

PS11/2

Financial Services Authority

Implementation of the second Electronic Money Directive:

supplement to HM Treasury's consultation –
Feedback on CP10/25 and part of CP10/24,
and final rules

Contents

	Acronyms used in this paper	3
1	Overview	5
2	Summary of responses	8
	Annex 1: List of non-confidential respondents	
	Appendix 1: Final Instrument	

This Policy Statement reports on the main issues arising from Consultation Paper 10/25 *Implementation of the second Electronic Money Directive: supplement to HM Treasury's consultation* and part of Chapter 2 of Consultation Paper 10/24 *Regulatory fees and levies – policy proposals for 2011/12* and publishes final rules.

Please address any comments or enquiries to:

Alison Donnelly
Conduct Policy
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 6540

Fax: 020 7066 6541

Email: cp10_25@fsa.gov.uk

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

Acronyms used in this paper

2EMD	Second Electronic Money Directive
Authorised EMI	Authorised Electronic Money Institution (under the Electronic Money Regulations 2011)
CP	Consultation Paper
DEPP	Decision Procedure and Penalties manual
EEA	European Economic Area
EG	Enforcement Guide
ELM	Electronic Money sourcebook
ELMI	Electronic money institutions with Part 4 permission under FSMA before 30 April 2011 to issue e-money
EMI	Electronic money institution (under the Electronic Money Regulations 2011)
EMRs	Electronic Money Regulations 2011
FSMA	Financial Services and Markets Act 2000
Ombudsman service	Financial Ombudsman Service
PERG	Perimeter Guidance manual
PRIN	Principles for Businesses
PSRs	Payment Services Regulations 2009
Small e-money issuer	Certified by us under article 9C of FSMA (Regulated Activities Order 2001(d)) and which has issued e-money before 30 April 2011
Small EMI	Small electronic money institution (under the Electronic Money Regulations 2011)

1

Overview

- 1.1 In Consultation Paper 10/25 *Implementation of the second Electronic Money Directive: supplement to HM Treasury's consultation (CP10/25)* we consulted on the necessary changes to our Handbook to enable us to discharge our new responsibilities under the Electronic Money Regulations 2011 (the EMRs).¹ The Treasury consulted on the EMRs², which will implement the second Electronic Money Directive³ (2EMD) in the UK, and has published its response to the consultation.⁴ In this Policy Statement (PS), we report on the responses we received to our consultation and set out, in final form, the Handbook rules, directions and guidance (see Appendix 1). These do not differ significantly from the consultation proposals.
- 1.2 Our consultation paper (CP) covered the following issues:
- changes to the Perimeter Guidance manual (PERG) to help businesses decide whether they fall within the scope of the EMRs;
 - proposals about reporting requirements, including a change for payment services providers;
 - changes to the jurisdiction of the Financial Ombudsman Service (the ombudsman service) so it can perform an out-of-court redress function for issuing and redeeming electronic money (e-money) within the scope of the 2EMD and consequent changes in the scope of the complaints-handling rules;
 - changes to the Enforcement Guide; and
 - some consequential changes to the Handbook.
- 1.3 This PS also provides feedback on our proposed authorisation and registration application fees consulted on in Chapter 2 of CP10/24 *Regulatory fees and levies – policy proposals for 2011/12*.

1 www.legislation.gov.uk/uksi/2011/99/contents/made

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

3 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. 2EMD must be implemented by 30 April 2011.

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

Responses received

- 1.4 We received 11 responses to CP10/25 from a range of interested parties including businesses and trade associations. We received one response to the application fees question in CP10/24.
- 1.5 In general, respondents supported our approach. However, concerns were raised on a number of issues, in particular, the content of PERG, our intention to require electronic money institutions (EMIs) to submit reporting returns by email, and transitional provisions for existing ELMIs and small e-money issuers that have entered into certain e-money contracts before 30 April 2011.
- 1.6 We have decided to adopt the policies set out in CP10/25 but have made changes in light of comments made during the consultation, in particular to PERG and the reporting requirements. We have also reflected the changes made to the EMRs following the Treasury's consultation, specifically to the capital requirements for small electronic money institutions (small EMIs) and our disciplinary powers.
- 1.7 There was support for our proposals on application fees, so we will implement them unchanged, subject to some minor drafting points.
- 1.8 A copy of the final text of the Handbook rules, directions and guidance is in Appendix 1.

Who should read this paper?

Firms

- 1.9 This PS will be of interest to electronic money issuers (and those considering issuing e-money) and payment services providers, including:
 - ELMIs, small e-money issuers and businesses that want to become authorised electronic money institutions (authorised EMIs) or small EMIs under the new regime;
 - banks, building societies and credit unions;
 - payment institutions;
 - mobile phone companies; and
 - other technical service providers in the payments industry.

CONSUMERS

This paper will be of interest to consumers and consumer groups because 2EMD provisions on safeguarding and redemption increase the level of protection for consumers. It confirms that the ombudsman service will cover the activities of issuing and redeeming e-money by all electronic money issuers.

Next steps

- 1.10** The next step for ELMIs and small e-money issuers is to consider whether they require authorisation or registration under the EMRs if they wish to continue issuing e-money in future. We will contact ELMIs and small e-money issuers to discuss what information they would need to provide to move to the new regulatory regime.
- 1.11** For businesses considering issuing e-money the next step is to get authorised or registered. The application pack will be available on the e-money section of our website from mid-February 2011.
- 1.12** We propose to give guidance about the new regulatory regime in an E-money Approach Document. A draft is available on the e-money section of our website and we welcome comments on its contents by 18 February. We intend to publish it by the end of February.
- 1.13** We provide feedback on the other e-money fee proposals in chapter 2 of CP10/24 and are consulting on our proposed fee rates in our CP11/02: *Regulatory fees and levies – Rates proposals 2011/12*.⁵ The fees will be finalised through our consolidated fees policy statement, which we will publish in May 2011. Invoices will be issued from June 2011.
- 1.14** We will continue to discuss issues about implementing 2EMD with the industry stakeholder liaison group we have established. The minutes of the group's meetings are available on the e-money section of our website.
- 1.15** We will also work with the Consumer Financial Education Board (CFEB) to update consumer information on the moneymadeclear website.
- 1.16** The key expected milestones are as follows.

Key dates

Date	Event
mid-February 2011	The application forms for authorisation and registration available on the FSA website.
1 July 2011	Last date for ELMIs (electronic money institutions with Part 4 permission under the FSMA before 30 April 2011 to issue e-money) to tell us whether they wish to become an authorised EMI or small EMI and to give us the information we require from them so they can 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)) and which have issued e-money before 30 April 2011) taking advantage of the transitional provisions to apply 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.

⁵ www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_02.shtml

2

Summary of responses

- 2.1 In this chapter, we summarise the responses we received to CP10/25 and set out our response. We also present our feedback on the application fees for electronic money institutions (EMIs) consulted on in CP10/24 (Chapter 2).
- 2.2 In general respondents agreed with our approach although there were concerns about some specific issues, which are detailed below.

Equality and diversity

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

- 2.3 We said in CP10/25 that we did not believe that our proposals raised any issues in relation to equality and diversity. All of the respondents that answered this question agreed with our analysis.

Our response:

We have proceeded with our proposals.

Perimeter guidance

- 2.4 We set out our proposed changes to the Perimeter Guidance manual (PERG), which gives guidance to businesses on whether they need to be regulated. Our guidance is aimed primarily at businesses uncertain about whether their activities fall within the scope of the EMRs.

2.5 We proposed a question and answer (Q&A) format to help readers consider whether and how their business may be impacted by the EMRs. We have divided the guidance into the following sections⁶:

- general issues (PERG 3A.2, Q2 to Q7);
- definition of electronic money (PERG 3A.3, Q8 to Q16);
- small electronic money institutions, mixed business, distributors, agents and exempt bodies (PERG 3A.4, Q17 to Q25);
- exclusions (PERG 3A.5, Q26 – Q28);
- territorial scope (PERG 3A.6, Q29); and
- transitional arrangements (PERG 3A.7, Q30 and Q31).

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

2.6 We received a lot of comments on the content of PERG. Two respondents expressed disappointment that the guidance is limited to being only the ‘FSA’s view’ as they would prefer that adherence to the guidance would carry weight in a court of law.

2.7 Respondents recommended that PERG also include guidance on:

- the meaning of ‘at a discount’;
- electronic travellers cheques;
- trust accounts;
- the definition of agents; and
- what happens if another EEA state interprets the obligations on agents and distributors more stringently than the UK.

2.8 There were a number of comments about the clarity of the guidance on what is a limited network and the transitional arrangement for businesses that will no longer fall within the scope of our regulation. One respondent said that our guidance was less clear than that provided in Recital 5 of the 2EMD as our lists do not include common criteria. They suggested defining a limited network as a small closed loop. Another respondent argued that trade associations and not-for-profit businesses that operate e-money schemes should be included in the limited network exemption. Respondents provided examples of business models that they believe fall into a ‘grey area’ in which it is uncertain whether the monetary value is e-money because of the limited network exemption.

⁶ To distinguish the new guidance in PERG 3 from the current guidance the new chapter is called 3A. The references and question numbers given in paragraph 2.5 relate to the final version, see Appendix 1.

- 2.9 A respondent recommended that PERG deals with the transitional arrangements for an authorised payment institution (authorised PI) that wants to become an authorised electronic money institution (authorised EMI). They recommended that to avoid unnecessary expense, complexity and consumer confusion the institution should just have to supply additional information rather than making a fresh application.
- 2.10 A respondent suggested some minor rewording including making it clear that monetary value can be stored locally or remotely; that a distributor cannot issue e-money on behalf of its principal; and that e-money products can offer a direct debit facility. They also questioned the legal basis for the requirement to notify the FSA of distributors.
- 2.11 Points were also raised about highlighting some of the most important clauses for the benefit of readers and simplifying the wording such as changing 'holder of the pre-paid value' to 'e-money holder'.
- 2.12 A respondent suggested that PERG should make clear that in order for a store of value to be e-money it must be capable of being used for a payment service. They also queried the value of including question 18 on whether mobile network operators are issuing e-money and its answer in PERG.

Our response

The status of the guidance is clearly set out in the answer to question 3 of PERG 3A. We cannot be more definitive because the interpretation of financial services legislation is ultimately a matter for the courts.

Our E-money Approach Document will include guidance on issuing e-money at par value (and not at a discount). We have made a draft E-money Approach Document, which is available on our website and we intend to publish it by the end of February.

We agree that there are two types of electronic travellers cheques and that the type that can only be used to withdraw cash from a cash machine is unlikely to be e-money (if the ATM is owned by the issuer or the withdrawal from the ATM involves the repayment of the prepaid value). So we have amended the guidance (see question 13 of PERG 3A).

The guidance on trust accounts in PERG 3.5.7 to 3.5.9 is no longer necessary because of the safeguarding provisions of the EMRs. We will give guidance on safeguarding in the E-money Approach Document. We have added the question: 'If I use a trust account to store monetary value in respect of funds I have accepted payment for, will I be issuing electronic money?' (question 14, PERG 3A). This is to clarify that putting monetary value into a trust account does not, of itself, prevent the person who accepts the payment from issuing e-money. We have added a question (Q21) on the scope of activities of agents under the EMRs to PERG. We will also include a chapter on the appointment of agents in the E-money Approach Document.

We have not included guidance on what happens if different Member States interpret 2EMD differently. There is an existing process for settling these matters through the European Commission's Payments Committee, and we will make use of this process where required.

We note the various comments on limited networks. Our interpretation of the 'limited networks' exemption is, in our view, as definitive as possible within the limitations of the text of the Payment Services Directive (PSD), 2EMD and the European Commission's guidance in its Frequently Asked Questions. The Commission does not allow Member States to set fixed numerical or geographical limits for 'limited networks'. This means that the status of any particular product or scheme depends on the specific facts of the case, rather than there being a simple 'tick-box' approach. We have added more examples to improve clarity. We cannot include the terms 'closed loop' and 'open loop' because of the lack of clarity around their meaning.

We can see no justification – either in the text of 2EMD or in the transposition discussions – for not-for-profit arrangements or those under the auspices of trade associations to be regarded as 'limited networks'. We believe such arrangements would need to be considered on the same basis as any other product or scheme.

We deal with the concern about the transitional arrangements for issuers that no longer need to be authorised or registered after 30 April 2011 in the response to question 15 (paragraph 2.51 below). We will give guidance on this directly to the affected firms and agree arrangements on an individual basis.

We do not think PERG is the appropriate place to give guidance on the application process to become an EMI – the E-money Approach Document will have a chapter how to get authorised or registered. Payment institutions will have to make a fresh application because e-money authorisation/registration is granted under separate legislation with different conditions and because additional information is needed (for example, on their IT systems and controls). Payment institutions can arrange for their authorisation or registration to be cancelled at the same time as their authorisation or registration as an EMI is granted. It is clearly the applicant's responsibility to provide the required information to satisfy the conditions for authorisation or registration under the EMRs.

We accept the suggestions that we give clarity about monetary value being stored locally or remotely; that a distributor cannot issue e-money on behalf of its principal; and that e-money products can offer a direct debit facility. Under regulations 5(1), 12(1) and 37 of the EMRs, EMIs must provide information on distributors. We have tried to keep the language in PERG as simple and straightforward as possible given the complexity of the underlying issues.

We do not agree with the respondent's view that in order for a store of value to be e-money it must be capable of being used for a payment service. Our view is that, as Article 1(4) and (5) of 2EMD specifies only two of the negative scope provisions in Article 3 of the PSD as applying in this context, the others may be

payment transactions for the purposes of 2EMD. Article 2(2) of 2EMD refers to “payment transactions” as distinct from “payment services”.

We took note of the comment on question 18 (‘We are a mobile network operator allowing our customers the opportunity to use the pre-paid credit on their mobile devices to purchase music and applications from third party merchants. Will we be issuing electronic money?’) and have deleted it from the guidance.

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

- 2.13** In addition to the requests for additional guidance noted above, respondents asked for guidance on how changing authorisation status when an authorised PI becomes an authorised EMI would affect existing passports.
- 2.14** A respondent expressed a concern that we will give insufficient weight to applicants’ IT systems and security as this has implications for the integrity of the product, delivery, customer service, governance and the ‘consumer proposition’.

Our response

The question of passporting and the interaction between Member States’ competent authorities is being addressed at EU level through the agreement of Passporting Guidelines. The European Commission is expected to publish these on its website soon.

We note the concerns relating to applicants’ IT security. PERG is not the appropriate place to give guidance on IT security requirements but the E-money Approach Document will include details of the information that EMIs will have to provide during the application process.

Reporting requirements

- 2.15** We consulted on four questions about the new reporting requirements that we propose to introduce to help us monitor and supervise EMIs.

Authorised EMIs

- 2.16** We consulted on six reporting returns for authorised EMIs covering the balance sheet, income statement, capital requirements, large exposures, safeguarding and supplementary information.

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

- 2.17** Two respondents expressed concerns that submission by email was inherently insecure, that confidentiality could be compromised and that it does not provide the validation of receipt or content that the GABRIEL⁷ system provides. Their preferred solution was to enable EMIs to report using the GABRIEL system that authorised ELMIs currently use. It was also pointed out that corporate email is often limited to files of a certain size, which could prevent files being sent.
- 2.18** One respondent asked whether EMIs also providing payment services unrelated to the issuing of e-money should continue to report using GABRIEL. They argued against split reporting methods (i.e. GABRIEL and email) on the grounds that it could cause unnecessary complexity and risk of error.
- 2.19** Respondents asked us to clarify the requirement to provide separate accounts if the EMI is a hybrid business (does business other than issuing e-money and providing payment services) and the audit requirements for these accounts.
- 2.20** There was also a request for us to make clearer the distinction between payment services ‘integral to issuing electronic money’ and ‘non-integral’ payment services used in paragraph 3.6 of CP10/25, suggesting that it may be clearer to differentiate between payment services made using e-money (including issuance and redemption) and other payment services.
- 2.21** A respondent questioned the inclusion of fields for ‘zero weighted government and central banks’, ‘20% weighted credit institutions’ and ‘qualifying debt securities’ in return FSA059 on the basis that these categories of assets are not specified in 2EMD. Instead they suggested that these should be replaced by the permitted range of safeguarding assets specified in Article 7.2 of 2EMD or an insurance policy or other guarantee. They questioned the references to tier 1 and tier 2 capital in return FSA059. They suggested the inclusion of separate fields for ‘dividends’ and ‘extraordinary items’ before the ‘retained profit field’ in return FSA060. They also queried whether return FSA062 on large exposures was valid given that there was no mention of large exposures in 2EMD or the EMRs.
- 2.22** A respondent queried why EMIs would no longer be subject to complaints reporting suggesting that an inconsistent approach for credit institutions and EMIs could confuse both the e-money industry and banks. In their view the industry and consumer bodies are likely be interested in the e-money complaints statistics.
- 2.23** A respondent suggested more frequent safeguarding reporting than the six-monthly reporting proposed.
- 2.24** One trade association felt strongly that we should relationship manage all authorised EMIs in order to meet the requirement in 2EMD and because of what they see as the high level of fees authorised EMIs are likely to have to pay.

⁷ GABRIEL (Gathering Better Regulatory Information Electronically) is our online regulatory reporting system for the collection, validation and storage of regulatory data.

Our response

Enabling EMIs to report using GABRIEL would lead to high development costs which would have to be recovered from a small population of EMIs. We do not believe file sizes would be excessive. However, in view of the concerns raised we will investigate the viability of providing EMIs with a more secure email solution. EMIs providing payment services unrelated to their e-money business will not report on these activities using GABRIEL; the intention is that all EMIs will report on their e-money and payment services business using the manual returns. We will give more information on accounting requirements in the E-money Approach Document. Paragraph 3.11 of CP10/25 should have reflected regulation 25(1) which says 'An electronic money institution which carries on activities other than the issuance of electronic money and the provision of payment services, must provide to the Authority separate accounting information in respect of its issuance of electronic money and provision of payment services.' Where an EMI must prepare audited accounts we require them to be sent to us. In FSA064 (Supplementary Information) we have introduced several questions asking the EMI to confirm various details about its auditing arrangements and, for hybrid businesses, the submission of accounts for e-money and payment services. These will help us to monitor EMIs' compliance with statutory accounting and auditing requirements.

The terms 'integral' and 'non-integral' payment services, used in the table in paragraph 3.6 of the CP to explain the purpose of the FSA061 (Capital Requirements) return, are not used in the return itself, nor any of the other returns. We recognise the need to make a clear distinction here and now refer in the returns, where necessary, to 'electronic money and related payment services' and 'unrelated payment services'.

We have amended returns FSA059 and FSA060 as suggested.

In relation to return FSA062, we did consider whether the maximum harmonising nature of 2EMD would allow us to ask for the information on large exposures currently asked for in FSA024. We felt that as Article 5 of the Payment Services Directive (PSD), which is brought into 2EMD by Article 3, requires a description of the issuer's risk-management arrangements, we could legitimately ask about exposures which would constitute a significant risk. On further review, and taking into consideration the comments received, we now consider that requiring information on large exposures is not necessary to supervise compliance with the EMRs. So, we will not require the FSA062 (large exposure) return and the other returns are renumbered accordingly.

We have decided to give guidance that it is in a business' best interests to retain records of complaints so they can be used to help the resolution of complaints by the ombudsman service if necessary. Our assessment is that the risks in the e-money market are low and it is not proportionate to impose the additional

burden of complaints reporting on these electronic money issuers. We would be able to collect this data on an ad hoc basis if we considered it appropriate. Further, customers of electronic money issuers have a right to complain to us about apparent breaches of the EMRs and so we will be able to monitor these complaints. In our view adopting a consistent six-month frequency for all returns keeps the reporting requirements simpler. However, we will keep the frequency of returns under review as the regime progresses.

We note the point on supervision. As the Competent Authority, we determine how best to supervise EMIs, based on our perception of risk. We have agreed metrics for measuring the impact score of EMIs and we use this score to decide if an EMI will be relationship managed. We keep the metrics under review to ensure they remain suitable.

Small EMIs

- 2.25 We proposed a general increase in the reporting requirements for small EMIs (compared with the current ones for small e-money issuers) reflecting the new capital and safeguarding requirements in the EMRs.

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

- 2.26 There were no significant objections to the proposed reporting requirements for small EMIs.
- 2.27 One respondent suggested that, where broadly similar information is requested, there may be grounds for rationalising the returns for authorised EMIs and small EMIs. In effect this would mean replacing the small EMI FSA065 return with combined authorised EMI/small EMI versions of the FSA061 (capital requirements), FSA063 (safeguarding) and FSA064 (supplementary information) returns.

Our response

We have decided to keep the small EMI return separate from those for authorised EMIs. We believe requiring small EMIs to complete one return keeps their reporting obligations straightforward and avoids over-complicating several other returns. For example, a combined EMI capital requirements return could cause confusion (the authorised EMI's FSA061 return is already complicated as it captures two own funds requirements for authorised EMIs providing unrelated payment services).

We have made further changes to this return in the light of the consultation. The capital requirements section has been reworked to reflect changes in the final EMRs. This section of the return will now only need to be completed if the actual

or, where applicable, projected figure for 'average outstanding electronic money' for the relevant reporting period is equal to or exceeds €500,000.

Extra questions have been added to the 'Supplementary Information' section to help us monitor small EMIs' compliance with our requirements. Two relate to conditions of registration, asking whether the relevant small EMI monetary thresholds⁸ have continued to be met. An explanation is required if the thresholds have been exceeded. The 'own funds' compliance question has been amended to reflect the final EMRs.

Finally, we have introduced several questions asking small EMIs to confirm various details about its auditing arrangements and, for hybrid businesses, the submission of accounts for e-money and payment services. These changes mirror the amendments made to the authorised EMI FSA064 return and will help us to monitor compliance with statutory accounting and auditing requirements.

We have also made some minor changes to the terminology and instructions used in the returns to provide more clarity. For example, in several of the returns the column heading 'other payment services' has been replaced by 'unrelated payment services'.

Other electronic money issuers

- 2.28 We proposed to require electronic money issuers that do not need to be authorised or registered to issue e-money to provide us with their average outstanding e-money twice a year, 30 days from the end of the reporting period. This would enable us to have a fuller picture of the amount of e-money in issue.

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

- 2.29 None of the respondents raised any objections to these proposals. One respondent argued that credit institutions should also be required to provide average outstanding e-money to provide consistent data across the sector.

Our response

As outlined in CP10/25 we believe the cost of making the necessary, albeit minor, change to the credit institution reporting return FSA001 is disproportionate to the benefit and therefore cannot be justified.

⁸ €500,000 for average outstanding e-money and a rolling average of €3,000,000 over 12 months for unrelated payment services.

Late return administration charge

2.30 We proposed an administrative charge of £250 for all EMIs and payment institutions that do not provide complete returns on time.

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

2.31 None of the respondents opposed us applying a late return administration charge.

2.32 One respondent called for safeguards to be put in place to ensure that we do not penalise EMIs that report on time but whose returns, sent by email, we do not receive for various reasons.

Our response

We have introduced the £250 administration charge. Implementing a 'chasing' process for late/non-submitters will reinforce our ability to levy the charge and flag up early any non-receipt issues. We will not levy the charge if an EMI can provide evidence that it submitted the return by email by the due date.

Dispute resolution

2.33 Chapter 4 of CP10/25 was a joint consultation between the ombudsman service and the FSA.

The compulsory jurisdiction of the ombudsman service

2.34 We proposed extending the compulsory jurisdiction of the ombudsman service to cover all electronic money issuers in 2EMD's scope for disputes concerning the issuance and redeemability of e-money and the related payment services.

2.35 Under our current rules, persons that were formerly authorised firms or payment service providers fall into the compulsory jurisdiction of the ombudsman service concerning complaints about an act or omission that occurred when it was authorised, provided that the compulsory jurisdiction rules were in force at the time the activity in question took place. We proposed to mirror this treatment for electronic money issuers in 2EMD's scope, so that persons who were formerly an electronic money issuer under the EMRs fall into the compulsory jurisdiction concerning complaints about an act or omission that occurred when it was an electronic money issuer.

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

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

- 2.36 Respondents generally supported our proposals. However, two questioned the cost of the ombudsman service's compulsory jurisdiction. One asked that consideration be given to the potential costs of applying the regime and whether these costs could be managed or reduced. Another felt that the ombudsman service's case fee would not be proportionate to the amount typically held in e-money accounts.
- 2.37 A respondent stated that in its view former electronic money issuers should be covered by the standards that existed at the time of authorisation or registration as otherwise this would be a retrospective action.

Our response

All businesses covered by the ombudsman service's compulsory jurisdiction pay a general levy plus a £500 case fee for the fourth and any subsequent cases. We consult on the ombudsman service general levy each year in February as part of our annual fees process. The case fee is decided by the ombudsman service and is consulted on in January each year. We approve the case fee.

We and the ombudsman service take a proportionate approach to setting its budget:

- the general levy is calculated on the basis of 'polluter pays' – the number of complaints the ombudsman service expects to receive about regulated activities in the coming year;
- the general levy is divided into blocks, each subject to a tariff base. In practice, we use size of business as a proxy for the potential impact of any firm; and
- because firms receive the first three cases free of charge, the overwhelming majority of firms within the ombudsman service's jurisdictions do not pay a case fee.

We also note that the ombudsman service can dismiss cases without businesses incurring a case fee where it considers the complaint to be frivolous or vexatious.

We can confirm that complaints relating to acts or omissions by former ELMIs that took place before the EMRs were in force would be treated according to the standards in place at the time. This does not affect small e-money issuers as they

do not currently fall into the compulsory jurisdiction with regards to the issuing and redeeming of e-money. So there is no retrospective action and no revision to the proposal is necessary.

For a person who was formerly an electronic money issuer under the EMRs, the compulsory jurisdiction will apply in respect of complaints about an act or omission that occurred at the time when it was an electronic money issuer, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

We have decided to implement our proposals unchanged from our consultation.

Eligibility to bring complaints to the ombudsman service

- 2.38 We also proposed that an electronic money issuer will not be eligible to make a complaint that relates in any way to an activity which it is allowed to undertake itself. This extends to complaints from electronic money issuers in respect of payment service provision as all electronic money issuers are entitled to provide payment services.

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

- 2.39 None of the respondents raised any objections to this proposal.

Our response

We have proceeded with our proposal.

The voluntary jurisdiction of the ombudsman service

- 2.40 The ombudsman service proposed to extend the activity of issuing e-money in the voluntary jurisdiction to include businesses issuing e-money outside the scope of the Regulated Activities Order. This was to allow small EMIs into the voluntary jurisdiction for complaints concerning their acts or omissions in issuing e-money before they joined the compulsory jurisdiction. EMIs that carry on business in the EEA and direct services at UK consumers would still be able to join the voluntary jurisdiction.

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

- 2.41 One respondent sought clarity on applications to the voluntary jurisdiction from EEA member state firms that only direct their activities at consumers in their own jurisdiction.

Our response

The voluntary jurisdiction is available for participants with activities directed wholly or partly at UK consumers.

The ombudsman service will implement its proposal unchanged.

Enforcement

- 2.42 In CP10/25 we discussed the additions we would have to make to the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG) and how we intend to enforce any breaches of the EMRs.

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

- 2.43 Overall respondents agreed with our approach to adopt similar procedures to enforcement under FSMA. One respondent commented that our approach was fair and comprehensive while another welcomed the additional suspension and restriction powers, which they considered would help address risks that are serious but do not justify cancelling authorisation or registration.
- 2.44 One respondent said that we should enforce the EMRs in a manner consistent with our new FSMA policy on the imposition of penalties and suspensions.
- 2.45 Another suggested that we explain in greater detail how we would approach disciplinary measures against directors and officers of firms for offences or breaches committed by the firm.

Our response

We can confirm that our approach to taking enforcement action will be consistent with our stated enforcement policies.

Our approach to taking action against senior management is outlined in the relevant sections of EG 2.31 – 2.32 and DEPP 6.2.4 – 6.2.9 and makes it clear, in particular, that we would not take action against a senior manager if there were no personal culpability. We are committed to ensuring that senior managers

of firms/electronic money issuers take responsibility for identifying risks and ensuring appropriate and effective systems and controls to manage those risks. We seek to deter misconduct, where senior managers are themselves responsible, by taking disciplinary action against them.

It will be appropriate to take disciplinary measures against a relevant person where there is evidence of personal culpability on the part of that person. Personal culpability arises where the behaviour was deliberate or where a relevant person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned.

Among other changes in the EMRs, please note that we will not have the particular disciplinary powers to suspend or impose restrictions on relevant persons that we mentioned in paragraphs 5.7 and 5.8 of CP10/25.

Consequential changes to the Handbook

The Glossary

2.46 We proposed to make amendments to the Glossary to reflect the new terms used in the EMRs.

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

2.47 None of the respondents raised any concerns regarding the proposed changes to the Glossary.

Our response

We have made the proposed changes to the Glossary.

The Principles for Business (PRIN)

2.48 We proposed a minor change to PRIN 3.1.8G to state that the Principles do not apply to the extent that they would impose an obligation which is inconsistent with 2EMD.

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

2.49 Respondents agreed with this proposed change.

Our response

We have made the proposed change to PRIN.

Use of the FSA logo

- 2.50 We proposed that authorised EMIs should be able to use the FSA logo, but that small EMIs registered with us and incoming EEA electronic money institutions would not be able to do so.

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

- 2.51 Four respondents commented on this question. One supported our proposal that use of the logo should be restricted to authorised EMIs but the others believed that all EMIs should be able to use it. Only one respondent provided a rationale. They felt that, if small EMIs are subject to greater prudential requirements than small payment institutions and the current small e-money issuers, there are grounds for them to be able to use the logo. Another respondent argued that there should be a transitional arrangement that allows card issuers that will fall out of the scope of regulation under the EMRs to avoid having to re-issue any cards that refer to the regulatory status of the card issuer.

Our response

In 2008, we narrowed the use of the FSA logo to authorised businesses in light of concern that consumers might be misinterpreting its use.⁹ Allowing registered businesses to use the logo would undermine the clarity that this change has achieved for consumers.

There are no transitional arrangements for firms that fall out of the scope of regulation when the EMRs are implemented. How a firm makes this transition and communicates its new regulatory status to its customers will be agreed with the firm's supervisor, who will take a proportionate approach. ELMIs are currently permitted to use the FSA logo only as part of a statement in a letter or electronic equivalent that it is authorised and regulated by the FSA.

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

- 2.52 We outlined the changes we have to make to the Handbook because electronic money issuers will no longer be regulated under FSMA.

⁹ See Chapter 7 of CP08/7: *Quarterly consultation (no 16)*.

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

- 2.53 A respondent recommended that the sections in the Electronic Money sourcebook (ELM) relating to the following should be retained or reintroduced as guidance elsewhere: liquidity, derivatives and systems and controls.

Our response

We will provide guidance in the E-money Approach Document on all the requirements on electronic money issuers in the EMRs. The E-money Approach Document is intended to be comprehensive and reflects the EMRs. 2EMD is a maximum harmonising directive so if we place requirements on electronic money issuers that are additional to those in 2EMD in areas that are fully harmonised by 2EMD we risk being super-equivalent (imposing requirements that go beyond what is in the directive).

Transitional provisions

- 2.54 We proposed that ELMIs and small e-money issuers should continue to meet their obligations under the current regime until they have been grandfathered into or re-registered under the new regulatory regime.

Q17: Do you agree with the transitional provision?

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

- 2.55 One respondent was not clear on how the transitional provisions relate to contracts entered into before 30 April 2011. They also stated that ELMIs and small e-money issuers would need dispensation from the requirement under the PSRs to give customers 60 days notice of changes to terms and conditions. They said ELMIs and small e-money issuers may not be able to give a full 60 days notice due to the delay in finalising the EMRs.

Our response

The Treasury has inserted into the EMRs a transitional provision, regulation 77, relating to contracts entered into prior to 30 April 2011. We believe this satisfies this point. We plan to give guidance on the transitional provision in the E-money Approach Document.

We do not believe the request for dispensation from the requirements in the PSRs to give notice of changes to terms and conditions is necessary. Regulation 79(2) of the PSRs states that the payment service provider is not liable for any contravention of a requirement if the contravention is due to obligations under provisions of Community or national law.

Cost benefit analysis

- 2.56 We provided an estimate of the costs and an analysis of the benefits that would arise from our proposals.

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

- 2.57 None of the respondents challenged our cost benefit analysis. One respondent agreed with our decision to express costs on a per issuer basis.

Our response

We believe that the changes to the reporting returns set out above, for example the deletion of the return on large exposures, will not materially change our cost benefit analysis.

Compatibility statement

- 2.58 We provided an explanation of the reasons we believed that our proposed rules and guidance:
- are compatible with our regulatory objectives;
 - are the most appropriate way to meet our regulatory objectives; and
 - take account of the principle of good regulation to which we must have regard.

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

- 2.59 A respondent argued that the proposed text of PERG will result in our having to give case-by-case guidance, which is not a good use of resources.

Our response

As outlined above we have addressed as many of the concerns about PERG raised by respondents as we can.

Application fees

2.60 In Chapter 2 of CP10/24 we asked for views on our proposed application fees for EMIs.

Electronic money issuers exempt from paying application fees

2.61 The following types of electronic money issuers will not be charged a fee for making an application under the EMRs:

- **credit institutions:** they will not need 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 need to apply to vary their Part 4 Permission under FSMA and to pay the relevant fee for this;
- **credit unions and municipal banks:** as above.
- **ELMIs:** they have already been authorised by us so will be grandfathered into the new regulatory regime;
- **inward passporting EEA electronic money issuers:** the appropriate checks will have been conducted by their home state regulators, and so they only have to notify us; and
- **other bodies that do not need authorisation or registration under the EMRs:** the Post Office Limited, the Bank of England, government departments, local authorities and the National Savings Bank have a right to issue electronic money and only have to notify us of their intention to do so.

Authorised EMIs

2.62 We proposed an application fee of £5,000 for businesses applying to become authorised electronic money institutions. This reflects our assessment of the complexity – and the amount – of work we expect in processing their applications.

Small electronic money institutions

- 2.63 The EMRs allow electronic money issuers with average outstanding e-money that does not exceed €5m to be registered as small EMIs rather than be fully authorised. The applications will be less complex than for authorised electronic money institutions and so we are able to set a lower fee of £1,000.
- 2.64 Small e-money issuers will have to apply to become small EMIs (or authorised EMIs) under the new regime because 2EMD requires us to know significantly more about their business, and so they will have to pay the application fee of £1,000 (or £5,000 if they apply to become authorised EMIs). Under the EMRs, they will have until 30 April 2012 to fully transition to the new regime.
- Q1:** Do you agree with our proposed application fees for authorised electronic money institutions and small electronic money institutions?
- 2.65 We received only one response, supporting our proposals.

Our response:

We have implemented our proposals unchanged, subject to some minor drafting points.

We have also addressed a gap that we noticed in the draft instrument. We have extended the provisions in FEES 3 Annex 1 Part 6 to electronic money institutions so that they benefit from a discount of 50% of the appropriate application fee if they vary their permission with a simple change of legal status. This does not require consultation since it merely ensures that they are treated equally with all other authorised firms and payment institutions.

Annex 1

List of non-confidential respondents

CP10/25

In addition to those listed below, one respondent wanted their response to be confidential.

American Express

B&Q

ea Consulting Group

Prepaid International Forum (PIF)

The Electronic Money Association (EMA)

The Financial Services Consumer Panel

The Gift Voucher Shop

The Horticultural Trades Association

The Mobile Broadband Group

Visa Europe

Question 1, Chapter 2 of CP10/24

BBA

Appendix 1

Final Instrument

ELECTRONIC MONEY AND PAYMENT SERVICES INSTRUMENT 2011

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes:
- (1) the rules and guidance in Annexes A and K to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
 - (2) the rules, standard terms and guidance in Annexes A and K to this instrument for VJ participants relating to the Voluntary Jurisdiction;

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

- (a) section 226A (Consumer Credit Jurisdiction);
 - (b) section 227 (Voluntary Jurisdiction);
 - (c) paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme);
 - (d) paragraph 16B (The Consumer Credit Jurisdiction) of Schedule 17; and
 - (e) paragraph 18 (The Voluntary Jurisdiction) of Schedule 17.
- B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

- C. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 69 (Statement of policy) as applied by paragraph 1 of Schedule 3 to the Electronic Money Regulations 2011 (“the Regulations”);
 - (b) section 138 (General rule-making power);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 169(9) (Investigations etc. in support of overseas regulator) as applied by paragraph 3 of Schedule 3 to the Regulations;
 - (f) section 210(1) (Statements of policy) as applied by regulation 53 (6) of the Regulations;
 - (g) section 226 (Compulsory Jurisdiction);
 - (h) section 234 (Industry funding);
 - (i) section 395(5) (The Authority’s procedures) as applied by paragraph 8 of Schedule 3 to the Regulations;
 - (j) paragraph 17 (1) (Fees) of Schedule 1; and
 - (k) paragraph 13 (Authority’s procedural rules) of Schedule 17;

- (2) regulation 49 (Reporting requirements) of the Regulations;
- (3) regulation 60 (Guidance) of the Regulations;
- (4) regulation 82 (Reporting requirements) of the Payment Services Regulations 2009 (“the 2009 Regulations”);
- (5) regulation 93 (Guidance) of the 2009 Regulations; and
- (6) the other powers referred to in Schedule 4 to the General Provisions of the Handbook.

- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rules, standard terms and guidance made by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force as follows:
- (1) the amendments in Part 1 of Annex A, and Annex M come into force on 10 February 2011;
 - (2) the amendments in Part 3 of Annex A and Part 2 of Annex E come into force on 30 April 2012;
 - (3) the remainder of the instrument comes into force on 30 April 2011.

Notes

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

Revocation of the Electronic Money sourcebook (ELM)

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

Amendments to the Handbook

- I. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
General Provisions (GEN)	Annex E
General Prudential sourcebook (GENPRU)	Annex F
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex G

Conduct of Business sourcebook (COBS)	Annex H
Supervision manual (SUP)	Annex I
Decision Procedure and Penalties manual (DEPP)	Annex J
Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Electronic Money sourcebook (ELM)	Annex L

Material outside the Handbook

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

Citation

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

By order of the Board of the Financial Ombudsman Service Limited
1 February 2011

By order of the Board of the Financial Services Authority
9 February 2011

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into effect on 10 February 2011

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

<i>authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>): (a) a <i>person</i> included by the <i>FSA</i> in the <i>FSA Register</i> as an <i>authorised electronic money institution</i> pursuant to regulation 4(1)(a) of the <i>Electronic Money Regulations</i> ; or (b) a <i>person</i> deemed to have been granted authorisation by the <i>FSA</i> by virtue of regulation 74 of the <i>Electronic Money Regulations</i> .
<i>average outstanding electronic money</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) the average total amount of financial liabilities related to <i>electronic money</i> in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.
<i>EEA authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to issue <i>electronic money</i> and provide <i>payment services</i> in accordance with the <i>Electronic Money Directive</i> .
<i>EEA branch of an authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) a branch established by an <i>authorised electronic money institution</i> , in the exercise of its <i>passport rights</i> , to issue <i>electronic money</i> , provide <i>payment services</i> , distribute or redeem <i>electronic money</i> or carry out other activities in accordance with the <i>Electronic Money Regulations</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>Electronic Money Directive</i>	Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.
<i>electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i>) an <i>authorised electronic money institution</i> or a <i>small electronic money institution</i> .

- electronic money issuer* (1) (except in *DISP*) any of the following *persons* when they issue *electronic money*:
- (a) *authorised electronic money institutions*;
 - (b) *small electronic money institutions*;
 - (c) *EEA authorised electronic money institutions*;
 - (d) *credit institutions*;
 - (e) the Post Office Limited;
 - (f) the Bank of England, the European Central Bank and the national central banks of *EEA States* other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority;
 - (g) government departments and local authorities when acting in their capacity as public authorities;
 - (h) *credit unions*;
 - (i) municipal banks;
 - (j) the National Savings Bank.

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

- (2) (in *DISP*) as in (1) but:
- (a) excluding *credit institutions*, *credit unions* and municipal banks; and
 - (b) including a *person* who meets the conditions set out in regulation 75(1) or regulation 76(1) of the *Electronic Money Regulations*.

Electronic Money Regulations

the Electronic Money Regulations 2011 (SI 2011/99).

passport right

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

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

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

Amend the following definitions as shown:

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

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

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

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

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

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

but does not include:

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

IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

Part 2: Comes into effect on 30 April 2011

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

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

- (a) a *credit institution*, a *credit union* or a municipal bank; or
- (b) a person who is deemed to have been granted authorisation under regulation 74 of the *Electronic Money Regulations* or who falls within regulation 76(1) of the *Electronic Money Regulations*.

Amend the following definitions as shown:

base currency ...

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

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

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

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

...

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

- (g) the *licensee*, *firm*, ~~or~~ *payment service provider* or *electronic*

money issuer was:

- (i) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or
- (ii) authorised to carry on an activity by virtue of section 34(A) of that Act; or
- (iii) in accordance with regulation 26(2) of the *Payment Services Regulations* or regulation 31 of the *Electronic Money Regulations*, was not required to hold a licence for consumer credit business under section 21 of the Consumer Credit Act 1974; and

(h) the activity was carried on in the course of a business of a type specified in accordance with section 226A(2)(e) of the *Act*:

...

credit institution (1) (except in *REC*) (in accordance with articles 4(1) and 107 of the *BCD*) :

- (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; and
- (b) ~~an electronic money institution within the meaning of the *E-Money Directive*; [deleted]~~

~~but so that:~~

(c) ~~(except for the purposes of *GENPRU*, *ELM*, *BIPRU* and *IPRU(INV)* (in so far as it relates to *exempt CAD firms*)) an institution within (1)(b) that does not have the right to benefit from the mutual recognition arrangements under *BCD* is excluded; and [deleted]~~

(d) ...

(2) ...

(3) (in relation to the definition of *electronic money issuer*) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of Article 4(3) of the *Banking Consolidation Directive* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with Article 38 of the *Banking Consolidation Directive*.

electronic money (1) ~~(except in *PERG* (and *FEES*) the investment, specified in article 74A of the *Regulated Activities Order* (Electronic money), which~~

~~is monetary value, as represented by a claim on the issuer, which is:~~

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

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

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

but does not include:

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

financial institution

- (1) (in accordance with paragraph 5(c) of Schedule 3 to the *Act* (EEA Passport Rights: EEA firm) and article 4(5) of the *Banking Consolidation Directive* (Definitions)), but not for the purposes of *ELM*, *GENPRU*, *BIPRU* and *INSPRU*), an undertaking, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the listed activities listed in points 2 to 12 and 15 of Annex I to the *BCD*, which is a subsidiary of the kind mentioned in article 24 of the *BCD* and which fulfils the conditions in that article.

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

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

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

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

...

- immediate group* ...
- (2) (in ~~ELM 7~~ and *BIPRU* and in relation to any *person*) has the same meaning as in paragraph (1), with the omission of (1)(e).
- incoming ECA provider* a *person*, other than an *exempt person* ~~or a person who has been given a waiver in accordance with article 8(1) of the E Money Directive~~, who:
- (a) provides an *electronic commerce activity*, from an *establishment* in an *EEA State* other than the *United Kingdom*, with or for an *ECA recipient* present in the *United Kingdom*; and
- (b) is a national of an *EEA State* or a company or firm mentioned in article 54 of the *Treaty*.
- initial capital* (1) ~~(in ELM) items coming into stage A of the calculation in ELM 2.4.2R (Calculation of initial capital and own funds). [deleted]~~
- ...
- insurance holding company* (1) a *parent undertaking*, other than an *insurance undertaking*, the main business of which is to acquire and hold participations in *subsidiary undertakings* and which fulfils the following conditions:
- (a) its *subsidiary undertakings* are either exclusively or mainly *insurance undertakings*; and
- (b) at least one of those *subsidiary undertakings* is an *insurer* or an *EEA firm* that is a *regulated insurance entity* or a *reinsurance undertaking*;
- a *parent undertaking*, other than an *insurance undertaking*, that fulfils the conditions in paragraphs (1)(a) and (b) of this definition is not an *insurance holding company* if:
- (c) it is a *mixed financial holding company*; and
- (d) notice has been given in accordance with Article 4(2) of the *Financial Groups Directive* that the *financial conglomerate* of which it is a *mixed financial holding company* is a *financial conglomerate*.
- (2) For the purposes of:
- (a) the definition of the *insurance sector*;
- (b) ~~ELM~~; and ~~[deleted]~~
- (c) the definition of *material insurance holding*;

paragraph (1)(b) of this definition does not apply.

<i>investment management firm</i>	(subject to <i>BIPRU</i> TP 1.3R (Revised definition of investment management firm for certain transitional purposes)), a <i>firm</i> whose <i>permitted activities</i> include <i>designated investment business</i> , which is not an <i>authorised professional firm</i> , <i>bank</i> , <i>BIPRU investment firm</i> , <i>ELMI</i> , <i>building society</i> , <i>credit union</i> , <i>energy market participant</i> , <i>friendly society</i> , <i>ICVC</i> , <i>insurer</i> , <i>media firm</i> , <i>oil market participant</i> , <i>service company</i> , <i>incoming EEA firm</i> (without a <i>top-up permission</i>), <i>incoming Treaty firm</i> (without a <i>top-up permission</i>), <i>UCITS management company</i> or <i>UCITS qualifier</i> (without a <i>top-up permission</i>), whose <i>permission</i> does not include a <i>requirement</i> that it comply with <i>IPRU-INV 3</i> or <i>IPRU-INV 13</i> (Personal investment firms) and which is within (a), (b) or (c):
<i>lower tier two capital</i>	(1) (in <i>ELM</i>) the lower tier two capital of an <i>ELMI</i> calculated in accordance with <i>ELM 2.4</i> (Calculation of initial capital and own funds)- [deleted] ...
<i>material holding</i>	(1) (for the purposes of <i>ELM</i>) a holding or position set out in <i>ELM 2.4.17R</i> (Material holdings)- [deleted] (2) (for the purposes of <i>GENPRU</i> and <i>BIPRU</i>) has the meaning in <i>GENPRU 2.2.209R</i> (Deductions from tiers one and two: Material holdings (<u><i>BIPRU firm only</i></u>)).
<i>own funds</i>	... (2) (in <i>ELM</i>) the own funds of an <i>ELMI</i> calculated in accordance with <i>ELM 2.4</i> (Calculation of initial capital and own funds)- [deleted] ...
<i>participant firm</i>	... (i) an <i>ELMI</i> in relation to <i>issuing e-money</i>- [deleted] ...
<i>participation</i>	(for the purposes of <i>ELM</i> , <i>UPRU</i> and <i>GENPRU</i> and for the purposes of <i>BIPRU</i> and <i>INSPRU</i> as they apply on a consolidated basis): ...
<i>payment service provider</i>	(1) (except in <i>DISP</i>) (in accordance with regulation 2(1) of the <i>Payment Service Regulations</i>) any of the following <i>persons</i> when they carry out a <i>payment service</i> : (a) an <i>authorised payment institution</i> ;

- (b) a *small payment institution*;
- (c) an *EEA authorised payment institution*;
- (d) a *full credit institution*;
- (e) an ~~*e-money issuer*~~ *electronic money issuer*;

...

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

personal investment firm

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

...

qualifying debt security

- (1) ~~(for the purposes of *ELM*) a security falling into *ELM* 3.3.9R (Liquid assets).~~ [deleted]
- (2) (for the purposes of *BIPRU*) a *debt security* that satisfies the conditions in *BIPRU* 7.2.49R (Definition of a qualifying debt security).

respondent

- (1) (in *DISP*) a *firm* (except a *UCITS qualifier*), *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP* 2 and 3) includes, as a result of sections 226 and 226A of the *Act*:
 - (a) an *unauthorised person* who was formerly a *firm* in respect of a *complaint* about an act or omission which occurred at the time when the *firm* was *authorised*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; ~~and~~
 - (b) a *person* who was formerly a *licensee* in respect of a *complaint* about an act or omission which occurred at

the time when it was a *licensee*, provided the *complaint* falls within a description specified in the consumer credit rules in force at the time of the act or omission;

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

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

securities and futures firm

(subject to BIPRU TP 1 (Revised definition of securities and futures firm for certain transitional purposes)) a firm whose permitted activities include *designated investment business*, which is not an *authorised professional firm*, *bank*, *BIPRU investment firm* (unless it is an *exempt BIPRU commodities firm*) ~~ELMI~~, *building society*, *credit union*, *friendly society*, *ICVC*, *insurer*, *media firm*, *service company*, *incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), *UCITS management company* or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with IPRU(INV) 5 (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f) or (g):

...

tier one capital

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

...

tier two capital

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

...

upper tier two capital

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

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

absolute FX exposure limit

consolidated sub-group

consumer e-money card

consumer e-money device

consumer e-money holder

daily e-money outstandings amount

EEA consolidated group

EEA financial parent undertaking

EEA group large exposure

EEA group risk own funds

EEA group risk own funds requirement

ELM financial rules

ELMI

e-money

E-Money Directive

e-money electronic device

e-money firm

e-money float

e-money float exposure

e-money issue price

e-money issuer

e-money outstandings

e-money scheme rules

financial services undertaking

FX exposure

FX exposure limit

granting an e-money permission

group of closely related counterparties

issuing e-money

large e-money float exposure

net FX open currency position

own funds requirement

qualifying liquid asset

redemption right

regulatory capital resources

relevant financial services company

reportable large exposure

sufficiency liquid

UK consolidated group

UK financial parent undertaking

UK group large exposure

UK group risk own funds

UK group risk own funds requirement

zero weighted asset

Zone A credit institution

Part 3: Comes into effect on 30 April 2012

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

ELM

small e-money issuer

small e-money issuer certificate

Annex B

Amendments to the Principles for Businesses (PRIN)

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

- 3.1.8 G The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* and *Electronic Money Directive* to credit institutions ~~and e-money issuers~~ (see Parts 5 and 6 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*).

Annex C

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

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

12.1 Application

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

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

...

(b) ~~an *ELMI*~~; [deleted]

...

...

...

BIPRU firms and other firms to which BIPRU 8 applies

...

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

(1) ~~an *ELMI*~~; [deleted]

...

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

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

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

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

Annex D

Amendments to the Threshold Conditions (COND)

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

2.1 Threshold condition 1: Legal status

2.1.1 UK Paragraph 1, Schedule 6 to the Act

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

...

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

Annex E

Amendments to the General Provisions (GEN)

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

Part 1: Comes into force on 30 April 2011

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

...

5.1.1 G This chapter contains:

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

...

...

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

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

...

Schedule 4 Powers exercised

...

Sch 4.3G	The following additional powers have been exercised by the <i>FSA</i> to make the rules in <i>GEN</i> :
	...
	Regulation 92 (Costs of compliance <u>supervision</u>) of the <i>Payment Services Regulations</i>
	<u>Regulation 49 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>
	<u>Regulation 59 (Costs of supervision) of the <i>Electronic Money Regulations</i></u>
	...

...

Sch 4.5G	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :
	...
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 1 of Schedule 3 to the <i>Electronic Money Regulations</i></u>)
	...
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 3 of Schedule 3 to the <i>Electronic Money Regulations</i></u>)
	Section 210 (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> <u>and regulation 53 (6) of the <i>Electronic Money Regulations</i></u>)
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 8 of Schedule 3 to the <i>Electronic Money Regulations</i></u>)

Sch 4.6G	The following additional powers and related provisions have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :
----------	---

	...
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>
	...

Sch 4.7G

...

Sch 4.7AG

<u>The following additional powers and related provisions have been exercised by the FSA in GEN to direct, require or specify:</u>	
	<u>Regulation 49 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>

...

Sch 4.10G

The following additional powers have been exercised by the FSA to make the other <u>guidance</u> in GEN:	
	...
	<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>

Part 2: Comes into force 30 April 2012

Schedule 4 Powers exercised

...

Sch 4.2G

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

...

Sch 4.7G

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

Annex F

Amendments to the General Prudential sourcebook (GENPRU)

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

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

...

7 Table

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

...

9 Table: PART 6: Definitions used in this Annex

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

...		
-----	--	--

Annex G

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

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

8.1.1 R This chapter applies to:

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

Annex H

Amendments to the Conduct of Business sourcebook (COBS)

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

- 1.1.1A R This sourcebook does not apply to a *firm* with respect to the activity of *accepting deposits* carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*, except for *COBS 4.6* (Past, simulated past and future performance), *COBS 4.7.1R* (Direct offer financial promotions), *COBS 4.10* (Systems and controls and approving and communicating financial promotions), *COBS 13* (Preparing product information) and *COBS 14* (Providing product information to clients) which apply as set out in those provisions, *COBS 4.1* and the Banking: Conduct of Business sourcebook (*BCOBS*).
- 1.1.1B R *COBS 4.4.3R*, *COBS 5* (Distance communications), *COBS 15.2* (The right to cancel), *COBS 15.3* (Exercising a right to cancel), *COBS 15.4* (Effects of cancellation) and *COBS 15 Annex 1* (Exemptions from the right to cancel) apply to a *firm* with respect to the activity of *issuing electronic money* as set out in those provisions.
- ...
- 4.1.1A R *COBS 4.4.3R* applies to a *firm* with respect to the activity of *issuing electronic money*.
- ...
- 4.4.3 R To ensure that a *firm* pays due regard to the information needs of its *clients*, and communicates information to them in a way which is clear, fair and not misleading with respect to the activity of *issuing electronic money*, a *firm* must ensure that, in good time before the *firm* issues *electronic money* to a *person*, it has been communicated to that *person* on paper or in another *durable medium* that the *compensation scheme* does not cover claims made in connection with *issuing electronic money*.
- ...
- 15.1.1 G This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:
- (1) most providers of retail financial products that are based on *designated investments*; and
 - (2) *firms* that enter into *distance contracts* with *consumers* that relate to *designated investment business*; and
 - (3) *firms* that enter into *distance contracts* the making or performance of which by the *firm* constitutes, or is part of, the activity of *issuing*

electronic money.

...

Cancellable contracts

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

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

...

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
<u>2.15</u>	<u>The changes to COBS set out in Annex H of the Electronic Money and Payment Services Instrument 2011</u>	<u>R</u>	<u>In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i>, the changes effected by the Annex listed in column (2) do not apply and COBS 5 and COBS 15.3.1R, COBS 15.3.4R and COBS 15.4, as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i>.</u>	<u>30 April 2011</u>	<u>30 April 2011</u>

Annex I

Amendments to the Supervision manual (SUP)

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

3 Auditors

3.1 Application

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

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

...

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

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

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

...

15.4 Notified persons

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

...

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

...

...

16 Reporting requirements

16.1 Application

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

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

16.1.1B D The directions and *guidance* in *SUP* 16.15 apply to *electronic money issuers* that are not *credit institutions*.

...

16.1.3 R Application of different sections of *SUP* 16 (excluding *SUP* 16.13 and *SUP* 16.15)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<i>SUP</i> 16.6	<i>Bank</i> , <i>ELMI</i>	<i>SUP</i> 16.6.4R to <i>SUP</i>

		16.6.5R
	...	
<i>SUP 16.7</i>	<i>Bank, other than an EEA bank with permission for cross border services only.</i>	<i>SUP 16.7.7R to SUP 16.7.15R</i>
	...	
	<i>ELMI</i>	<i>SUP 16.7.64R to SUP 16.7.66R</i>
...		
<p>Note 1 = Where an <i>authorised professional firm</i> is required by <i>IPRU(INV)</i> 2.1.2R(1) to comply with chapter 3, 5, 10 or 13 of <i>IPRU(INV)</i>, section <i>SUP 16.7</i> applies to such a <i>firm</i> as if it were the relevant <i>firm</i> category in the right hand column of <i>IPRU(INV)</i> 2.1R.</p>		
<p><u>Note 2 = The application of <i>SUP 16.13</i> is set out under <i>SUP 16.13.1G</i> and the application of <i>SUP 16.15</i> is set out under <i>SUP 16.15.1G</i>.</u></p>		

...

Structure of the chapter

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

...

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

(11) client money and asset return (*SUP 16.14*); and

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

[Editor's Note: sub-paragraph (11) was added by FSA 2010/52 and comes into force on 1 June 2011.]

...

16.6 Compliance reports

Application

...

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

Category of firm	Applicable provisions
------------------	-----------------------

<i>Bank, ELMI</i>	<i>SUP 16.6.4R - SUP 16.6.5R</i>
...	

...

Banks

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

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

...

16.12 Integrated Regulatory Reporting

...

Reporting requirement

...

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

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

...

Regulated Activity Group 1

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

Description of <i>data item</i>	Prudential category of firm, applicable <i>data items</i> and reporting format (Note 1)
---------------------------------	---

	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	<i>EEA bank ...</i>	<i>EEA bank ...</i>	<i>Electronic money institutions</i>	<i>Credit union</i>	<i>Dormant account fund operator (note 15)</i>
<i>Annual report and accounts</i>	No standard format		No standard format, but in English			No standard format		No standard format
...								
Balance sheet	...	...				FSA020	...	
Income statement	...	...	...			FSA021	...	
Capital adequacy	...	...				FSA022	...	
...								
Market risk	...	...				FSA023		
...								
Large exposures	...	...				FSA024	...	
...								
Liquidity (other than stock)		...				FSA025		...
...								
ELMI questions						FSA026		
Non-EEA sub-group	...					FSA028 (note 8)		
...								

...

16.12.7 R The applicable due dates ...

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

...

Purpose

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

...

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

Reporting requirement

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

...

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

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

After SUP 16.14 insert the following new section. The text is not underlined.

[Editor's Note: SUP 16.14 was added by FSA 2010/52 and comes into force on 1 June 2011.]

16.15 Reporting under the Electronic Money Regulations

Application

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

Purpose

- 16.15.2 G The purpose of this section is to give directions to the *electronic money issuers* referred to in SUP 16.1.1BD under regulation 49 (Reporting requirements) of the *Electronic Money Regulations* in relation to:

- (1) the information in respect of their issuance of *electronic money* and

provision of *payment services* and their compliance with requirements imposed by or under Parts 2 to 5 of the *Electronic Money Regulations* that they must provide to the *FSA*; and

- (2) the time at which and the form in which they must provide that information.

- 16.15.3 G The purpose of this section is also to set out the rules applicable to these types of *electronic money issuers* in relation to complete and timely reporting and, where relevant, the failure to submit reports.

Reporting requirement

- 16.15.4 D An *electronic money issuer* that is not a *credit institution* must submit to the *FSA*:

- (1) the duly completed return applicable to it as set out in column (2) of the table in *SUP* 16.15.8D; and
- (2) the return referred to in (1):
 - (a) in the format specified as applicable in column (3) of the table in *SUP* 16.15.8D;
 - (b) at the frequency and in respect of the periods specified in column (4) of that table;
 - (c) by the due date specified in column (5) of that table; and
 - (d) by electronic means made available by the *FSA* where necessary.

- 16.15.5 D *SUP* 16.4.5R (Annual Controllers Report) and *SUP* 16.5.4R (Annual Close Links Reports) apply to an *authorised electronic money institution* as if a reference to *firm* in these *rules* were a reference to an *authorised electronic money institution*.

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

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

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

(1) Type of <i>electronic money issuer</i>	(2) Return	(3) Format	(4) Reporting Frequency	(5) Due date (Note 4)
<i>Authorised electronic money institution (Note 1)</i>	Balance sheet	FSA059	Half yearly (Note 3)	30 <i>business days</i>
	Income statement	FSA060	Half yearly (Note 3)	30 <i>business days</i>
	Capital requirements	FSA061	Half yearly (Note 3)	30 <i>business days</i>
	Safeguarding	FSA062	Half yearly (Note 3)	30 <i>business days</i>
	Supplementary information	FSA063	Half yearly (Note 3)	30 <i>business days</i>
	<i>Annual report and accounts</i>	No standard format	Annual (Note 3)	80 <i>business days</i>
<i>Small electronic money institutions (Note 2)</i>	Return	FSA064	Half yearly (note 5)	30 <i>business days</i>
	Total electronic money outstanding @ 31st December	FSA065	Annual (Note 5)	1 month
	<i>Annual report and accounts</i>	No standard format	Annual (Note 5)	80 <i>business days</i>
(a) the Post Office Limited (b) the Bank of England, the ECB and the national central banks of <i>EEA States</i> other than the <i>United Kingdom</i> (c)	<i>Average outstanding electronic money</i>	No standard format	Half yearly (Note 6)	30 <i>business days</i>

Government departments and local authorities				
(d) <i>credit unions</i>				
(e) municipal banks				
(f) the National Savings Bank				
Note 1	When submitting the completed returns required, the <i>authorised electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 30AD to SUP 16 Annex 30ED.			
Note 2	When submitting the completed returns required, the <i>small electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 30FD to SUP 16 Annex 30GD.			
Note 3	Where the <i>authorised electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>authorised electronic money institution's accounting reference date</i> .			
Note 4	The due dates for returns are the last day of the periods given in column (5) of the table above following the relevant reporting frequency period set out in column (4) of the table above.			
Note 5	The reporting frequency in relation to FSA065 is calculated from 31 December each calendar year. Otherwise, where the <i>small electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>small electronic money institution's accounting reference date</i> .			
Note 6	This is calculated from 31 December each calendar year.			

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

16 Annex 30D Electronic money: returns

The returns for electronic money institutions are set out in SUP 16 Annex 30AD to 16 Annex GD. *[Editor's Note: SUP 16 Annex 29R was added by FSA 2010/52 and comes into force on 1 June 2011.]*

16 Annex 30AD Authorised electronic money institutions - balance sheet return

FSA059 Authorised electronic money institutions - balance sheet

	Currency	<input type="text"/>	Please select £ or €
	Currency units	<input type="text"/>	Thousands
1	Cash	<input type="text"/>	
2	Secure low-risk liquid assets	<input type="text"/>	
3	Material holdings in financial institutions	<input type="text"/>	
4	Investments in own shares	<input type="text"/>	
5	Other current assets	<input type="text"/>	
6	Intangible assets	<input type="text"/>	
7	Other fixed assets	<input type="text"/>	
8	Total assets	<input type="text"/>	
9	Electronic money outstandings	<input type="text"/>	
10	o/w electronic money issue price	<input type="text"/>	
11	Other current liabilities	<input type="text"/>	
12	Non current liabilities (excluding provisions)	<input type="text"/>	
13	Paid up share capital	<input type="text"/>	
14	Share premium account	<input type="text"/>	
15	Audited reserves (excluding revaluations)	<input type="text"/>	
16	Externally verified interim profits	<input type="text"/>	
17	Partnership capital	<input type="text"/>	
18	Initial capital	<input type="text"/>	
19	Interim net losses	<input type="text"/>	

20	Revaluation reserves	<input type="text"/>
21	Own Funds	<input type="text"/>
22	Subordinated debt capital	<input type="text"/>
23	Provisions	<input type="text"/>
24	Unaudited current year's profits	<input type="text"/>
25	Total liabilities	<input type="text"/>

16 Annex 30BD Authorised electronic money institutions - income statement

FSA060 Authorised electronic money institutions - income statement

	Currency	<input type="text"/>	Please select £ or €
	Currency units	<input type="text" value="Thousands"/>	
	Income (including regulated business revenue)		A
1	Total income	<input type="text"/>	
	Expenses	<input type="text"/>	
2	Total expenses	<input type="text"/>	
3	Tax expense	<input type="text"/>	
4	Dividends	<input type="text"/>	
5	Extraordinary items	<input type="text"/>	
6	Retained Profit	<input type="text"/>	

16 Annex 30 CD Authorised electronic money institutions - capital requirements return

FSA061 Authorised electronic money institutions - capital requirements

Currency	<input type="text"/>	Please select £ or €
----------	----------------------	----------------------

Currency units

Thousands

1 The firm completing this is subject to the capital rules for

A

2 Electronic money issuance and related payment services only (*Answer Yes or No*)

If 'yes' complete Part One, Section 1 **only**.

3 Electronic money issuance, related payment services and unrelated payment services (*Answer Yes or No*)

If 'yes' complete **both** Part One, Sections 1 and 2.

PART ONE: CAPITAL REQUIREMENT

Section 1 (electronic money business)

4 Initial capital requirement

350

Min €350,000

Own funds requirement

5 Total own funds

6 Electronic money outstandings at period end

7 Average daily outstanding electronic money at the end of each calendar day over preceding 6 months

8 Own funds requirement

2% of average outstanding electronic money figure (field A7)

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

Section 2 (electronic money institutions engaged in unrelated payment services)

10 Please indicate which method your firm uses to calculate its own funds requirement

Select one method only – A, B or C and complete the relevant section below.

Method A (Fixed overheads method)

11 Total fixed overheads for preceding year

12	Own funds requirement (10% of fixed overheads for preceding year)	
----	---	--

Method B (Scaled average monthly payment method)

13	Total payment volume (in Euro)	
14	4% of first €5m of payment volume	
15	2.5% of payment volume between €5m and €10m	
16	1% of payment volume between €10m and €100m	
17	0.5% of payment volume between €100m and €250m	
18	0.25% of any remaining payment volume	
19	Total	
20	Scaling factor	
21	Own funds requirement	

Method C (Scaled income method)

Relevant Indicator

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

Multiplication Factor

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

Total capital requirement	
---------------------------	--

35	Initial capital requirement from Section 1 (X)	350
36	Own funds requirement from Section 1 + own	

	funds requirement calculated using methods A, B or C (Y)	
37	Total capital requirement (higher of X and Y)	

Part Two: TOTAL CAPITAL RESOURCES

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

Deductions

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

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

16 Annex 30DD Authorised electronic money institutions – safeguarding return

FSA062 Authorised electronic money institutions - safeguarding return

METHOD OF SAFEGUARDING OF CLIENT ASSETS

		A	B	C
	<i>Mark 'X' in all appropriate boxes in columns A & B</i>	Electronic money	Unrelated payment services	Name of institution/ custodian/insurer
1	Placed in a separate account with an authorised credit institution			
2	Invested in approved secure low-risk liquid assets held in a separate account with an authorised custodian			
3	Covered by an insurance policy with an authorised insurer			
4	Covered by a guarantee from an authorised insurer			
5	Covered by a guarantee from an authorised credit institution			

16 Annex 30ED Authorised electronic money institutions - supplementary information

FSA063 Authorised electronic money institutions - supplementary information

		Yes/No	Explanation if No
1	Have the firm's own funds been equal to or greater than its own funds requirement throughout the reporting period?		
2	Have all funds received from customers been immediately segregated and safeguarded throughout the reporting period?		
3	Please report the number of electronic money accounts open with the firm at the end of the reporting period.		
4	Please report the number of agents the firm was responsible for at the end of the reporting period		

Audited Accounts

5	If your firm is incorporated, does it qualify for the Companies House small firms exemption from having its accounts audited? <i>Please answer 'yes' or 'no'.</i>	
6	If your firm is required to submit audited accounts, please report the date on which your accounts were last audited. <i>Please enter date</i>	
7	Is your firm a 'hybrid' firm conducting other non-regulated business with an obligation to submit separate accounts for its electronic money and payment services business? <i>Please answer 'yes' or 'no'.</i>	
8	If you have answered 'yes' to 7 above, please enter the date these accounts were last submitted to us. <i>Please enter date</i>	

16 Annex 30FD Small electronic money institution return

FSA064 Small electronic money institution return

Section 1: Capital Adequacy

A

*(**Full completion of Section 1 of this return is only required if the actual or, where applicable, projected figure for 'average outstanding electronic money' in respect of the relevant period is equal to or exceeds €500,000. If the figure is below this threshold the capital requirement does not apply and figures for fields A3 and A4 only should be entered.**)*

Currency Please select £ or €
 Currency units Thousands

PART ONE: CAPITAL REQUIREMENT

1 Initial capital requirement *2% of average outstanding electronic money figure (A4)*

Own funds requirement

2 Total own funds

3 Electronic money outstandings at period end

4 Average outstanding electronic money at the end of each calendar day over preceding 6 months

5 Own funds requirement *2% of average outstanding electronic money figure (A4)*

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

Part Two: TOTAL CAPITAL RESOURCES

7 Paid up capital
 8 Reserves
 9 Retained profit/loss

10	Revaluation reserves	
11	Eligible general or collective provisions	
12	Eligible securities and instruments	
13	Cumulative preference shares (other than fixed term)	
14	Eligible members' commitments	
15	Eligible borrowers' commitments	
16	Eligible fixed term cumulative preference shares and subordinated loans	
17	Total resources	
	Deductions	
18	Own shares at book value	
19	Intangible assets	
20	Material losses	
21	Deductible holdings of shares	
22	Deductible participations	
23	Deductible instruments	
24	Total deductions	
25	Total capital resources	
26	Period end £/€ exchange rate used	
27	Total capital resources (Euro equivalent)	
28	Total capital requirement (in Euro)	
29	Capital surplus/deficit (in Euro)	

Section 2: Method of safeguarding of client assets

		A Electronic money	B Unrelated payment services	C Name of institution/ custodian/insurer
1	Placed in a separate account with an authorised credit institution			
2	Invested in approved secure low-risk liquid assets held in a separate account with an authorised custodian			
3	Covered by an			

	insurance policy with an authorised insurer			
4	Covered by a guarantee from an authorised insurer			
5	Covered by a guarantee from an authorised credit institution			

Section 3: Supplementary Information

		Yes/No	Explanation if No
1	Has the firm continued to meet the condition for registration that average outstanding electronic money generated by the firm's total business activities must not exceed €5,000,000 throughout the reporting period?		
2	Has the firm continued to meet the condition for registration that the rolling monthly average of the total amount of any unrelated payment transactions (over any period of 12 months) must not exceed €3,000,000 throughout the reporting period?		
3	If the actual or, where applicable, projected figure for 'average outstanding electronic money' in respect of the relevant period is equal to or greater than €500,000, has the firm's own funds been equal to or greater than its own funds requirement (2% of their average outstanding electronic money) throughout the reporting period? <i>Answer N/A if the average amount of outstanding electronic money is below €500,000.</i>		
4	Have all funds received from customers been immediately segregated and safeguarded		

	throughout the reporting period?	
5	Please report the number of electronic money accounts open with the firm at the end of the reporting period.	
6	Please report the number of agents the firm was responsible for at the end of the reporting period.	

Audited Accounts

7	If your firm is incorporated, does it qualify for the Companies House small firms exemption from having its accounts audited? <i>Please answer 'yes' or 'no'.</i>	
8	If your firm is required to submit audited accounts, please report the date on which your accounts were last audited. <i>Please enter date</i>	
9	Is your firm a 'hybrid' firm conducting other non-regulated business with an obligation to submit separate accounts for its electronic money and payment services business? <i>Please answer 'yes' or 'no'.</i>	
10	If you have answered 'yes' to 7 above, please enter the date these accounts were last submitted to us. <i>Please enter date</i>	

16 Annex 30GD Small electronic money institutions - total outstanding electronic money return

FSA065 Small electronic money institutions - total electronic money outstanding @ 31st December

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

Amend the following as shown.

Appendix 1 Prudential categories and sub-categories

...

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

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

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
12L	...				
	(5) SUP 16.7.66 [deleted]	R	An <i>ELMI</i> that is required to report a consolidated reporting statement on capital adequacy in the case of <i>ELM</i> 7.3.2R in respect of reporting dates after 31 December 2007 will use FSA003 in place of FSA009. FSA003 should be submitted in accordance with SUP 16.12.3R(3).	1 January 2008	1 January 2008
	...				
	(7) SUP 16.7.65R, SUP 16.7.66R [deleted]	R	An <i>ELMI</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under SUP 16.12.5R.	1 January 2008 to 1 April 2009	1 January 2008
12M	...				
	(18) SUP	R	An <i>ELMI</i> must submit the ELM CA/LE (unconsolidated	1 January 2008 to 30 August	1 January 2008

	16.7.65R, <i>SUP</i> 16.7.66R [deleted]		and consolidated) for reporting dates between 1 January 2008 and 30 August 2008 in accordance with the rules set out in <i>SUP</i> 16.7.66R.	2008	
...					

...

Insert the following new transitional provision after SUP TP 1.5. The text is not underlined.

TP 1.6 Electronic Money Transitional Provision

<u>(1)</u>	<u>(2) Material to which the transitional provision applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provisions: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
<u>1</u>	The changes to <i>SUP</i> set out in Annex I of the Electronic Money and Payment Services Instrument 2011	<u>R</u>	In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i> , the changes effected by the Annex listed in column (2) do not apply and the provisions of <i>SUP</i> , as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i> .	<u>30 April 2011</u>	<u>30 April 2011</u>

...

Amend the following as shown.

Schedule 4 Powers exercised

...

Sch 4.4G The following additional powers and related provisions have been exercised by the *FSA* to give the directions and make the *guidance* in *SUP*.

	...
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 49 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>
	<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>

Annex J

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

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

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

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

<u>Regulation 29(2)</u>	<u>when the FSA is proposing to refuse to register an EEA branch of an authorised electronic money institution</u>		<u>Executive procedures</u>
<u>Regulation 29(3)(a)</u>	<u>when the FSA is deciding to refuse to register an EEA branch of an authorised electronic money institution</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulation 29(2) and Regulation 29(3)(a)</u>	<u>when the FSA is proposing or deciding to cancel the registration of an EEA branch of an authorised electronic money institution*</u>		<u>RDC</u>
<u>Regulation 34(9)</u>	<u>when the FSA is proposing to refuse an application for registration as an agent</u>		<u>Executive procedures</u>
<u>Regulation 34(10)(a)</u>	<u>when the FSA is deciding to refuse an application for registration as an agent</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 35(2) and 35(3)(a)</u>	<u>when the FSA is proposing or deciding to remove an agent from the FSA Register otherwise than at the request of the electronic money institution*</u>		<u>RDC</u>
<u>Regulations 53(1) and 53(3)</u>	<u>when the FSA is proposing, or deciding, to publish a statement that an electronic money issuer has contravened the Electronic Money Regulations*</u>		<u>RDC</u>
<u>Regulations 53 (1) and 53 (3)</u>	<u>when the FSA is proposing or deciding, to impose a financial penalty*</u>		<u>RDC</u>
<u>Regulations 53(1)</u>	<u>When the FSA is proposing or</u>		<u>RDC</u>

<u>and 53(3)</u>	<u>deciding to suspend the authorisation of an <i>authorised electronic money institution</i> or registration of a <i>small electronic money institution</i>, or to limit or otherwise restrict the carrying on of <i>electronic money</i> issuance or <i>payment services</i> business by an <i>electronic money institution</i> *</u>		
<u>Regulations 56(1) and 56(3)</u>	<u>when the <i>FSA</i> is proposing or deciding to exercise its powers to require restitution *</u>		<u><i>RDC</i></u>
<u>Regulation 74(7)</u>	<u>when the <i>FSA</i> is proposing to decide not to include a person on the register</u>		<u><i>Executive procedures</i></u>
<u>Regulation 74(8) (a)</u>	<u>when the <i>FSA</i> is deciding not to include a person on the register</u>		<u><i>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</i></u>
<u>Schedule 3, paragraph 1</u>	<u>when the <i>FSA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Electronic Money Regulations</i> (Note 2)</u>		<u><i>RDC</i></u>
<u>Schedule 3, paragraph 1</u>	<u>when the <i>FSA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 2)</u>		<u><i>RDC</i></u>

Notes:

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

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

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

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

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

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

Annex K

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

INTRO 1 Introduction

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

...

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

...

Background

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

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

...

...

Application to payment service providers

...

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

...

Application to electronic money issuers

1.1.10C R This chapter (except the *complaints record rule*, the *complaints reporting rules*, and the *complaints data publication rules*) applies to *electronic money issuers* in respect of *complaints* from *eligible complainants* concerning *activities carried on from an establishment maintained by it or its agent in the United Kingdom*.

1.1.10D G (1) In this sourcebook, the term *electronic money issuer* does not include *credit institutions*, *credit unions* or *municipal banks* (which will be carrying on a *regulated activity* if they issue *electronic money* and will be covered by this sourcebook as *firms* in those circumstances), but it does include *small electronic money institutions* and *persons* who meet the conditions set out in *regulation 75(1)* or *regulation 76(1)* of the *Electronic Money Regulations*.

(2) Although *electronic money institutions* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should this be necessary.

...

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

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

...

...

1 Annex 2G Application of DISP 1 to type of respondent

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...						
incoming <i>EEA authorised payment institution</i> providing cross-border

<i>payment services from outside the UK</i>						
<i>electronic money issuer in relation to complaints concerning issuance of electronic money</i>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<i>incoming branch of an EEA authorised electronic money institution in relation to complaints concerning issuance of electronic money</i>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<i>incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK</i>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<i>licensee</i>	...	...	...	...	...	...

...

- 2.1.1 G ...
- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, ~~and payment services~~ and issuance of electronic money, and covers:

...

...

Activities by payment service providers

- 2.3.2A R ...

Activities by electronic money issuers

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

(1) issuance of electronic money; or

(2) consumer credit activities;

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

General

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

...

To which activities does the Voluntary Jurisdiction apply?

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

...

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

...

(c) activities which (at ~~1 July 2009~~ 30 April 2011) were *regulated activities* or would be *regulated activities* if they

were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

(m) issuance of electronic money;

...

...

Compulsory Jurisdiction

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

2.6.2 G This:

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

...

Eligible complainants

...

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

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

...

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

...

Exceptions

- 2.7.9 R The following are not *eligible complainants*:
- (1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:
 - (a) the *firm* itself has *permission* to carry on; or
 - (ab) the *firm*, ~~or~~ *payment service provider* or *electronic money issuer* itself is entitled to carry on under the *Payment Services Regulations* or the *Electronic Money Regulations*;
or
 - (b) the *licensee* or *VJ participant* itself conducts;

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

...

...

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

This table belongs to *DISP* 2.5.1 R

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

...

Annex L

Amendments to the Electronic Money sourcebook (ELM)

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

- 1 Application, contents, purpose and general**
- 2 Initial and continuing own funds requirements**
- 3 Management of the e-money float**
- 4 Limitations on activities**
- 5 Systems and controls; Rules for making calculations**
- 6 Redemption, information requirements and purse limits**
- 7 Consolidated financial supervision**
- 8 Small e-money issuers**

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

TP 1 Transitional Provision relating to the Electronic Money Regulations

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1	The changes to <i>ELM</i> set out in Annex L of the Electronic Money and Payment Services Instrument 2011	R	<p>(1) Except as set out in (2), in relation to a <i>person</i> deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i>, the provisions of <i>ELM</i>, as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that <i>person</i> is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i>.</p> <p>(2) The provisions of <i>ELM</i> 4.4, <i>ELM</i> 6 (except for <i>ELM</i> 6.8.2AR and 6.8.7R) and <i>ELM</i> 8 do not apply in relation to a <i>person</i> who falls within (1).</p>	30 April 2011	30 April 2011

2	The changes to <i>ELM</i> set out in Annex L of the Electronic Money and Payment Services Instrument 2011	R	<p>In relation to a <i>person</i> who meets the conditions set out in regulation 76 (1) of the <i>Electronic Money Regulations</i> (a <i>small e-money issuer</i> who, before 30th April 2011 has carried on the activity of electronic money issuance in accordance with the <i>small e-money issuer certificate</i>), <i>ELM</i> 8.4, <i>ELM</i> 8.6, <i>ELM</i> 8.7 and <i>ELM</i> 8 Annex 2, as they were in force as at 29 April 2011, will apply from 30 April 2011 until:</p> <p>(a) 30 April 2012; or</p> <p>(b) that <i>person</i> is included in the <i>FSA Register</i> as an <i>authorised electronic money institution</i> pursuant to regulation 4(1)(a) of the <i>Electronic Money Regulations</i> or as a <i>small electronic money institution</i> pursuant to regulation 4(1)(b) of the <i>Electronic Money Regulations</i>;</p> <p>whichever is the earlier.</p>	30 April 2011	30 April 2011
---	---	---	---	---------------	---------------

Annex M

Amendments to the Perimeter Guidance manual (PERG)

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

Comes into effect on 10 February 2011

1.4.2 G Table: list of general guidance to be found in *PERG*

Chapter:	Applicable to:	About:
...		
<p><i>PERG 3.3A:</i></p> <p>Issuing e-money <u>Guidance on the scope of the <i>Electronic Money Regulations</i></u></p>	<p>a <i>person</i> who needs to know</p> <ul style="list-style-type: none"> • whether a particular electronic payment product is e-money <u>electronic money</u> and whether the <i>person</i> issuing it needs to be authorised <u>authorised or registered</u> under the <i>Act</i> <u><i>Electronic Money Regulations</i></u> • whether any communications about the product will be restricted 	<ul style="list-style-type: none"> • the scope of the regulated activity of issuing e-money <u><i>Electronic Money Regulations</i></u> • the application of the restrictions in section 21 of the <i>Act</i> (Restrictions on financial promotion) to communications about e-money

...

2.6 Specified investments: a broad outline

...

Deposits

...

2.6.3 G Certain transactions are excluded. ... In addition, there is a separate exclusion in article 9 of the Order (Sums received in consideration for the issue of debt securities) and another in article 9A (Sums received in exchange for electronic money). ~~PERG 3.2.15G to PERG 3.2.19G~~ PERG 3A Q4 contains guidance on the exclusion relating to *electronic money*.

...

Electronic money

2.6.4A G *Electronic money* is specified as an *investment* in article 74A of the *Regulated Activities Order* (as amended by the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002* (SI 2002/682)). It is defined, in article 2 of that Order, as monetary value, as represented by a claim on the issuer, which is stored on an electronic device, issued on receipt of funds and accepted as a means of payment by *persons* other than the issuer. Further *guidance* is given in *PERG 3* (Guidance on the scope of the regulated activity of issuing e-money), but only when issued by:

- (1) a full credit institution, a credit union or a municipal bank; or
- (2) a person deemed to have been granted authorisation under regulation 74 of the *Electronic Money Regulations*; or a person who falls within regulation 76(1) of the *Electronic Money Regulations* (see *PERG 3A*, Q30 and 31).

The authorisation and registration requirements for any other person intending to issue *electronic money* are governed by the *Electronic Money Regulations*. Guidance on these regulations is available in *PERG 3A*.

...

2.7 Activities: a broad outline

...

Issuing ~~e-money~~ electronic money

2.7.2A G ~~Guidance on the regulated activity of issuing e-money is given in *PERG 3*. See *PERG 2.6.4AG* for a description of those *persons* to whom this specified activity applies.~~

...

Agreeing

2.7.21 G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing ~~e-money~~ electronic money, effecting or carrying out contracts of insurance, operating a multilateral trading facility, managing dormant account funds,...*

...

2.8 Exclusions applicable to particular regulated activities

...

~~Issuing e-money~~

- 2.8.2A G ~~Certain 'small issuers' of *e-money* may apply to the *FSA* for a certificate to be excluded from the *regulated activity* of *issuing e-money*. To be eligible, the issuer must be a *body corporate* or a *partnership* (other than a *full credit institution*) with its head office in the *United Kingdom* and it must meet certain conditions. The *FSA* must give that issuer a certificate if it appears to the *FSA* that the issuer meets those conditions. Further *guidance* on those conditions and how the application is made is given in *ELM* 8.4 (The conditions for giving a small e-money issuer certificate). [deleted]~~

...

2.9 Regulated activities: exclusions applicable in certain circumstances

- 2.9.1 G The various exclusions outlined below deal with a range of different circumstances.
- (1) Each set of circumstances described in *PERG* 2.9.3G to *PERG* 2.9.17G has some application to several *regulated activities* relating to *securities*, *relevant investments* or *home finance transactions*. They have no effect in relation to the separate *regulated activities* of *accepting deposits*, *issuing e-money* *electronic money*, *effecting or carrying out contracts of insurance*, *advising on syndicate participation at Lloyd's*, ...

...

Delete all of PERG 3. The deleted text is not shown.

After PERG 3 [deleted] insert the following new chapter. The text is not underlined.

Chapter 3A: Guidance on the scope of the Electronic Money Regulations 2011

3A.1 Introduction

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

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

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

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

A reference in this chapter to:

- individual regulations is a reference to the *Electronic Money Regulations* unless otherwise stated; and
- ‘municipal bank’ means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987.

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

- General issues (*PERG 3A.2*)
- The definition of electronic money (*PERG 3A.3*)
- Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies (*PERG 3A.4*)
- Exclusions (*PERG 3A.5*)
- Territorial scope (*PERG 3A.6*)
- Transitional arrangements (*PERG 3A.7*)

3A.2 General issues

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

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

- (a) an *authorised electronic money institution*; or

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

Otherwise you risk committing a criminal offence under regulation 63.

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

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

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

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

Some *electronic money* products may be charged up by means of scratch cards that can be purchased from shops. The price paid for the card is the monetary value of the *electronic money*. The card contains a number. The purchaser then enters the number on a web site to activate the *electronic money* account. There is thus a delay between the payment for the *electronic money* and its use by the holder. In our view, this delay does not make the payment for the *electronic money* a *deposit*. This is because the means of spending the *electronic money* is put into the hands of the purchaser when they purchase the card.

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

It depends on a number of factors:

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

Transitional arrangements may also be relevant, see *PERG 3A.7*.

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

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

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

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

The issuance of *electronic money* is not itself a *payment service* but it is likely to entail the provision of *payment services*. For example, issuing a *payment instrument* is a *payment service* and *electronic money* is likely to be issued on a *payment instrument* in order to make a payment transaction. See Q20 at *PERG* 15 for more detail on what amounts to issuing *payment instruments*.

As an *electronic money institution* you are permitted to engage in the provision of *payment services* as well as other activities, see regulation 32 and Q19 below, without needing to be separately authorised or registered under the *Payment Services Regulations*.

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

3A.3 The definition of electronic money

Q8. How is electronic money defined in the Electronic Money Regulations?

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

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

and is not otherwise excluded by the *Electronic Money Regulations*, see *PERG* 3A.5.

Electronic money is an electronic payment product. The value is held electronically or magnetically on the payment instrument itself (either locally or remotely) and payments using the value are made electronically. So, for example, monetary value stored on a:

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

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

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

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

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

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

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

Value on a debit card may be *electronic money* or a *deposit*. Guidance on this is given in Q15.

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

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

Q12. Does it matter that the monetary value can be spent with the issuer and third parties?

No. If monetary value can be spent with third parties, it does not stop being *electronic money* just because the *electronic money* can also be spent with the issuer. This is so even if in practice most of the *electronic money* is spent with the issuer and only a small portion spent with third parties.

Q13. Are electronic travellers cheques electronic money?

An electronic travellers cheque is a product, based on a plastic card, designed to replace paper travellers cheques. There are two types of electronic travellers cheques:

- (1) ones that can also be used to buy goods and services from third parties; and
- (2) ones whose only function is to allow the holder to withdraw cash in a foreign currency from ATMs when abroad.

The plastic card is loaded with value, the holder pays for the value on issue and uses the value to purchase goods and services. It is likely then to meet the first three conditions in the definition of *electronic money* listed at Q8. The remaining condition is whether the value is accepted as a means of payment by persons other than the issuer.

An electronic travellers cheque falling into (1) above is likely to be *electronic money* as it can be used to purchase goods from third parties.

An electronic travellers cheque falling into (2) is unlikely to be *electronic money* provided that:

- it can only be used to withdraw foreign currency from ATMs owned by the issuer of the value; or
- the withdrawal of foreign currency by a cardholder will never involve the purchase of the currency from the owner of the ATM but instead the repayment of prepaid value by the issuer of the prepaid value.

Q14. If I use a trust account to store monetary value in respect of funds I have accepted payment for, will I be issuing electronic money?

Putting monetary value into a trust account does not, of itself, prevent the *person* who accepts the payment for electronic value from issuing *electronic money*.

Q15. How does electronic money differ from deposits?

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

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

- If the monetary value is kept on an account that can be used by non-electronic means, that points towards it being a *deposit*. For example, an account on which cheques can be drawn is unlikely to be *electronic money*.

- If a product is designed in such a way that it is only likely to be used for making payments of limited amounts and not as a means of saving, that feature points towards it being *electronic money*. Relevant features might include how long value is allowed to remain on the account, disincentives to keeping value on the account and the payment of interest on it.
- One should have regard to whether the product is sold as *electronic money* or as a *deposit*.

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

Q16. What sort of factors will the FSA take into account in deciding whether a particular scheme might be electronic money?

In considering this question relevant factors include:

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

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

3A.4 Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies

Q17. What criteria must we meet to be a small electronic money institution?

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

- your total business activities immediately before the time of registration generates an *average outstanding electronic money* that does not exceed 5 million euros;
- the monthly average, over the period of 12 months preceding the application, of the total amount of payment transactions which are not related to the issuance of *electronic money* and are executed by you or your agents in the *United Kingdom*, must not exceed 3 million euros;
- immediately before the time of registration you must hold such initial capital, if any, which is required in accordance with Part 1 of Schedule 2 to the regulations;

- you must have taken adequate measures for the purposes of safeguarding *electronic money* holders' fund as set out at regulation 20;
- you must satisfy the *FSA* that the persons responsible for the management of your *electronic money* and *payment services* are of good repute and possess appropriate knowledge and experience to issue *electronic money* and provide those *payment services* that you intend to undertake;
- none of the individuals responsible for the management or operation of your business has been convicted of offences relating to money laundering, or terrorist financing or *financial crime*;
- you must be a body corporate whose head office is in the *United Kingdom*;
- you must comply with the registration requirements of the Money Laundering Regulations 2007, where they apply to you.

Q18. We satisfy the conditions for registration as a small electronic money institution - does that mean we have to register as one?

Not necessarily, there are other options available to you.

If you register as a *small electronic money institution*, you cannot acquire passport rights under the *Electronic Money Directive*. So you may wish to become an *authorised electronic money institution* if you wish to take advantage of a passport.

If your business does not currently exceed the thresholds referred to in the first two bullets at Q17, but you expect that it will, you may also wish to apply for authorisation rather than registration.

Q19. We are a firm providing non-financial products and services to the general public. Would it be possible for us to obtain authorisation as an electronic money institution?

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

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

Q20. We are a branch of a firm which has its head office outside the EEA. If we became an electronic money institution can we also engage in mixed business?

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

Q21. We act as agent for an electronic money institution. What is the scope of our activities under the regulations?

As such an agent you may provide *payment services* on behalf of your principal, but only if you are registered by them on the *FSA Register*. You may also distribute or redeem *electronic money* for your principal. You cannot however issue *electronic money* on their behalf.

Q22. We distribute and redeem electronic money. What is the scope of our activities under the regulations?

In some *electronic money* schemes an originator creates *electronic money* and then sells it to banks and other distributors. The latter then sell the *electronic money* to the public. In our view reference to the issuer of *electronic money* in the *Electronic Money Regulations* is a reference to the originator and not the distributor.

So, provided you are not:

- issuing *electronic money* yourself; or
- acting as an agent for an *electronic money institution*, see Q21;

you do not need to be authorised or registered under the *Electronic Money Regulations*. However, the *electronic money institution* that is acting as your principal should notify the *FSA* that you are acting as a distributor, see regulations 26 and 37 and Schedule 1.

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

Q23. We have been registered by one of our principals as an agent under the Payment Services Regulations. If we wish to act as agent for an electronic money institution as well will we need to be registered again?

Yes. If your principal is an *electronic money institution*, it is its responsibility to apply for registration on your behalf even if you have been registered as agent under the *Payment Services Regulations*. Assuming your principal is not an *EEA firm*, you are required to be

registered on the *FSA Register* before you provide *payment services* for your principal, subject to any relevant transitional provisions which may delay or avoid the need for registration. If your principal is an *EEA firm*, your principal will need to comply with the relevant Home State legislation relating to your appointment, and your Home State competent authority will need to notify the *FSA*.

Q24. We are a credit union. Are we exempt from the regulations?

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

Q25. We are a municipal bank. Are we exempt from the regulations?

Save that you are not subject to the safeguarding requirements in Part 3 of the regulations, your position is identical to that of *credit unions*, see Q24.

3A.5 Exclusions

Q26. Are there any exclusions from the definition of electronic money that we should be aware of?

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

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

Q27. We offer branded prepaid cards which consumers can use to purchase goods in a particular shopping mall. Are we issuing electronic money?

Yes, it is likely that you will be issuing *electronic money* unless you are able to fall within an exclusion. The most likely exclusion is if the card is only used to purchase goods and

services in your premises or within a limited network of service providers. In our view you will only be able to take advantage of this exclusion here if:

- it is made clear in the relevant terms and conditions of the card that the purchaser of the value is only permitted to use the card to buy from merchants located within that particular shopping mall; and
- the facility to use the card to purchase goods and services outside this shopping mall has been disabled.

Q28. For the purposes of the second exclusion referred to at Q26, can you explain when goods or services are “used through” a telecommunication, digital or IT device (“a relevant device”)?

It is important to realise that it is the good or service purchased on a relevant device that must be used through that device for the purposes of this exclusion.

So, for example, where a person purchases travel or cinema tickets using prepaid credit on a mobile phone and the ticket is sent to this phone and then used to gain entry onto a transport system or into a cinema, what is being purchased are rights to travel or to watch a film. The ticket itself is a form of receipt confirming the purchase of such rights. Accordingly, as the travel rights or the visit to the cinema cannot be experienced on a relevant device, such a purchase is likely to fail the “used through” part of the regulation 3(b) exclusion.

Examples of the sorts of goods and services that could meet the “used through” part of the regulation 3(b) exclusion are music, online newspaper or video content, electronic books and mobile phone applications. This is because these products are all capable of being enjoyed through the relevant device they have been delivered to.

For more guidance on this exclusion see *PERG* 15, Q23 and 24.

3A.6 Territorial scope

Q29. We are a non-EEA firm with a branch in the United Kingdom and we wish to issue electronic money. Can we apply for authorisation or registration?

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

3A.7 Transitional arrangements

Q30. We are a firm with a Part IV permission to issue electronic money. Do we need to have applied for authorisation under the regulations prior to 30 April 2011?

No. Provided that you:

- have been lawfully issuing *electronic money* in the *United Kingdom* prior to 30 April 2011; and
- are not a person mentioned in paragraphs (c) to (j) in the *Glossary* definition of *electronic money issuer*;

regulation 74 will apply to grant you deemed authorisation under regulation 9.

If you are granted such a deemed authorisation you must, before 1 July 2011:

- tell us what type of *electronic money institution* you wish to become; and
- provide us with such information as we may reasonably require.

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

If, by 1 July 2011, you do not tell us what type of *electronic money institution* you wish to be, or you notify us that you do not wish to be an *electronic money institution*, your deemed authorisation will cease on 30 October 2011 or, if your *Part IV permission* is cancelled before that date, on the cancellation of that *permission*.

Q31. We are currently a small electronic money issuer. Do we need to have applied for authorisation under the regulations prior to 30 April 2011?

No, under regulation 76, provided:

- you are a *small electronic money issuer*; and
- before the 30 April 2011 you carried on the activity of issuing *electronic money* in accordance with your certificate;

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

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

Amend the following as shown.

8.7 Engage in investment activity

...

8.7.2 G ...

So, it is quite possible for a *person* to be carrying on a business in the *United Kingdom* for which he does not require *authorisation* because the business activity either is not connected with financial services or falls within one of the exclusions in the *Regulated Activities Order* but find that the restriction in section 21 applies to his communications. It should also be noted that ~~e-money~~ electronic money is not a *controlled investment*. This means that the restriction in section 21 does not apply to the communication of an invitation or inducement that concerns ~~e-money~~ electronic money. This is unless the communication is a *financial promotion* for some other reason. For guidance on *electronic money* see *PERG 3A*.

...

15.2 General

Q1. Why does it matter whether or not we fall within the scope of the PSD regulations?

Broadly, when you provide payment services, by way of business, in the UK and these services do not fall within an exclusion or exemption, you must be:

...

(e) an ~~e-money issuer~~ electronic money issuer (that is either an ~~e-money issuer~~ with a Part IV permission or a *small e-money issuer* or an EEA ~~e-money issuer~~ exercising passport rights); or

...

Q5. As a payment institution rather than a credit institution, are we right in thinking that our maintenance of payment accounts does not amount to accepting deposits?

Yes, article 9AB and 9L of the *Regulated Activities Order* provide that funds received by payment institutions from payment services users with a view to the provisions of payment services shall constitute neither deposits nor ~~e-money~~ electronic money.

...

Q8. We are an ~~e-money~~ electronic money issuer. Do the PSD regulations apply to us?

Yes. If you are an ~~e-money~~ electronic money issuer, you will be subject to the conduct of business requirements in the PSD regulations. The authorisation and registration regime applying to UK ~~e-money~~ electronic money issuers is split between ~~remains~~ that imposed by the *Act* (see PERG 2.6.4A) and that imposed by the *Electronic Money Regulations* (see PERG 3.2 3A for guidance ~~about the regulated activity of issuing e-money~~ on the scope of the *Electronic Money Regulations*).

~~Authorised e-money issuers will not need to apply for a separate Part IV permission, in order to provide payment services. In other words, if you have a Part IV permission to carry on the regulated activity of *issuing e-money*, you will also be authorised to provide payment services to the extent permitted by *ELM* 4.3. If you are a *small e-money issuer*, you will not be subject to the authorisation requirements of either the *Act* or the PSD regulations.~~

...

15.4 Small payment institutions, agents and exempt bodies

...

Q30. We are an agent of an ~~e-money issuer~~ electronic money institution for the purpose of providing payment services. Do we need to apply to the FSA for registration under the PSD regulations?

~~No. If you are such an agent of an e-money issuer which is permitted to provide payment services in the UK, you are not required to be registered under the PSD regulations. An e-money issuer will be permitted to provide payment services if it has a Part IV permission to issue e-money, or if it is either an EEA e-money issuer exercising passport rights or a *small e-money issuer*.~~

As such an agent you will need to be registered by your principal under the *Electronic Money Regulations*, see PERG 3A Q21. However, in our view you do not need to be registered as an agent under the PSD regulations unless you are also providing payment services on behalf of another payment institution.

Annex N

Amendments to the Building Societies Regulatory Guide (BSOG)

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

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

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

Annex O

Amendments to the Enforcement Guide (EG)

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

After EG 19.103 insert the following new text.

Electronic Money Regulations 2011

- 19.104 The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the Electronic Money Regulations. The *Electronic Money Regulations* impose requirements including, amongst other things, various provisions regulating the rights and obligations of electronic money institutions.
- 19.105 The FSA's approach to enforcing the *Electronic Money Regulations* will mirror its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the electronic money issuer or relevant person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
- 19.106 The *Electronic Money Regulations*, for the most part, mirror the FSA's investigative, sanctioning and regulatory powers under the *Act*. The FSA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the *Act*. Key features of the FSA's approach are described below.

The conduct of investigations under the Electronic Money Regulations

- 19.107 The *Electronic Money Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Electronic Money Regulations*.
- 19.108 The FSA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Electronic Money Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FSA's policy in civil investigations under the *Electronic Money Regulations* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Electronic Money Regulations

- 19.109 The *RDC* is the FSA's decision maker for some of the decisions under the *Electronic Money Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where

appropriate, *DEPP* 3.3 and 3.4. *DEPP* 3.4 applies for urgent notices under regulations 11(6), (9) and (10)(b) (including as applied by regulation 15).

- 19.110 For decisions made by *executive procedures* the procedures to be followed will be those described in *DEPP* 4.
- 19.111 The *Electronic Money Regulations* do not require the FSA to have published procedures to commence criminal prosecutions. However, in these situations the FSA expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.
- 19.112 The *Electronic Money Regulations* require the FSA to give third party rights as set out in section 393 of the *Act* and to give access to material as set out in section 394 of the *Act* in certain cases.
- 19.113 Certain FSA decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the Electronic Money Regulations

- 19.114 When determining whether to take action to impose a penalty the FSA's policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. When determining the level of a financial penalty the FSA's policy includes having regard to relevant principles and factors in *DEPP* 6.5 to 6.5D.
- 19.115 When determining whether to suspend the authorisation or, as the case may be, the registration of an electronic money institution or limit or otherwise restrict the carrying on of electronic money issuance or payments services business by an electronic money issuer the FSA's policy will have regard to the relevant factors in *DEPP* 6A.
- 19.116 As with cases under the *Act*, the FSA may settle or mediate appropriate cases involving civil breaches of the *Electronic Money Regulations* to assist it to exercise its functions under the Regulations in the most efficient and economic way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the settlement discount scheme.

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

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

PUB REF: 002358

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: www.fsa.gov.uk

Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.