS), which invests solely in the assets mentioned previously.
- 10.19 An authorised credit institution includes UK banks and building societies authorised by us to accept deposits (including UK branches of third-country credit institutions) and European Economic Area (EEA) firms authorised as credit institutions by their home state competent authorities, other than a person in the same group as the EMI. Authorised custodians include firms authorised by us to safeguard and administer investments and EEA firms authorised as investment firms under the Markets in Financial Instruments Directive (MiFID) and that hold investments under the standards in Article 13 of MiFID.
- 10.20 The safeguarding account in which the relevant funds or equivalent assets are held must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the EMI/credit union). It must be clear to any administrator that the funds are held for the purpose of safeguarding.
- 10.21 The safeguarding account must not be used to hold any other funds or assets including safeguarding or segregation of funds from other services or the protection of funds received for foreign exchange deals. This means that, when EMIs/credit unions are safeguarding funds received for both e-money and unrelated payment services, the money should not be held in the same account.
- 10.22 In our view, the effect of having to hold a separate account where only the EMI/credit union may have any interest or right over the relevant funds or assets (except as provided by regulation 19 of the PSRs) is that EMIs cannot share safeguarding accounts. For example, a corporate group containing several EMIs or credit unions cannot pool their respective relevant funds or assets in a single account. Each EMI/credit union must therefore have its own safeguarding account. The EMRs do not,

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<sup>19</sup> In exceptional circumstances, we may determine that an asset that would otherwise be secure and low risk for these purposes is not such an asset, provided the determination is based on an evaluation of the risks associated with the asset, including any risk arising from the security, maturity or value of the asset and there is adequate justification for the determination.

however, prevent EMIs/credit unions from holding more than one safeguarding account. If an account with an authorised credit institution is being used, it is important that the account is named in such a way that its purpose is clear, and that the EMI has an acknowledgement from the credit institution, or is otherwise able to demonstrate to our satisfaction that the bank has no rights (for example of set-off) over funds in that account.

- 10.23 To ensure it is clear what funds have been segregated and in what way, EMIs/credit unions must keep records of any:
- relevant funds segregated;
  - relevant funds placed in an account with a credit institution; and
  - assets placed in a custody account.
- 10.24 We reserve the right, in exceptional cases, to determine that an asset that would otherwise be described as secure and low risk is not in fact such an asset, provided that:
- such a determination is based on an evaluation of the risks associated with the asset, including any risk arising from the security, maturity or value of the asset; and
  - there is adequate justification for the determination.

## **Safeguarding option 2 – the insurance or guarantee method**

- 10.25 The second safeguarding method is to arrange for the relevant funds to be covered by an insurance policy with an authorised insurer, or a guarantee from an authorised insurer or an authorised credit institution. EMIs/credit unions also safeguarding funds received for payment transactions that are not related to issuing e-money may need a separate policy or guarantee to ensure both sets of funds are adequately covered. The policy or guarantee will have to cover all relevant funds, not just funds held overnight or longer.
- 10.26 The proceeds of the insurance policy or guarantee must be payable in an insolvency event (as defined in regulation 24 of the EMRs and regulation 19 of the PSRs) into a separate account held by the EMI/credit union. That account must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the EMI/credit union). The account must not be used for holding any other funds, and no-one other than the EMI/credit union may have an interest in or right over the funds in it (except as provided for by regulation 24 of the EMRs and regulation 19 of the PSRs).
- 10.27 Neither the authorised credit institution nor the authorised insurer can be part of the group to which the EMI/credit union belongs.
- 10.28 An ‘authorised insurer’ means a person authorised for the purposes of FSMA to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 6 of the First Council Directive 73/239/EEC of

24 July 1973 on the business of direct insurance other than life insurance<sup>20</sup>, other than a person in the same group as the EMI.

## **Protection from the claims of other creditors**

- 10.29 Where an EMI/credit union that has chosen to deposit customer funds in a credit institution account or invest them in secure, low risk and liquid assets, is placed in administration or ‘wound up’, these funds shall form part of the EMI’s/credit union’s asset pool. The claims of the e-money holder/payment service user will be paid from the asset pool above all other creditors. Regulation 24(1) of the EMRs and regulation 19(11) of the PSRs ensure that, provided the funds have been safeguarded in accordance with one of the methods described above, the users’ funds are protected from the claims of other creditors. The claims of the e-money holder/payment service user are not subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool. The asset pool will include all individual customer funds for payment transactions unrelated to e-money issuance where a small EMI or credit union has chosen to safeguard such individual transactions (which they are not obliged to do). The asset pool will also include all individual customer funds for unrelated payment transactions at or below £50 that an authorised EMI has chosen to safeguard voluntarily, as again the authorised EMI is not obliged to safeguard unrelated payment transactions below £50.

## **Systems and controls**

- 10.30 EMIs/credit unions must maintain organisational arrangements that are sufficient to minimise the risk of the loss or reduction of relevant funds or assets through fraud, misuse, negligence or poor administration (regulation 24(3) of the EMRs and regulation 19(14) of the PSRs). This requirement is in addition to the general requirements on EMIs and credit unions to have effective risk management procedures, adequate internal control mechanisms and to maintain relevant records. It also applies to small EMIs and credit unions that voluntarily safeguard funds received for unrelated payment services.
- 10.31 An EMI’s or credit union’s auditor is required to tell us if it has become aware in its capacity as an auditor that, in its opinion, there is or has been, may be or may have been, a breach of any requirements imposed by or under the EMRs that is of material significance to us (regulation 25(4) of the EMRs). This may be in relation to either or both the issuing of e-money and the provision of unrelated payment services, and includes a breach of the safeguarding requirement and the organisational arrangements requirement.
- 10.32 Listed below are the arrangements that, in our view, EMIs and credit unions should have in place.

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20 OJ No L 145, 30.4.2004, p.1.



- They should exercise all due skill, care and diligence in selecting, appointing and periodically reviewing credit institutions, custodians and insurers involved in the safeguarding arrangements. They should take account of the expertise and market reputation of the third party and any legal requirements or market practices related to the holding of relevant funds or assets that could adversely affect e-money holders' or payment service users' rights or the protections afforded by regulation 20 of the EMRs and regulation 19 of the PSRs (for example, where the local law of a third country credit institution holding a safeguarding account would not recognise the priority afforded by the EMRs and PSRs to e-money account holders/payment service users on insolvency). For the requirements relating to safeguarding for unrelated payment services see Chapter 10 of the *Payment Services Approach Document*.
- They should also consider, together with any other relevant matters:
  - the need for diversification of risks;
  - the capital and credit rating of the third party;
  - the amount of relevant funds or assets placed, guaranteed or insured as a proportion of a third party's capital and (in the case of a credit institution) deposits; and
  - the level of risk in the investment and loan activities undertaken by the third party and its affiliates (to the extent that information is available).

When the decision is made on whether the arrangements remain appropriate they should record the grounds for that decision.

- They should have arrangements to ensure that relevant funds received by persons acting on their behalf (such as agents or distributors) are safeguarded in accordance with regulation 20 of the EMRs and regulation 19 of the PSRs.
- Where relevant funds are segregated in a different currency from that of receipt but the e-money holder has not instructed the EMI or credit union to convert it in this way, it should ensure that the amount held is adjusted regularly to an amount at least equal to the currency in which they are liable to the e-money holder using an appropriate exchange rate, such as the previous day's closing spot rate.
- The records should enable them, at any time and without delay, to distinguish relevant funds and assets held for each e-money holder from their own money. The records should be sufficient to show and explain its transactions concerning relevant funds and assets. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for e-money holders.
- They should carry out internal reconciliations of records and accounts of the entitlement of e-money holders to relevant funds and assets with the records and accounts of amounts safeguarded. This should be done as often as necessary and as soon as reasonably practicable after the date of the

reconciliation to ensure the accuracy of the records and accounts. Records should be maintained that are sufficient to show and explain the method of internal reconciliation and its adequacy.

- They should regularly carry out reconciliations between internal accounts and records and those of any third parties safeguarding relevant funds or assets. Reconciliations should be performed as regularly as necessary and as soon as reasonably practicable after the date to which the reconciliation relates to ensure the accuracy of its internal accounts and records against those of the third parties. When determining whether the frequency is adequate, they should consider the risks the business is exposed to, such as the nature, volume and complexity of the business, and where and with whom the relevant funds and assets are held. We believe an adequate method of reconciliation is for a comparison to be made and any discrepancies identified between:
  - the balance on each safeguarding account, as recorded by the EMI/credit union, with the balance on that account as set out on the statement or other form of confirmation issued by the firm that holds those accounts; and
  - the balance, currency by currency, on each e-money holder transaction account as recorded by the EMI/credit union, with the balance on that account as set out in the statement or other form of confirmation issued by the firm that holds the account.

10.33 Where discrepancies arise as a result of reconciliations, they should identify the reason for the discrepancy and correct it as soon as possible by paying any shortfall or withdrawing any excess, unless the discrepancy arises only due to timing differences between internal and external accounting systems. While a discrepancy cannot be resolved, they should assume that the records that are correct are those showing a greater amount of relevant funds or assets that should be safeguarded.

10.34 They should notify us in writing without delay if in any material respect they have not complied with, or are unable to comply with, the requirements in regulation 20 of the EMRs or regulation 19 of the PSRs or if they cannot resolve any reconciliation discrepancies in the way described.

### **Effect of an insolvency event**

10.35 If an insolvency event (as listed in regulation 24 of the EMRs) occurs in relation to an EMI or credit union that is safeguarding, then (with one exception) the claims of e-money holders will be paid from the relevant funds and assets that have been segregated (the 'asset pool' as defined in regulation 24 of the EMRs) above all other creditors. The exception is that expenses of the insolvency proceeding take priority so far as they are in respect of the costs of distributing the asset pool.

10.36 No right of set-off or security right can be exercised in respect of the asset pool, except to the extent that it relates to the fees and expenses of operating a safeguarding account.

# 11 Financial crime

## Introduction

- 11.1 All electronic money issuers must comply with legal requirements to deter and detect financial crime, which includes money laundering and terrorist financing. Relevant legislation includes the financial crime provisions in the EMRs, section 21A of the Terrorism Act 2000, the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007, the EC wire transfer regulation<sup>21</sup> and Schedule 7 to the Counter-Terrorism Act 2008. Electronic money issuers are also subject to the various pieces of legislation that implement the UK's financial sanctions regime.
- 11.2 Credit institutions, credit unions and municipal banks that issue e-money must continue to comply with the relevant provisions in our Handbook, including the provisions relating to financial crime in our Senior Management Arrangements, Systems and Controls (SYSC) sourcebook in SYSC 6.1.1 R and SYSC 6.3.

## Application to become an EMI

- 11.3 To be eligible to become an EMI, applicants must ensure, among other things, the sound and prudent conduct of their affairs. In particular, they have to satisfy us that they have:
- robust governance arrangements, including a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
  - effective procedures to identify, manage, monitor and report any risks to which they might be exposed; and
  - adequate internal control mechanisms.
- 11.4 These arrangements must be comprehensive and proportionate to the nature, scale and complexity of the e-money to be issued and include policies and procedures to identify, manage, monitor and report any risks of financial crime to which they may be exposed (regulation 6(5)(b)).

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21 Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

- 11.5 Chapter 3 lists the types of controls we expect to see as part of the authorisation process.

## **Systems and controls**

- 11.6 We expect EMIs to establish and maintain systems and controls to comply with their legal obligations under the EMRs, the Money Laundering Regulations 2007, the EC wire transfer regulation and Schedule 7 of the Counter-Terrorism Act 2008. These systems and controls include appropriate and risk-sensitive policies and procedures to deter and detect financial crime and an organisational structure where responsibility to prevent financial crime is clearly allocated.

## **Policies and procedures**

- 11.7 We expect EMIs to establish and maintain appropriate and risk-sensitive policies and procedures for countering the risk that they may be used to further financial crime. Appropriate policies and procedures are proportionate to the nature, scale and complexity of the EMI's activities and enable it to identify, assess, monitor and effectively manage financial crime risk.
- 11.8 In identifying its financial crime risk, an EMI should consider a range of factors, including:
- its customers, product and activity profile;
  - its distribution channels;
  - the type, complexity and volume of permitted transactions;
  - its processes and systems; and
  - its operating environment.
- 11.9 As part of their risk assessment and to mitigate the risk of their products being used for purposes connected with financial crime, we expect EMIs to:
- apply ongoing due diligence to merchants on a risk-sensitive basis; and
  - put in place and enforce policies to determine the acceptable use of their products.

This is because merchants can be involved in activities that are associated with an increased risk of money laundering. EMIs should also be alert to the possibility that merchants may abuse their products to further illegal activity, such as the sale of child abuse images or age-restricted goods to minors.

- 11.10 EMIs should carry out regular assessments of their financial crime policies and procedures to ensure they remain relevant and appropriate. As part of this, an EMI should be alert to any change in its operating environment that will have an impact on the way it conducts its business. For example, we expect EMIs to be alert to the publication of any information on financial crime risks and threats associated with

e-money products, such as typology reports from the Financial Action Task Force or other relevant domestic and international bodies, and incorporate this information in their risk assessment as appropriate.

- 11.11 EMIs are ultimately responsible for any action or omission committed by their agents and distributors (regulation 36 of the EMRs) to the same extent as if they have expressly permitted it. This includes failure by agents, third parties to which activities have been outsourced and distributors to take adequate measures to prevent financial crime. EMIs must be aware of this risk and take measures to manage it effectively. This includes taking steps to satisfy themselves of agents', distributors' and third parties' ongoing compliance with their financial crime obligations.
- 11.12 Chapter 5 contains further detail on the responsibility of EMIs for their agents and distributors.
- 11.13 Electronic money issuers should also take steps to ensure they comply with the UK's financial sanctions regime, which acts to freeze the assets of certain individuals and entities designated by the government. It is an offence to provide funds to people and organisations on the consolidated list of sanctions targets maintained by the Treasury's Asset Freezing Unit without first obtaining a licence. In some cases it is prohibited to provide any financial service. Information about financial sanctions is available from the Treasury.

### **Internal organisation**

- 11.14 We expect EMIs to establish a clear organisational structure where responsibility for the establishment and maintenance of effective policies and procedures to prevent financial crime is clearly allocated.
- 11.15 Regulation 20(5A) of the Money Laundering Regulations 2007 requires EMIs to appoint an individual to monitor and manage compliance with the anti-money laundering policies and procedures they are required to put in place. This may be the same person who is also the officer nominated under the Proceeds of Crime Act 2000. We expect the individual appointed under regulation 20(5A) of the Money Laundering Regulations to have the knowledge, experience and training as well as a level of authority and independence within the EMI and sufficient access to resources and information to enable him to carry out that responsibility.
- 11.16 EMIs should also consider allocating to a director or senior manager overall responsibility for the establishment and maintenance of effective systems and controls to prevent financial crime. This director or senior manager may also be the individual appointed under regulation 20(5A) of the Money Laundering Regulations.

### **Industry guidance**

- 11.17 When considering whether a breach of applicable legislation in relation to anti-money laundering and counter-terrorist financing policies and procedures has occurred, we will consider whether an EMI has followed relevant provisions in the guidance for the UK financial sector issued by the Joint Money Laundering Steering Group (JMLSG).

EMIs are reminded that the JMLSG does not intend its guidance to be applied unthinkingly, as a checklist of steps to take.

## **Enforcement**

- 11.18 Under the EMRs, we have the power to cancel, suspend or vary the authorisation, registration or permissions of EMIs that fail to meet their obligation to put in place effective procedures in relation to financial crime. We may also censure or impose a penalty on electronic money issuers that contravene requirements imposed by or under the EMRs. We may also enforce EMIs' financial crime obligations under other legislation, including FSMA, the Money Laundering Regulations 2007 and Schedule 7 to the Counter-Terrorism Act 2008.
- 11.19 See Chapter 15 for more details about our enforcement approach.

# 12 Complaint handling

- 12.1 This chapter summarises the complaint handling requirements that apply to all electronic money issuers in the scope of 2EMD.

## Introduction

- 12.2 Complaint handling covers three distinct areas:
- how electronic money issuers handle the complaints they receive from customers;
  - the role of the ombudsman service in dealing with complaints where customers are not satisfied with the company's response; and
  - our role in handling complaints from customers and other interested parties about electronic money issuers' alleged breaches of the EMRs and about the FSA.
- 12.3 2EMD requires there to be an adequate and effective out-of-court complaint and redress procedure to settle disputes between electronic money issuers and e-money holders or payment service users. FSMA is amended to allow the ombudsman service to operate an out-of-court complaint and redress process for electronic money issuers. This means that the rules relating to complaints handling are not in the EMRs but in the Dispute Resolution: Complaints sourcebook (DISP) in our Handbook.
- 12.4 All electronic money issuers are subject to the complaints handling rules even if they are not required to be authorised or registered by us. For a full list of the persons that are defined as electronic money issuers if they issue e-money see Chapter 2.

## Handling complaints from customers

- 12.5 It is important that businesses have their own complaint-handling arrangements that should resolve most complaints. The ombudsman service will not consider a complaint until the business concerned has had an opportunity to consider it.
- 12.6 The rules about how electronic money issuers should handle complaints are set out in Chapter 1 of DISP.

- 12.7 The rules cover a range of issues, including aiding consumer awareness, establishing internal complaint-handling procedures, timeliness, the requirement for a final response letter, rules on referral of complaints to others and a requirement to cooperate with the ombudsman service.
- 12.8 There are some ‘frequently asked questions’ about complaints handling on our [website](#).
- 12.9 All electronic money issuers except those with Part 4 permission under FSMA to issue e-money are exempt from the requirements in these rules to record complaints, report complaint statistics to us, or publish their complaints data. However, it is in their interests to retain records of complaints so these can be used to help the ombudsman service if necessary. This does not affect any requirements to record or report complaints if they are authorised by us to undertake any other regulated activity.
- 12.10 Firms authorised under FSMA to issue e-money (credit institutions, municipal banks and credit unions) are not exempt from the complaints record rule, the complaints reporting rules or the complaints data publication rules.

## **Providing information about complaints procedures**

- 12.11 Electronic money issuers are subject to the PSRs for the payment services element of their e-money business and if they provide any unrelated payment services. The PSRs require payment service providers to provide information about the out-of-court complaint and redress procedures for the payment service user and the methods for having access to them (paragraph 7(b) of Schedule 4 to the PSRs). This means informing payment service users about the complaints mechanism and the availability of the ombudsman service. This information can be provided using the summary details required under [DISP 1.2](#).
- For single payment transactions, this information must be made available ‘before the payment service user is bound by the single payment service contract’.
  - For framework contracts, this information must be provided ‘in good time before the payment service user is bound by the framework contract’.
- 12.12 In both cases, where the contract is concluded using distance means, the information can be provided immediately after the contract is concluded if the method used to conclude the contract does not enable earlier provision.
- 12.13 However, these requirements are different in terms of content and timing from the requirement in DISP 1.2 for other types of business, which is that the payment service provider should ‘refer eligible complaints to the availability of these summary details ...at or immediately after the point of sale’. Where the activity does not involve a sale, this obligation applies at or immediately after the point when contact is first made with an eligible complainant.
- 12.14 So, payment service providers who also undertake other types of business regulated by the FSA will have to operate different arrangements for payment service users from those they operate for other customers. If they want to, payment service



providers can apply the requirements relating to payment service users to all their customers, since they satisfy the requirements set out in DISP 1.2 for other customers.

## **The role of the ombudsman service in dealing with complaints**

- 12.15 The ombudsman service is a statutory, informal dispute-resolution service, established under FSMA and operationally independent of the FSA. It operates as an alternative to the civil courts. Its role is to resolve disputes between individuals, micro-enterprises, small charities and trusts, and financial services firms quickly, without taking sides and with minimum formality, on the basis of what is fair and reasonable in the circumstances of each case. In considering what is fair and reasonable, the ombudsman service takes into account the relevant law, regulations, regulators' rules, guidance and standards, relevant codes of practice (such as the Remittances Customer Charter) and, where appropriate, what it considers to have been good industry practice at the relevant time.

### **Jurisdiction of the ombudsman service**

- 12.16 There are three separate jurisdictions under the ombudsman service.
- The compulsory jurisdiction covers all firms, payment service providers and electronic money issuers with UK establishments.
  - The consumer credit jurisdiction covers businesses (other than those covered by the compulsory jurisdiction) licensed by the OFT under the Consumer Credit Act 2006.
  - The voluntary jurisdiction extends to financial services businesses that are not covered by the compulsory jurisdiction or the consumer credit jurisdiction, but choose to join the voluntary jurisdiction – for example, firms providing services in the UK from overseas.
- 12.17 All electronic money issuers are covered by the compulsory jurisdiction of the ombudsman service for disputes concerning issuing and redeeming e-money and the related payment services. Electronic money issuers that provide unrelated payment services will also be in the compulsory jurisdiction for disputes concerning the provision of payment services.
- 12.18 Further information about the ombudsman service's processes for handling complaints is available on the ombudsman service's website. There is also information specifically for smaller businesses.

### **Eligibility to bring complaints to the ombudsman service**

- 12.19 Access to the ombudsman service is available to:
- consumers;
  - micro-enterprises (see below);

- small charities – annual income under £1m at the time of the complaint; and
  - small trusts – net asset value under £1m at the time of the complaint.
- 12.20 Electronic money issuers are not eligible to make a complaint that relates in any way to an activity that it is allowed to undertake itself. This extends to complaints from electronic money issuers about payment service provision, as all electronic money issuers are also entitled to provide payment services.
- 12.21 The full details of who is eligible to bring a complaint are set out in [DISP 2.7](#). If an electronic money issuer is in any doubt about the eligibility of a complainant, it should treat the complainant as if it were eligible. If the complaint is referred to the ombudsman service, it will determine eligibility by reference to appropriate evidence, such as accounts or VAT returns in the case of micro-enterprises.
- 12.22 A ‘micro-enterprise’ is an enterprise that:
- employs fewer than ten people; and
  - has a turnover or annual balance sheet that does not exceed €2m.
- 12.23 When calculating turnover or balance sheet levels, current and historical rates can be found on the European Commission’s [InforEuro](#) website.
- 12.24 For a complaint about payment services (whether relating to e-money or any unrelated payment services provided by the electronic money issuer), the complainant is eligible if it is a micro-enterprise either at the point of concluding the contract or at the time of the complaint. The point of this ‘dual test’ is to make it easier for payment service providers to determine whether the complainant is eligible. Payment service providers should have arrangements in place to check whether their customers are micro-enterprises when the contract is entered into. But if this information is not easily available, the dual test would allow a complainant to rely instead on its status at the time of making the complaint.
- 12.25 For other activities covered by the ombudsman service’s jurisdiction, the test for eligibility is whether the complainant is a micro-enterprise ‘at the time the complainant refers the complaint to the respondent’. This is in line with the eligibility tests for small charities and trusts.
- 12.26 The dual test means that, where the complaint is about a number of issues, including payment services, the electronic money issuer may only have to consider eligibility at the time the complaint was made. However, if the complainant was not eligible at the time the complaint was made and the case appears borderline, it will also be necessary to investigate the complainant’s status when concluding the contract.
- 12.27 Complaints can be made about electronic money issuers that have stopped issuing e-money. Former electronic money issuers remain in the compulsory jurisdiction for complaints about an act or omission that occurred when they issued e-money, as long as the compulsory jurisdiction rules were in force at the time the activity took place.

## **Territorial scope of the compulsory jurisdiction**

- 12.28 The compulsory jurisdiction covers complaints about e-money issued and payment services and ancillary activities provided from an establishment in the UK. This includes EEA authorised EMIs' UK branches or agents.
- 12.29 As above, electronic money issuers are subject to the PSRs for the payment service element of their e-money business and if they provide any payment services that are not related to the issuing of e-money. While there are some limitations on the application of the PSRs' conduct of business requirements to payment transactions that are not made wholly within the EEA and using an EEA currency, eligible complainants are still able to take complaints about these payment transactions to the ombudsman service. (For more information on this limitation see Chapter 11 in the Payment Services Approach Document.)
- 12.30 When dealing with complaints about transactions within or outside the scope of the PSRs' conduct of business requirements, the ombudsman service takes into account the different regulatory position alongside its usual test of what is fair and reasonable in all the circumstances of the case.

## **Cross-border disputes**

- 12.31 The ombudsman service actively cooperates with other dispute resolution services in other EEA states when resolving cross-border disputes. The ombudsman service's membership of FIN-NET, the financial dispute resolution network of national out-of-court complaint schemes in the EEA, helps to facilitate this.

## **The voluntary jurisdiction of the ombudsman service**

- 12.32 The voluntary jurisdiction covers complaints that are beyond the scope of either the compulsory jurisdiction or the consumer credit jurisdiction. It is available to electronic money issuers that carry on business in the EEA and direct services at UK consumers and wish to provide them with the protection of the ombudsman service.
- 12.33 Small e-money issuers can join the voluntary jurisdiction to allow consumers to take complaints to the ombudsman service about acts or omissions before they joined the compulsory jurisdiction.
- 12.34 Electronic money issuers that wish to join the voluntary jurisdiction should contact the ombudsman service (see Annex 2).

## **Complaints to the FSA**

- 12.35 We are required to operate procedures to allow e-money holders and other interested parties to submit complaints about electronic money issuers' alleged breaches of the EMRs or PSRs. This may be done by contacting us by telephone or

email (see Annex 2 for contact details). These complaints will be acknowledged and used to inform our regulatory activities (see Chapter 13). However, we do not operate a redress mechanism and so, when replying to complainants, we will tell them – where appropriate – that they may be able to refer their complaint to the ombudsman service.

## **Complaints about the FSA**

- 12.36 Anyone directly affected by the way in which the FSA has exercised its functions (other than its legislative functions) may complain about the FSA. If you wish to lodge a complaint about the FSA, please contact the Complaints Team by email ([complaints@fsa.gov.uk](mailto:complaints@fsa.gov.uk)) or by telephone (020 7066 9870).

# 13 Supervision

- 13.1 This chapter describes our approach to our responsibilities for supervising electronic money issuers.

## **Introduction**

- 13.2 Our supervisory strategy will be ‘complaints-led’ for the conduct of business rules applicable to all electronic money issuers (including those electronic money issuers that are not authorised or registered by us, see Chapter 2 for the list of electronic money issuers). We explain what we mean by ‘complaints-led’ below.
- 13.3 We will use reporting as our tool to monitor compliance with the capital requirements (see Chapter 9) for both authorised EMIs and small EMIs.
- 13.4 All EMIs will be required to submit reports providing information to help us understand the risks posed by their business activities. In addition to requiring certain financial information, we will require confirmation of an EMI’s safeguarding arrangements and the number of open accounts and agents (to provide confirmation that the necessary notification of any changes to these areas has been made to us).
- 13.5 All reports will be required within 30 business days of the EMI’s year end or half year end, with the first report due within one month of the first year end or half year end that occurs on or after 30 April 2011. More detail on reporting requirements can be found in Chapter 14.
- 13.6 In addition to the complaints-led and report-based prudential supervision described above, we may ask EMIs to attend educational roadshows and make them subject to a periodic regulatory review every four years.
- 13.7 We encourage EMIs to speak to us at the earliest opportunity if they anticipate any issues they may have in complying with the EMRs so that we can discuss with them an appropriate way forward.

## **Supervising compliance with the conduct of business rules**

- 13.8 All electronic money issuers (including those that are not authorised or registered by us) are subject to the conduct of business rules. We will supervise compliance with the conduct of business rules by using any information we receive from customers of electronic money issuers and other interested parties, such as complaints made directly to us (see Chapter 12).
- 13.9 When we receive a complaint alleging a breach of the conduct of business rules we will consider whether we need to take any supervisory action. In most cases, we expect simply to make the complainant aware of their right to take a complaint to the the ombudsman service if they are not satisfied with the electronic money issuer's response. We will not mediate between the electronic money issuer and the complainant; this is the role of the ombudsman service (see Chapter 12).
- 13.10 However, where a complaint to us about an alleged breach is significant or suggests a systemic problem, we are likely to follow up the complaint with supervisory action. This might involve, for example, a visit to the electronic money issuer concerned or a request for a written explanation of the circumstances of the alleged breach.
- 13.11 It may be that, although individual complaints are not significant, over time a particular electronic money issuer seems to be consistently non-compliant. This is likely to lead us to take supervisory action.
- 13.12 Where themes arise from the complaints, indicating an industry-wide problem on certain issues, we may undertake supervisory activity relating to that theme, such as visits to a number of electronic money issuers to understand how they are managing the particular risk identified. Findings from such visits may lead to both specific action being required from certain electronic money issuers and wider guidance being given to all electronic money issuers.
- 13.13 In any case, where we are not satisfied that an electronic money issuer has dealt appropriately with the causes of the non-compliance, we will discuss the matter with our Enforcement division. Chapter 15 contains further details on enforcement.
- 13.14 If the ombudsman service refers an electronic money issuer to us for non-compliance in settling an award made against it we will consider taking supervisory action against that institution. Continued non-compliance in settling an award will result in a referral to our Enforcement division.

## **Information from auditors of EMIs**

- 13.15 The EMRs impose an obligation on the auditors of all EMIs to report certain matters to us that they have become aware of in their capacity as auditor. For example, if the auditor reasonably believes that there is or has been a contravention of any of the requirements of the EMRs, they must report it to us (regulation 25(4)(a)(i)).
- 13.16 On receipt of such information, we will review and follow up with the EMI and/or the auditors as appropriate.

## **Credit institutions issuing e-money**

- 13.17 Credit institutions issuing e-money will remain firms regulated under FSMA and relationship-managed because of their other regulated activities. For these institutions we will adopt the same complaints-led approach described above but, where issuing e-money is a significant element of their activities, we will consider those activities within the ongoing risk assessment and ARROW arrangements for those firms.

## **Group supervision**

- 13.18 EMIs that are part of a large FSMA-authorised group are likely to be supervised as part of their group's relationship management.

## **Supervising compliance with the authorisation and registration requirements and the capital requirements of EMIs**

- 13.19 We will monitor compliance with the requirements for authorisation/registration, initial and ongoing capital and safeguarding by analysing the reports that we require EMIs to provide. These reports are described in Chapter 14.
- 13.20 The reports we receive will be analysed and supervisory action considered where, for example, a shortfall in capital is identified. It is likely in such circumstances that we will ask the EMI for an explanation of why it breached the requirement and agree remedial action. If we are not satisfied with the response, we will consider cancelling its authorisation or registration.
- 13.21 In addition to analysing reports made to us by EMIs, we will also consider their compliance with authorisation and registration requirements in our complaints-led supervisory activity. We consider that the complaints-led approach will help us to identify key risks in relation to ongoing compliance with the authorisation and registration requirements. Complaints about breaches of the conduct of business rules will be an indicator of whether an EMI is maintaining appropriate arrangements in relation to governance, systems and controls, and internal controls.
- 13.22 We are likely to instigate a closer supervisory relationship with any EMI that becomes sufficiently active in the e-money market to suggest that it poses a greater risk than most EMIs and if the impact of any shortcomings on the market could be significant. A relationship manager will carry out a cycle of risk assessments (every one to four years) and a risk mitigation programme will be developed that is proportionate to the risks identified.

## Changes in circumstances

- 13.23 We must be notified of changes of certain details after authorisation or registration. These are described in Chapter 4.
- 13.24 Where it becomes apparent to an EMI that there is, or is likely to be, a significant change in circumstances which may affect whether it continues to satisfy the own funds requirements, it must tell us without undue delay (or in the case of a prospective change, a reasonable period before it happens). Small EMIs that are not subject to initial capital requirements should monitor their level of business in case this moves above the relevant threshold (average outstanding e-money of €500,000).
- 13.25 Notifications must be made using the Standing Data form which will be available on the e-money section of our website from 30 April 2011, or, where a change is not covered by this form, by written confirmation to our Customer Contact Centre.

## Powers to require information, appoint persons to carry out investigations and carry out skilled persons reports

- 13.26 We prefer to carry out our functions under the EMRs by working in an open and cooperative relationship with each EMI. We will look to obtain information in the context of that relationship unless it appears that obtaining information in that way will not achieve the necessary results, in which case we will use our statutory powers. Our statutory powers include:
- the power to require specified information in connection with our responsibilities under the EMRs; and
  - the power to require a report from a skilled person, nominated or approved by us, on any matter that we require in connection with our responsibilities under the EMRs. Further information on our policy on the use of skilled persons and the appointment and reporting process is contained in the Supervision manual of our Handbook (SUP), specifically at SUP 5.3 and 5.4.
- 13.27 If it appears that there is a good reason for doing so, we can appoint competent persons to conduct an investigation on our behalf.

## Anti-money laundering and counter-terrorism policies and procedures

- 13.28 We are responsible for monitoring EMIs' compliance with their legal obligations under the EMRs, the Money Laundering Regulations 2007 and the Counter-Terrorism Act 2008. EMIs should be prepared to provide us with information about the operation and effectiveness of their anti-money laundering and counter-terrorist financing policies and procedures. This is likely to be based on the information EMIs have to provide to senior management under regulation 20(5A)(d) of the Money Laundering Regulations 2007.



13.29 Supervision of EMIs' compliance with these requirements will follow the approach set out in this chapter. Where an EMI poses a greater money-laundering or terrorist financing risk, it may have a closer supervisory relationship with us. We may also include EMIs in thematic financial crime reviews.



# 14 Reporting

- 14.1 We will require EMIs to provide us with information to help us comply with our supervisory responsibilities under the EMRs.

## Authorised EMIs

- 14.2 A summary of the reporting requirements for authorised EMIs is shown in the table below.

Reporting return	Required information /purpose	Frequency
FSA059	<b>Balance sheet</b>	Twice yearly within 30 business days of the authorised EMI's year end and half-year end.
FSA060	<b>Income statement</b>	
FSA061	<b>Capital requirements</b> Confirmation that the capital requirement is appropriately calculated and the requirement is being met. Authorised EMIs providing unrelated payment services in addition to issuing e-money will be subject to two cumulative 'electronic money' and payment service' own funds requirements. The payment service element to the requirement will be calculated by the authorised EMI using one of three methods, A, B or C (see Chapter 9). The authorised EMI must provide a breakdown of its capital resources that shows where it is in surplus or deficit.	

Reporting return	Required information /purpose	Frequency
FSA062	<p><b>Safeguarding</b></p> <p>Information is required on how the authorised EMI safeguards its clients' funds with respect to e-money and unrelated payment services by selecting from the following options:</p> <ul style="list-style-type: none"> <li>• placed in a separate account with an authorised credit institution;</li> <li>• invested in approved secure, low-risk and liquid assets held in a separate account with an authorised custodian;</li> <li>• covered by an insurance policy with an authorised insurer;</li> <li>• covered by a guarantee from an authorised insurer; or</li> <li>• covered by a guarantee from an authorised credit institution.</li> </ul> <p>For each option selected, the authorised EMI will also be asked to provide the name of the institution, custodian or insurer.</p>	
FSA063	<p><b>Supplementary information</b></p> <p>The authorised EMI is asked whether, for the reporting period, it has:</p> <ul style="list-style-type: none"> <li>• met its own funds requirement; and</li> <li>• immediately segregated and then safeguarded all funds received from customers throughout the reporting period.</li> </ul> <p>If either or both of the above requirements are not met, the authorised EMI will be required to provide an explanation.</p> <p>The authorised EMI will also be required to confirm, as at the reporting end date:</p> <ul style="list-style-type: none"> <li>• its number of agents – to enable us to verify the information provided for the e-money section of our Register; and</li> <li>• the number of accounts it has open.</li> </ul> <p>If the number of agents does not match the number of agents appearing on our Register, we may ask the authorised EMI for an explanation.</p> <p>To enable us to check that the firm is meeting the requirements to provide us with accounting and audit information under regulation 25, the return also asks whether the authorised EMI:</p> <ul style="list-style-type: none"> <li>• is required to have its accounts audited, and if it is, when this was last done; and</li> <li>• is a hybrid business, conducting other non-regulated business with an obligation to submit separate accounts for its e-money and payment services business (see below).</li> </ul>	Twice yearly within 30 business days of the authorised EMI's year end and half-year end.
	<b>Annual report and accounts</b>	Within 80 business days of year end

## Small EMIs

14.3 A summary of the reporting requirements for small EMIs is shown in the table below.

Reporting return	Information required/purpose	Frequency
FSA064	<p><b>Capital requirements</b></p> <p>The small EMI is required to provide figures that demonstrate how it meets its capital requirements. It must then provide a breakdown of its capital resources that shows where it is in surplus or deficit.</p> <p><b>Safeguarding</b></p> <p>Information is required on how the small EMI safeguards its clients' funds with respect to e-money and unrelated payment services (if it has opted to safeguard the funds received for unrelated payment services) by selecting from the following options:</p> <ul style="list-style-type: none"> <li>• placed in a separate account with an authorised credit institution;</li> <li>• invested in approved secure, low-risk and liquid assets held in a separate account with an authorised custodian;</li> <li>• covered by an insurance policy with an authorised insurer;</li> <li>• covered by a guarantee from an authorised insurer; or</li> <li>• covered by a guarantee from an authorised credit institution.</li> </ul> <p>For each option selected the small EMI will also be asked to provide the name of the institution, custodian or insurer.</p> <p><b>Supplementary information</b></p> <p>Confirmation of whether, for the reporting period, it has:</p> <ul style="list-style-type: none"> <li>• not exceeded the limit of €5m of average outstanding e-money;</li> <li>• not exceeded a rolling monthly average of €3m for the total amount of any unrelated payment transactions (over any period of 12 months);</li> <li>• met its own funds requirement (if applicable); and</li> <li>• immediately segregated and then safeguarded all funds received for e-money and unrelated payment services (if it has opted to safeguard funds received for unrelated payment services) from customers throughout the reporting period.</li> </ul>	<p>Twice yearly within 30 business days of the small EMI's year end and half-year end.</p>

Reporting return	Information required/purpose	Frequency
	<p>If any of the above requirements are not met, the small EMI will be required to provide an explanation. The small EMI will also be required to confirm, as at the reporting end date:</p> <ul style="list-style-type: none"> <li>its number of agents – to enable us to verify the information provided for the e-money section of our Register; and</li> <li>the number of accounts it has open.</li> </ul> <p>If the number of agents does not match the number of agents appearing on our Register, we may ask the small EMI for an explanation.</p> <p>To enable us to check that the small EMI is meeting the requirements to provide us with accounting and audit information under regulation 25, the return also asks whether it:</p> <ul style="list-style-type: none"> <li>is required to have its accounts audited, and if it is, when this was last done; and</li> <li>is a hybrid business, conducting other non-regulated business with an obligation to submit separate accounts for its e-money and payment services business (see below).</li> </ul>	Twice yearly within 30 business days of the small EMI's year end and half-year end.
FSA065	<p>Total amount of outstanding e-money issued at 31 December.</p> <p>This information is required for the FSA to meet its obligations in providing information to the Treasury – see 'annual report to the Treasury' section below.</p>	Annual report covering 1 January to 31 December. To be submitted by the end of the following January
	<b>Annual report and accounts</b>	Within 80 business days of year end

## Annual report to the Treasury

- 14.4 Every year the Treasury must inform the European Commission of the number of natural and legal persons that are registered with us as small EMIs and provide an aggregated e-money outstanding figure for the entire small EMI population. We must report the position as at 31 December in each calendar year.

## Separate accounting information for hybrid businesses

- 14.5 All EMIs that undertake non-regulated business will have to provide a separate set of accounts for the e-money and payment services business. If the accounts are audited and lodged at Companies House, we would expect them to be submitted to us at the same time.
- 14.6 If the EMI is already required to have a statutory audit of its annual accounts, this information must be subject to an auditor's report, prepared by the institution's statutory auditors or by an audit firm.

## **Reporting process for EMIs**

- 14.7 From 30 April 2011, all EMIs will be required to complete and submit their returns by email. We are investigating how we can enable them to send their returns by more secure email and will provide further information as soon as possible. Returns will be available to download from our website and there will be text provided to help EMIs complete them.
- 14.8 There will be no automated 'return due' reminder sent to EMIs. They will be responsible for ensuring that they meet reporting deadlines.
- 14.9 The receipt of each return will be acknowledged by email or letter.
- 14.10 All EMIs must comply with the deadlines for sending regulatory data to us. Our normal data collection processes will apply so EMIs failing to meet the reporting deadlines will be reminded to do so and be subject to an administrative charge of £250. This is in common with reporting by all FSA-authorized or registered firms.

## **Controllers and close links reports**

- 14.11 A condition for authorisation is that, to ensure the sound and prudent conduct of its affairs, anyone with a qualifying holding in an authorised EMI (a controller) must be a 'fit and proper' person. A further condition for authorisation is that, if it has close links with another person it must satisfy us that those links are not likely to prevent our effective supervision. We require annual reports detailing controllers and close links within four months of the authorised EMI's year end.
- 14.12 In addition to the annual reports, we expect to be notified of any changes to an authorised EMI's close links as soon as is reasonably practical and no later than one month after it becomes aware of the change.
- 14.13 The separate change in control provisions in Part 12 of FSMA apply in respect of all EMIs. Our approval is required before any acquisition of or increase in control can take place (see Chapter 4).

## **Credit institutions that issue e-money**

- 14.14 Credit institutions that issue e-money currently report the amount of e-money issued in the reporting return FSA001 – on a quarterly basis for an unconsolidated UK bank or building society, or half yearly if they are a UK consolidation group. The return requires the amount of e-money liabilities to be reported. This will continue and credit institutions will not be required to complete any additional returns.

## **Other electronic money issuers**

- 14.15 If any of the other electronic money issuers<sup>22</sup> begin to issue e-money in the UK, they will have to report their average outstanding e-money on a half-yearly basis so we can have more complete information on the size of the regulated e-money market.
- 14.16 This information should be provided by email on a half-yearly basis, 30 business days from the end of the reporting period.

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



# 15 Enforcement

- 15.1 This chapter describes our enforcement approach. It will be relevant to electronic money issuers who are subject to our enforcement action.
- 15.2 Some of our enforcement powers and our ability to prosecute certain offences under the EMRs began on 9 February 2011 when we were given the power to determine applications for authorisation and registration.

## **Our enforcement approach**

- 15.3 Our approach to enforcing the EMRs mirrors our general approach to enforcement under FSMA. This approach is set out in Chapter 2 of the Enforcement Guide (EG).
- 15.4 Our approach for selecting cases for formal enforcement action in respect of those not authorised to issue e-money will follow our approach set out in EG 2.12–2.14. Where we do not take formal action against those issuing e-money without authorisation or registration, we may still seek to obtain positive outcomes by engaging with them and seeking their cooperation in applying for authorisation or registration, undertaking to cease unauthorised activities and/or offering redress to consumers.
- 15.5 We seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We also seek to ensure fair treatment when exercising our enforcement powers. Finally, we aim to:
  - change the behaviour of the person who is the subject of the action;
  - deter future non-compliance by others;
  - eliminate any financial gain or benefit from non-compliance; and
  - where appropriate, remedy the harm caused by the non-compliance.

## **How are cases referred to the Enforcement division?**

- 15.6 When we consider whether to refer a case to the Enforcement division for investigation, we take a number of criteria into account. We have framed the criteria as a set of questions. They take into account our statutory objectives, business priorities and other issues, such as the response of the business or individual to the issues we are considering for referral.
- 15.7 Not all the criteria will be relevant to every case and there may be other considerations, not listed below, that are relevant to a particular case. Staff from the referring department, the Enforcement division and, in some cases, from other areas of the FSA work together to decide whether to refer a case for investigation. The referral criteria include the following.
- Is there actual or potential consumer loss/detriment?
  - Is there evidence of financial crime or risk of financial crime?
  - Are there issues that indicate a widespread problem or weakness at the business?
  - Is there evidence that the business/individual has profited from the action or potential breaches?
  - Has the business failed to bring the actions or potential breaches to the attention of the FSA?
  - What was the reaction of the business/individual to the breach?
- 15.8 The criteria may change from time to time. More information can be found on [our website](#).

## **What tools will we use when investigating electronic money issuers?**

- 15.9 Those electronic money issuers familiar with FSMA will note that the EMRs allow us to use many of the powers of investigation we have under FSMA. The regulatory powers which the EMRs give us include the following.
- Information requirements: we may require information by serving written notice on an electronic money issuer or any person connected to an electronic money issuer.
  - Interviews: we may require individuals working at or connected to an electronic money issuer to attend an interview and answer questions.
  - Search warrants: we may apply to the court for a search warrant to allow for the entry and searching of premises and the obtaining of documents.

## **What sanctions can we use when an electronic money issuer breaches the EMRs?**

- 15.10 The EMRs allow us to impose penalties and censures for breaches of the EMRs and to start criminal prosecutions against those who provide or claim to issue e-money but are not authorised or registered to do so. We can also order electronic money issuers to provide restitution to their customers. We can also cancel, suspend, or impose limitations or restrictions on EMIs or place requirements on their authorisation or registration where certain criteria outlined in the EMRs are met. Examples of the circumstances where we may cancel an authorisation/registration include, but are not limited to, persistent non payment of fees and levies owed to the FSA, non submission of an annual return and failing to provide current contact information to the FSA.
- 15.11 Our policy on how we impose penalties and the amount of such penalties on electronic money issuers or individuals who breach our rules can be found in Chapter 6 of our Decision Procedure and Penalties Manual (DEPP). We recently adopted a new penalties policy. For more information on this, please see our website.
- 15.12 Our policy in relation to how we exercise our powers of suspension can be found in DEPP 6A.

## **What process will we follow when imposing penalties or censures?**

- 15.13 Before imposing a penalty, we will inform the person or business that we intend to do so. We will also tell them the reasons for imposing a sanction and, where relevant, the amount of the penalty or the period to which a suspension or restriction of activity may apply. They will have at least 28 days to make representations to us, should they wish to do so. After this, we will make our decision on whether or not to take the proposed action. If we decide to proceed, and if the decision is contested, there is a right to refer the matter to the Tribunal. As with cases under FSMA, we may settle or mediate appropriate cases involving civil breaches of the EMRs. Both DEPP 6.7 and EG 5 contain further information on our settlement process and settlement discount scheme.
- 15.14 We may publish enforcement information about a firm on the FSA Register if we consider it appropriate to do so.

## **Removal of agents from the FSA Register**

- 15.15 Regulation 35 of the EMRs allows us to remove an agent of an EMI from the FSA Register in specified circumstances, which include the following:
- where we are not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons;

- the removal is desirable to protect the interests of consumers; or
- if the agent's provision of payment services is otherwise unlawful.

15.16 If we propose to remove an agent from the Register other than at the request of the EMI, which includes the circumstances mentioned above, we will inform the EMI that we intend to do so and the reasons for the proposed removal. In such cases the EMI may make representations which we will consider. After this, we will make our decision whether or not to take the proposed action. If we decide to proceed, and the decision is contested, the EMI can refer the matter to the Tribunal. If the matter is not referred to the Tribunal within 28 days we will remove the agent from the Register.

### **Where can I find more information?**

15.17 EG 19 sets out more detail on the use of enforcement powers in relation to the EMRs and Annex 1 of Chapter 2 of DEPP sets out who will make the decisions to use our disciplinary powers. [Our website](#) also includes further details.

# 16 Fees

- 16.1 This chapter summarises our structure for levying fees from electronic money issuers to recover our set-up and ongoing costs in meeting our regulatory responsibilities under the EMRs. It covers FSA fees and the levies for the ombudsman service and the Money Advice Service. Electronic money issuers will not be charged the Financial Services Compensation Scheme (FSCS) levy as it does not cover e-money.
- 16.2 Following our October 2010 Consultation Paper (CP) on regulatory fees and levies ([CP10/24](#)) we provided feedback and made the rules on application fees in our February 2011 Policy Statement ([PS11/02](#)). We included feedback on the other fees and set out our proposed approach and fee rates for 2011/12 in the February 2011 CP on regulatory fees and levies ([CP11/02](#)). We will provide feedback on the comments received and set the final rates in our Consolidated Policy Statement (PS) on fees in May 2011.

## Application fees

- 16.3 Authorised EMIs and small EMIs will be charged fees to cover our expenses in dealing with their applications.
- 16.4 The application fees came into force from February 2011. The rates are as follows.
- |                                    |        |
|------------------------------------|--------|
| Registration as a small EMI        | £1,000 |
| Authorisation as an authorised EMI | £5,000 |
- 16.5 Other bodies just have to notify us that they plan to issue e-money. These bodies will not have to pay application fees. They are:
- the Post Office Limited;
  - inward-passporting EEA authorised EMIs;
  - the Bank of England;
  - government departments and local authorities; and
  - the National Savings Bank.

- 16.6 Credit institutions, credit unions and municipal banks will not have to apply to become authorised or registered under the EMRs to issue e-money so there will be no EMRs application fee. If they already have Part 4 permission that covers the regulated activity of issuing e-money, they will not have to pay any additional fee. If they propose to start issuing e-money, however, they will have to apply to vary their Part 4 permission under FSMA and to pay the relevant fee for this.

## Periodic fees

- 16.7 All electronic money issuers, including those exempt from application fees, will be charged annual periodic fees to recover our costs of supervision and the set-up costs of establishing the processes and systems to support the new regime. We structure our fees by allocating our costs to fee blocks, which are defined on the basis of the permitted regulatory activities undertaken by firms. This relates our costs to the legal relationship between the fee-payer and ourselves. There are two new fee blocks for electronic money issuers.

Fee block G.10: all electronic money issuers except small EMIs

Fee block G.11: small EMIs

## All electronic money issuers except small EMIs

- 16.8 Authorised EMIs, credit institutions that issue e-money and electronic money issuers that do not have to be authorised or registered to issue e-money will be in fee block G.10. These electronic money issuers will pay variable fees calculated from a common metric known as a tariff base. This represents the size of the business undertaken. For 2011/12, we are using the definition prescribed in regulation 2(1) of the EMRs:

‘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 (which is the period ending on the date set out under Part 4), calculated on the first calendar day of each calendar month and applied for that calendar month (£m).’

- 16.9 We are taking this definition because:

- businesses that apply to us for authorisation will have to give this information to us – we will calculate the fees from the figures in their applications;
- businesses that are already authorised will have the data to hand in preparation for implementation of 2EMD – we have told them that we will use the figures for December 2010; and
- electronic money issuers that do not have to be authorised or registered will provide us with their average outstanding e-money on a half yearly basis if they begin to issue e-money. We can use this information to allocate them to a fee block to calculate their fees.

- 16.10 There are different opinions on the suitability of average outstanding e-money as a long-term measure of impact risk so we will review this decision for the financial year 2012/13.
- 16.11 There are two fee-bands for fee block G.10:
- a minimum fee of £1,500 per year for the first £5m of e-money liabilities. This is because the fee block will include firms that fall below the threshold for small EMIs because they wish to passport out of the UK, but our regulatory engagement with them will be greater than with similar-sized electronic money issuers in fee block G.11; and
  - for liabilities beyond £5m, we are proposing in our consultation paper on fee rates, published in February 2011 (CP11/02), a variable rate of £150 per £m or part-£m in addition to the minimum fee of £1,500. The rates will be finalised in our consolidated PS in May.

### **Small EMIs**

- 16.12 Small EMIs will pay a flat rate of £1,000 in fee block G.11.

### **Inward-passporting EEA authorised EMIs and credit institutions that issue e-money**

- 16.13 Inward-passporting EEA businesses that are authorised EMIs or credit institutions that issue e-money will get a discount of 40% on their fees. This is in line with the discount offered to inward-passporting payment institutions.

### **Payment services**

- 16.14 EMIs will automatically receive permission to provide the payment services linked to issuing e-money but will only pay fees in fee block G.10 or G.11 as electronic money issuers.
- 16.15 EMIs that provide unrelated payment services will have to notify us. We will not charge them an application fee, but they will be subject to the periodic fees applicable to authorised payment institutions or small payment institutions. More information on the fees applicable to payment institutions can be found in the *Payment Services Approach Document*.

### **Applications part-way through a financial year**

- 16.16 When a firm or business becomes newly authorised or registered during a fee-period, we apply a discount to reflect how much of the financial year remains. We will apply the same model to electronic money issuers, as set out below. As indicated in the table, there will be no discount on the fees for 2011/12 for electronic money issuers brought into the new regime when it comes into force in May 2011.

## Proportion of full-year periodic fee payable for firms registered or authorised during the financial year

Quarter in which firm is registered or authorised	Proportion of full-year fee payable
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%

## Financial penalties

- 16.17 We are empowered under the EMRs to impose financial penalties in certain circumstances. The money we recover through fines may be applied towards our expenses in carrying out our functions under the EMRs or for any incidental purpose.

## The Money Advice Service

- 16.18 The Money Advice Service was set up under the Financial Services Act 2010 to enhance:
- the understanding and knowledge of members of the public of financial matters (including the UK financial system); and
  - the ability of members of the public to manage their own financial affairs.
- 16.19 Electronic money issuers that do not have to be authorised or registered to issue e-money are exempt from paying the levy.
- 16.20 Credit institutions already pay the Money Advice Service levy in their fee block A and will not be charged again.
- 16.21 EMIs will pay a levy in their fee block G. The Money Advice Service levy mirrors our fees structure and is applied to the current tariff bands. EMIs with average outstanding e-money of up to £5m will pay the minimum Money Advice Service levy, which is currently £10, and a variable rate beyond that. In CP11/02 we have proposed a variable rate of £12 per £m or part-£m. Small EMIs in G.11 will pay the minimum Money Advice Service levy of £10.

## The ombudsman service fees

- 16.22 As outlined in Chapter 12, the ombudsman service has three separate jurisdictions:
- the compulsory jurisdiction, covering all firms, payment service providers and electronic money issuers with UK establishments;
  - the consumer credit jurisdiction; and



- the voluntary jurisdiction.

### **Compulsory jurisdiction fees**

- 16.23 All electronic money issuers are subject to the compulsory jurisdiction of the ombudsman service. The ombudsman service charges an annual levy to firms/businesses in its compulsory jurisdiction, which we collect on its behalf, as well as a case fee for the fourth and any further cases that are referred to it. The case fee is currently £500.
- 16.24 Electronic money issuers will be in a new industry block, Block 18. The tariff base for Block 18 is also based on average outstanding e-money (as described in paragraph 16.8) but small EMIs will be charged a flat fee.
- 16.25 Credit institutions (banks and building societies) that issue e-money will fall in both Block 1 as well as the new Block 18. However, e-money accounts will be excluded from the tariff base for Block 1 so that credit institutions do not pay two sets of levies for the same business.
- 16.26 EMIs that provide unrelated payment services will be in both Block 11 (for their unrelated payment services) and Block 18 (for issuing e-money). This does not apply to credit institutions as they are not charged separately for payment services.

### **Voluntary jurisdiction fees**

- 16.27 As described in Chapter 12, the ombudsman service operates a voluntary jurisdiction to allow businesses to sign up with it for certain types of complaint that would not otherwise be covered by the compulsory jurisdiction or the consumer credit jurisdiction.
- 16.28 EMIs (and credit institutions issuing e-money) participating in the voluntary jurisdiction of the ombudsman service will be covered by a new industry block, 13 V. EMIs providing unrelated payment services will also be in the new industry block 12 V.
- 16.29 Authorised EMIs will pay a fee that is based on average outstanding e-money. Small EMIs will be levied a flat fee.



# 17 Transitional provisions for businesses issuing e-money before 30 April 2011

- 17.1 Here, we outline the situation for electronic money issuers that have Part 4 permission under FSMA in respect of the activity of e-money issuance (credit institutions and ELMIs), or have a small electronic money issuer certificate, and have issued e-money before 30 April 2011.

## **Credit institutions that issue e-money**

- 17.2 Credit institutions that have Part 4 permission under FSMA in respect of the activity of e-money issuance before 30 April 2011 will not have to change their regulatory status. They must comply with the conduct of business requirements in Part 5 of the EMRs from 30 April 2011 with one exception. For e-money that has been issued on a fixed-term contract before 30 April 2011, where the contract provides for a termination date up to two years after the date the contract was entered into and where the e-money instrument cannot be re-loaded (regulation 77), the existing contractual terms regarding redemption may continue to be applied.

## **ELMIs**

- 17.3 Under regulation 74, ELMIs (electronic money institutions that have Part 4 permission to issue e-money) that have issued e-money before 30 April 2011 are deemed to have been granted authorisation under regulation 9 of the EMRs.
- 17.4 Each ELMI must notify us before 1 July 2011 whether it wishes to become an authorised EMI or a small EMI under the new regime and provide us with such information as we reasonably require to assess whether to include it on the e-money section of our Register.
- 17.5 We are contacting all ELMIs to outline the information they will have to provide to satisfy us that they meet the new regime's conditions for authorisation/registration.
- 17.6 If we decide the firm has satisfied the requirements to become an EMI we will notify it and update the e-money section of our Register as soon as practicable. At this point we will also cancel its ELMI authorisation and add a notice to the financial

firm section of our Register to advise that the firm now appears on the e-money section of our Register. All aspects of the EMRs will then apply.

- 17.7 We may decide that the firm should not be included on the e-money section of our Register if:
- the ELMI does not provide the information we need by 1 July 2011;
  - the ELMI does not meet the required conditions for authorisation or registration; or
  - it appears to us that the ELMI is unlikely to issue e-money within the 12 months following 1 July 2011.
- 17.8 If we are minded not to include the ELMI on the e-money section of our Register we will give it a warning notice. The firm may then make representations which we will consider. Following this, we will decide whether to include it on the e-money section of our Register. If we decide not to do so, we will give the person notice of our decision. If the decision is contested, the ELMI can refer the matter to the Tribunal.
- 17.9 If an ELMI does not tell us it intends to be an EMI by 1 July 2011, its deemed authorisation to issue e-money under regulation 74(1) will cease on 30 October 2011 (or, if earlier, when the ELMI's Part 4 permission under FSMA is cancelled).
- 17.10 An ELMI that considers it does not have to be authorised or registered under the new regulatory regime can cancel its authorisation from 30 April 2011. For more information on how to do this, see [our website](#).
- 17.11 An ELMI that considers itself exempt from regulation due to the limited network exemption should seek independent legal advice.

### *The FSA Register*

- 17.12 The relevant particulars relating to the ELMI will remain on the financial firm search section of our Register until it has fully moved into the new regime or its authorisation has been cancelled. The financial firm search section will then be updated accordingly.

### *Status disclosure and use of the FSA logo*

- 17.13 ELMIs must take care that any statements they make about their regulatory status are correct and reflect the current position (see Chapter 7).

### *Conduct of business requirements*

- 17.14 The conduct of business requirements in Part 5 of the EMRs, as described in Chapter 8, will apply to ELMIs with effect from 30 April 2011, except in the circumstances described in the paragraph below. This means that, where the provisions of the Electronic Money sourcebook (ELM) cover the same conduct of business ground as Part 5 of the EMRs, the ELM provisions will not apply during the transitional period.

- 17.15 There is an exception for e-money that has been issued on a fixed-term contract before 30 April 2011 where the contract provides for a termination date up to two years after the date on which the contract was entered into and where the e-money instrument cannot be re-loaded (regulation 77), allowing the existing contractual terms to continue.

### *Reporting requirements*

- 17.16 ELMIs must continue to report as required under FSMA until they have moved into the new regime or are no longer authorised.

### *Fees*

- 17.17 ELMIs that wish to become authorised EMIs or small EMIs will not have to pay application fees. They will pay the new periodic fees as set out in Chapter 16 for the 2011/12 financial year.
- 17.18 The new fees for the ombudsman service and the Money Advice Service set out in Chapter 16 will apply to ELMIs in the 2011/12 financial year.

## **Passporting: credit institutions and ELMIs**

- 17.19 Article 20 of 2EMD adds ‘issuing electronic money’ as activity 15 in Annex I of the recast Banking Consolidation Directive (BCD) 2006/48/EC. Issuing e-money used to be included in activity 5.
- 17.20 We will amend the passporting provisions so that credit institutions with a passport comprising activity 5 with respect to issuing e-money will have activity 15.
- 17.21 Those ELMIs exercising passporting rights under the BCD before 30 April 2011 for issuing e-money will continue to be able to use that passport between 30 April 2011 and the point at which they are transferred to the e-money section of our Register, or until 30 October 2011, whichever comes first. We will then make a fresh notification to the relevant host state competent authority confirming the passporting of the authorised EMI under 2EMD.
- 17.22 Where such authorised EMIs wish to amend their passported activities, they should follow the steps outlined in paragraphs 6.22 and 6.23 in Chapter 6.
- 17.23 Where such authorised EMIs wish to start distributing or redeeming e-money or providing payment services through an agent, they will have to apply to register the agent. Should they wish to distribute or redeem e-money through a distributor, they will have to identify the distributor and describe the anti-money laundering controls that will be used to comply with local anti-money laundering law.

## Small e-money issuers

- 17.24 Under regulation 76, small e-money issuers (which have a valid certificate under article 9C of the Financial Services and Markets 2000 (Regulated Activities) Order 2001 and have issued e-money before 30 April 2011) may continue to issue e-money in accordance with their certificate until 30 April 2012.
- 17.25 A small e-money issuer that proposes to issue e-money after 30 April 2012 should have submitted a complete application by 30 January 2012 to become either an authorised EMI or small EMI in order to meet the deadline of 30 April 2012.

### *Ceasing registration*

- 17.26 A small e-money issuer that considers it does not have to be authorised or registered under the new regulatory regime can apply for its small e-money issuer certificate to be revoked from 30 April 2011. Requests should be made by emailing the Permissions department [authorisation@fsa.gov.uk](mailto:authorisation@fsa.gov.uk)
- 17.27 A small e-money issuer that considers itself exempt from regulation due to the limited network exemption should seek independent legal advice.

### *The FSA Register*

- 17.28 Small e-money issuers will remain on a separate list on the e-money section of our Register until they have fully moved into the new regime, their certificate is revoked or until 30 April 2012. EMIs that are authorised or registered by us will be included on the e-money section of our Register.

### *Status disclosure and use of the FSA logo*

- 17.29 Small e-money issuers must take care that any statements they make about their regulatory status are correct and reflect the current position (see Chapter 7).

### *Conduct of business requirements*

- 17.30 The conduct of business requirements in Part 5 of the EMRs, as described in Chapter 8, will apply to small e-money issuers with effect from 30 April 2011, except in the circumstances described in the paragraph below.
- 17.31 There is an exception for e-money that has been issued on a fixed-term contract prior to 30 April 2011 where the contract provides for a termination date up to two years after the date on which the contract was entered into and where the e-money instrument cannot be re-loaded (regulation 77), allowing the existing contractual terms to continue.

### *Complaint handling*

- 17.32 Small e-money issuers who meet the conditions set out in regulation 76(1) of the EMRs will become subject to our complaint handling rules and the compulsory jurisdiction of the ombudsman service from 30 April 2011 in relation to acts or omissions in carrying on e-money issuance or ancillary activities after this date.

### *Reporting requirements*

- 17.33 Small e-money issuers must continue to report as required under FSMA until they are authorised or registered under the new regime or are no longer registered.

### *Fees*

- 17.34 Small e-money issuers have to apply to be authorised or registered under the new regime and so will be charged the full application fee.
- 17.35 For 2011/12 we will continue to charge small e-money issuers the flat periodic fee of £400 that they will be paying under the PSRs, not the e-money fee. This is because they have a full year to apply for registration or authorisation and we do not want to discourage them from applying early. They will continue to pay the Money Advice Service levy.
- 17.36 They will, however, be charged the new fees for the ombudsman service in the 2011/12 financial year.





# Links to key documents

## Key documents

1. The requirements for e-money regulation can be found in the documents listed below. EMIs that are authorised or registered under the EMRs will not need to refer to any other parts of the Handbook for the purpose of e-money regulation. Hyperlinks are provided where possible.

- [The Electronic Money Regulations 2011](#). These set out the vast majority of rules for the new regime.
- [The Payment Services Regulations 2009](#) as amended by the [Payment Services \(Amendment\) Regulations 2009](#). Electronic money issuers must comply with the requirements of the PSRs for the payment service aspects of their business. [The Payment Services Approach Document](#) describes our approach to implementing the PSRs. Electronic money issuers should refer to Chapter 8 for guidance on the conduct of business requirements of the PSRs as they may be applicable to the payment services part of their business.
- **The relevant parts of the FSA Handbook**

The Handbook is an extensive document that sets out the rules and guidance for financial services regulation. A [Reader's Guide](#) to the Handbook is available on the Handbook website, together with a [User Guide](#) for the online version. Most of the Handbook does not apply to electronic money issuers. However, there are a few areas that contain relevant provisions.

- [Glossary](#). This provides definitions of terms used elsewhere in the Handbook. Clicking on an italicised term in the Handbook will open up the glossary definition.
- General Provisions (GEN) – [GEN 2](#) and [GEN 5](#). GEN 2 contains provisions on interpreting the Handbook. GEN 5 includes the licence that allows authorised EMIs to use the FSA logo in certain circumstances.
- [Fees manual](#) (FEES). This contains fees provisions for funding the FSA, the ombudsman service and Money Advice Service relevant to electronic money issuers.
- Supervision manual (SUP). [SUP 9](#) describes how individual guidance can be sought on regulatory requirements and the reliance that can be placed on

guidance received. [SUP 5.3](#) and [SUP 5.4](#) describe our policy on the use of skilled persons to carry out reports (see Chapter 13 for further information). [SUP 16.15](#) sets out the forms, content, reporting period and due dates for the reporting returns for EMIs. [SUP 11.3](#) and [SUP 11 Annex 6G](#) provide guidance on Part 12 of FSMA, relating to control over electronic money institutions, which applies to electronic money institutions (with certain modifications) by virtue of Schedule 3 to the EMRs.

- [Decision Procedure and Penalties manual \(DEPP\)](#). This contains the procedures we must follow for taking decisions about enforcement action and setting penalties.
  - [Dispute resolution: complaints sourcebook \(DISP\)](#). This contains the obligations on electronic money issuers for their own complaint handling procedures. It also sets out the rules concerning customers' rights to complain to the ombudsman service.
2. The Handbook website also contains the following regulatory guides that are relevant to electronic money issuers:
- [Enforcement guide \(EG\)](#). This describes our approach to exercising the main enforcement powers given to us under FSMA, the EMRs and PSRs.
  - [Perimeter guidance manual \(PERG\) – PERG 3A](#). This contains guidance aimed at helping businesses consider whether they need to be authorised or registered for the purposes of issuing e-money in the UK.
  - [Unfair contract terms regulatory guide \(UNFCOG\)](#). This guide explains our powers under the Unfair Terms in Consumer Contracts Regulations 1999 and our approach to exercising them.

### **Guidance and information**

3. There is also guidance and information issued by us and the ombudsman service likely to be relevant to readers of this document.
- [Frequently asked questions](#) on the complaints sourcebook and complaints procedures.
  - [Information](#) about the ombudsman service's processes for handling complaints.
  - [Information](#) from the ombudsman service specifically for smaller businesses.

### **Other relevant legislation**

4. Electronic money issuers have responsibilities with regard to preventing financial crime. Links to the relevant legislation are listed below.
- [Terrorism Act 2000 \(section 21A\)](#)
  - [Proceeds of Crime Act 2002](#)
  - [Money Laundering Regulations 2007](#)
  - [EC wire transfer regulation 2006](#)
  - [Counter-Terrorism Act 2008 \(schedule 7\)](#)

# Useful contact details

## **Financial Services Authority (FSA)**

25 The North Colonnade  
Canary Wharf  
London, E14 5HS

Customer Contact Centre  
0845 606 9966

Consumer Helpline  
0845 606 1234

[electronicmoney@fsa.gov.uk](mailto:electronicmoney@fsa.gov.uk)

[www.fsa.gov.uk/electronicmoney](http://www.fsa.gov.uk/electronicmoney)

## **Financial Ombudsman Service (FOS)**

South Quay Plaza  
183 Marsh Wall  
London, E14 9SR

0845 080 1800 or 020 7964 0500

[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)



# Membership of the E-money Stakeholder Liaison Group

British Bankers Association

Building Societies Association

Electronic Money Association

Financial Services Authority

HM Revenue & Customs

HM Treasury

International Association of Money Transfer Networks

Mobile Broadband Group

Payments Council

Prepaid International Forum

Post Office Ltd

UK Cards Association

UK Gift Card and Voucher Association

UK Money Transmitters Association



# Glossary of terms, abbreviations and acronyms

<b>1EMD</b>	The first Electronic Money Directive 2000/46/EC
<b>2EMD</b>	Second Electronic Money Directive 2009/110/EC
<b>Authorised EMI</b>	Authorised electronic money institution as defined in the Electronic Money Regulations 2011
<b>BCD</b>	Banking Consolidation Directive
<b>Contact Centre</b>	The FSA's Customer Contact Centre (see Annex 2)
<b>Credit institution</b>	Banks and building societies with Part 4 permission to issue electronic money under FSMA
<b>DEPP</b>	Decision Procedure and Penalties manual
<b>DISP</b>	Dispute Resolution: Complaints sourcebook
<b>DMD</b>	Distance Marketing Directive
<b>Dormant e-money</b>	E-money held more than one year after the termination of the contract.
<b>EEA</b>	European Economic Area, comprising the member states of the European Union, plus Iceland, Liechtenstein and Norway
<b>EG</b>	Enforcement Guide
<b>ELMI</b>	Electronic money institution with Part 4 permission under FSMA to issue e-money before 30 April 2011
<b>EMI</b>	Electronic money institution
<b>e-money</b>	Electronic money
<b>EMRs</b>	Electronic Money Regulations 2011
<b>FSA</b>	Financial Services Authority
<b>FIN-NET</b>	Financial Dispute Resolution Network
<b>FSMA</b>	Financial Services and Markets Act 2000. This is the legislation that gives the FSA its statutory powers.
<b>HMRC</b>	HM Revenue & Customs
<b>Hybrid businesses</b>	The EMRs allow EMIs to undertake activities that are not related to issuing e-money and payment services, these businesses are called hybrid businesses.

<b>LLP</b>	Limited liability partnership
<b>Micro enterprise</b>	<p>an enterprise which:</p> <p>(a) employs fewer than 10 persons; and</p> <p>(b) has a turnover or annual balance sheet that does not exceed €2m.</p> <p>In this definition, “enterprise” means any person engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.</p> <p>[Note: article 4(26) of the Payment Services Directive and the Annex to the Micro-enterprise Recommendation]</p>
<b>OFT</b>	Office of Fair Trading
<b>the ombudsman service</b>	Financial Ombudsman Service
<b>PERG</b>	Perimeter Guidance manual
<b>PRIN</b>	Principles for Businesses
<b>PSD</b>	Payment Services Directive
<b>PSRs</b>	Payment Services Regulations 2009
<b>Small e-money issuer</b>	Has a certificate (which has not been revoked) given by us under article 9C of the Financial Services and Markets 2000 (Regulated Activities) Order 2001(d).
<b>Small EMI</b>	Small electronic money institution as defined in the EMRs
<b>SUP</b>	Supervision manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook
<b>The Tribunal</b>	The Upper Tribunal
<b>UTCCRs</b>	Unfair Terms in Consumer Contracts Regulations 1999



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