



**Financial Services  
Commission**

# **Administrative Notice No. 9**

## **E-Money**

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## Table of Contents

1	Application, contents, purpose and general.....	6
1.1	Introduction .....	6
1.2	Definitions.....	6
1.3	Contents and purpose .....	6
1.4	Restriction on issuing e-money.....	7
2	Applying for authorisation.....	9
2.1	Becoming an authorised EMNY Institution .....	9
2.2	Registered EMNY Institution .....	9
2.2.1	Initial capital for Registered EMNY Institutions.....	10
2.3	Appointment of agents and use of distributors .....	10
2.4	Granting of Authorisation (Regulation 7, 9(4) and (5) and Regulation 15) .....	10
3	Initial and continuing own funds requirement .....	12
3.1	Application .....	12
3.2	Purpose .....	12
3.3	Base capital requirements .....	13
3.4	Calculation of initial capital and own funds.....	13
	Ordinary share capital .....	13
	Reserves .....	13
	Net profits.....	13
	Partnership capital .....	13
	Intangible assets.....	14
	Losses .....	14
	Subordinated debt capital: requirements for both upper and lower.....	14
	tier two capital.....	14
	Subordinated debt capital: additional requirements for lower tier two capital .....	15
	Subordinated debt capital: additional requirements for upper tier two capital.....	15
	Material holdings.....	16
	Limits on components of own funds .....	16
	Adjustments to own funds.....	16
3.5	Continuing capital requirement.....	17
	Obligation to meet own funds requirement .....	17
	Calculation of own funds requirement .....	17
	Newly authorised EMNY Institution without a six month average.....	17
3.6	Initial capital requirement .....	17
	Ongoing capital (own funds) .....	17
	Meeting the Capital Requirement.....	18
3.7	Limits on qualifying items .....	18



3.8	Calculation of Own funds requirements.....	20
3.8.1	Method A.....	20
3.8.2	Method B.....	20
3.8.3	Method C.....	20
3.8.4	Method D.....	21
4	Safeguarding Requirements.....	22
4.1	Application.....	22
4.2	Purpose.....	22
4.3	Safeguarding funds received in exchange for e-money.....	22
4.4	Safeguarding funds from unrelated payment services.....	22
4.5	What funds have to be safeguarded and when?.....	22
4.6	How must funds be safeguarded?.....	23
4.6.1	Safeguarding Option 1 – the segregation method.....	23
4.6.2	Safeguarding Option 2 – the insurance or guarantee method.....	24
4.7	Protection from the claims of other creditors.....	24
4.8	Systems and controls.....	24
4.9	Effect of an insolvency event.....	26
4.10	Low Risk Assets.....	26
4.11	Foreign exchange risk.....	27
	Calculation of FX exposure.....	28
	FX exposure limits.....	28
4.12	Large exposure risk.....	29
	Large exposure limits.....	29
	General rules for calculation of exposures.....	29
	Exclusions.....	29
	Calculation of large e-money float exposure.....	30
	Treatment of guarantees and collateral.....	30
	Notifying the FSC of reportable large exposures.....	31
	Factors to consider when deciding whether to incur an exposure.....	32
4.13	Liquidity and interest rate risk.....	32
4.14	Derivatives.....	32
5	Additional Activities.....	34
5.1	Application.....	34
5.2	Purpose.....	34
5.3	Activities.....	34
5.4	Restrictions.....	34
5.5	Prohibition on issue of e-money at a discount.....	35
6	Systems and controls; Rules for making calculations.....	37



6.1	Application .....	37
6.2	Purpose .....	37
6.3	Requirements for making calculations .....	39
	Exchange rates .....	39
	Accounting policy.....	39
	Valuation .....	39
7	Redemption, information requirements, purse limits and Conduct of business Requirements.....	40
7.1	Application .....	40
7.2	Purpose .....	40
7.3	Issuing e-money.....	40
7.4	Redeeming e-money .....	41
7.5	Redemption fees .....	41
7.6	Duty to redeem .....	42
	Person entitled to redemption.....	42
	Currency of redemption .....	42
	Time of redemption .....	42
	Money Laundering and other checks .....	42
7.7	Methods of redemption .....	43
7.8	Terms of redemption .....	43
	Contents of e-money scheme contracts .....	43
	Obligation to enter into contracts with those entitled to redeem e-money .....	43
	Obligation to offer redemption as a contractual right.....	43
7.9	Information.....	44
7.10	Warnings on cards .....	45
7.11	Relevant funds .....	45
7.12	Conduct of Business Requirements under the Payment Services Regulations .	45
7.13	Large exposures .....	45
	The EEA group.....	45
8	Agents and Distributors.....	47
8.1	Application .....	47
8.2	Purpose .....	47
8.3	Differentiating agents and distributors .....	47
8.4	Agents and distributors .....	47
8.5	Registering an agent.....	48
	8.5.1 Registration process .....	48
	8.5.2 Anti-money laundering internal control mechanisms for agents.....	48
	8.5.3 Additional information and changes to information supplied.....	49



9 Definitions and Glossary of Terms .....	50
10 Frequently asked questions .....	52
11 Regulatory objectives and principles of good regulation checklist.....	55

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# 1 Application, contents, purpose and general

## 1.1 Introduction

- 1.1.1 This notice is issued to assist firms impacted by the Second Electronic Money Directive (“2EMD”) when interpreting the regulations in order to ensure that they are able to comply with the requirements set out by the Directive. The paper also aims to provide firms with details of the practical understanding of the new requirements.

## 1.2 Definitions

- 1.1.3 The following terms are used throughout this notice:

**“electronic money institution” (EMNY Institution)** means An authorised electronic money institution or a small electronic money institution.

**“e-money”** means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which –

- Is issued on receipt of funds for the purpose of making payment transactions;
- Is accepted by a person other than the electronic money issuer;
- Is not excluded by Regulation 3 (which sets out the exclusions to electronic money).

**“Electronic money issuer”** means any of the following persons when they issue electronic money –

- Authorised electronic money institutions;
- Small electronic money institutions;
- EEA authorised electronic money institutions;
- Credit institutions
- The European Central Bank and the national central banks of EEA states, when not acting in their capacity as a monetary authority or other public authority;
- Government departments
- The Gibraltar Savings Bank.

**“firm”** means an institution which is authorised to issue e-money.

**“EEA authorised electronic money institution”** means a person authorised in an EEA state other than Gibraltar, to issue electronic money and provide payment services in accordance with the electronic money directive.

**“EEA branch”** means a branch established by an authorised electronic money institution, in the exercise of its passport rights, to issue electronic money, provide payment services, distribute electronic money or carry out other activities in accordance with these Regulations in an EEA state other than Gibraltar.

## 1.3 Contents and purpose

- 1.3.1 This chapter sets out which parts of this Administrative Notice apply to which persons. It also explains that the regulated activity of issuing e-money is restricted to banks, building societies and EMNY Institutions.



- 1.3.2 Chapter 2 sets out rules and guidance on the capital adequacy of EMNY Institutions. Chapter 3 sets out rules and guidance on the safeguarding requirements. Chapter 4 sets out rules and guidance on the additional activities an EMNY Institution can carry out. It also prohibits issuing e-money at a discount. Chapter 5 sets out rules and guidance on systems and controls and rules relevant to making calculations under this Administrative Notice's financial rules. Chapter 6 sets out rules and guidance on redemption of e-money, the supply of information and purse limits. Chapter 7 sets out rules and guidance about the measure of capital adequacy by reference to an EMNY Institution's membership of a group.
- 1.3.3 The requirements in this Administrative Notice set standards governing the backing safeguarding of e-money issued by an EMNY Institution with high quality liquid assets. It also sets minimum capital and other risk management standards. This mitigates the risk that EMNY Institutions will be unable to meet their liabilities and commitments to consumers. This Administrative Notice also protects consumers by regulating the relationship between issuers of e-money and those who hold their e-money.
- 1.3.4 The requirements for EMNY Institutions are intended to take account of the following principles, which are based on the recitals to the Electronic Money Directive and the Second Electronic Money Directive.
- (1) It is desirable to provide a regulatory framework that helps to ensure that e-money delivers its full potential benefits and that avoids hampering technological innovation. Therefore the regime provides a "technology neutral" regulatory framework.
  - (2) The 2EMD revises the existing Electronic Money Directive since some of its provisions were considered to have hindered the emergence of a true single market for electronic money services and the development of such user-friendly services;
  - (3) with the objective of removing barriers to market entry and facilitating the taking up and pursuit of the business of electronic money issuance, the rules to which EMNY Institutions are subject to be brought in line to ensure a level playing field for all payment service providers;
  - (4) In order to respond to the specific risks associated with e-money the supervisory regime is targeted specifically at issues relating to issuing e-money.
  - (5) It is necessary to preserve a level playing field between EMNY Institutions and banks and building societies issuing e-money and, thus, to ensure fair competition among a wider range of institutions to the benefit of holders of e-money. A balance needs to be achieved between the less cumbersome features of the prudential supervisory regime applying to EMNY Institutions against provisions that are more stringent than those applying to credit institutions. Notably as regards the safeguarding of funds of an electronic money holder. Given the crucial importance of safeguarding, it is necessary that the FSC be informed in advance of any material changes, such as a change in the safeguarding method; a change to the credit institution where safeguarded funds are deposited; or a change to the insurance undertaking or credit institution which insured or guaranteed the safeguarded funds.

## 1.4 Restriction on issuing e-money

- 1.4.1 Regulation 63 of the Regulations says that Member States shall prohibit persons or undertakings that are not electronic money issuers from carrying on the business of issuing "electronic money". The purpose is to ensure that only persons who are subject to a prudential regime designed to deal with the risks of issuing e-money engage in that activity.



- 1.4.2 For persons who are not firms this is implemented by the general prohibition. For firms this is achieved by the requirements in this Administrative Notice. The definition of EMNY Institution covers any firm whose permitted activities include issuing e-money. Only a bank, building society, and a recognised institution are excluded. If a firm falls within the definition of an EMNY Institution all the requirements in this Administrative Notice about EMNY Institutions apply.



## 2 Applying for authorisation

A Gibraltar firm that provides electronic money services by way of business in Gibraltar needs to apply to the FSC to become either an authorised EMNY Institution or a registered EMNY Institution.

Being a registered EMNY Institution is an option available to businesses where the total business activities of the applicant immediately before the time of registration must not generate average outstanding electronic money that exceeds €5,000,000. In addition, any payment service activity that it carries out is restricted to not exceeding €3,000,000 where this represents the monthly average over the period of 12 months preceding the application.

There are, however, no passporting rights for registered EMNY Institutions.

### 2.1 Becoming an authorised EMNY Institution

In order to become an authorised EMNY Institution a firm needs to submit the relevant application forms as required by the FSC, the required information and the application fee. Application forms are available via the FSC website. The information required, as set out in Regulation 5 and Schedule 1, can be found below:

- A programme of operations;
- a business plan, including a financial forecast of the first 3 financial years;
- auditor's confirmation of the firm's capital (to comply with Regulation 6(3));
- a description of the measures taken for safeguarding users' funds;
- a description of the firm's corporate governance arrangements, internal controls, including administrative, internal audit, risk management and accounting procedures;
- a description of how the firm's internal controls ensure compliance with the AML/CFT notes;
- a description of the firm's structural organisation including intended outsourcing arrangements;
- Individual Questionnaires for the firm's directors and managers;
- transparency of the shareholding of the firm;
- auditor details;
- Memorandum and Articles of Association; and
- details of the Head Office.

### 2.2 Registered EMNY Institution

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

Registered EMNY Institutions benefitting from a waiver will not have the right of establishment, nor the freedom to provide services, nor will they indirectly exercise those rights when being a member of a payment system.

Under the Directive there is scope for restrictions to be placed on EMNY Institutions that have been granted a waiver, the effect of which is that they may only engage in certain activities.



An EMNY Institution benefitting from a waiver is required to notify the FSC of any change in its situation which is relevant to the conditions which are to be met for the waiver to be granted.

Waivers will not be granted on AML/CFT obligations.

### 2.2.1 Initial capital for Registered EMNY Institutions

By the time of registration, the applicant must provide evidence that they hold initial capital at the level required by Part 1 of Schedule 2 of the Regulations. The level of initial capital required varies according to the average value of outstanding e-money:

- Where the business activities of an applicant generate average outstanding e-money of €500,000 or more, the capital requirement is at least equal to 2% of the average outstanding e-money of the institution.
- Where the business activities of an applicant generate average outstanding e-money of less than €500,000, there is no capital requirement.
- Where an applicant to become a small EMNY Institution has not completed a sufficiently long period of business to compile historical data adequate to make that assessment, the applicant must make the assessment on the basis of projected outstanding e-money as evidenced by its business plan, subject to any adjustments to that plan required by the FSC.

## 2.3 Appointment of agents and use of distributors

Regulation 33 provides that an EMNY Institution may distribute or redeem e-money through an agent or a distributor. EMNY Institutions may not issue e-money through an agent or distributor. Agents must, under regulation 34, be included on the Register, but there is no requirement to register distributors. It is therefore important to understand the difference between the two.

EMNY Institutions may engage agents to provide payment services both related and unrelated to issuing e-money (see the definition of agent in regulation 2(1)). EMNY Institutions may also distribute or redeem e-money through agents.

EMNY Institutions may engage distributors to distribute and redeem e-money but not to provide payment services.

Regulation 36(2) makes EMNY Institutions responsible for anything done or omitted by an agent or distributor. EMNY Institutions are responsible to the same extent as if they had expressly permitted the act or omission. The FSC will therefore expect EMNY Institutions to have appropriate systems and controls in place to effectively oversee their agents' and distributors' activities.

Full details on agents and distributors can be found in Section 8.

## 2.4 Granting of Authorisation (Regulation 7, 9(4) and (5) and Regulation 15)

- 2.4.1 The Regulations allow the FSC to include in the authorisation/registration a requirement for the EMNY Institution to take a specified action or refrain from taking specified action (for example, not to deal with a particular category of customer). The requirement may be imposed by reference to the person's relation with its group or members of its group. We may also specify the time



that a requirement expires (regulations 7 and 15). For example, the FSC may require that the EMNY Institution refrain from providing specified unrelated payment services because the FSC consider that the EMNY Institution does not have adequate systems and controls in place to manage the risks of the unrelated payment services.

- 2.4.2 In accordance with regulation 7(4), where an applicant carries out business activities other than issuing e-money and the provision of payment services and the FSC feels that the carrying on of this business will, or is likely to, impair the FSC's ability to supervise the business or their financial soundness, the FSC can require the applicant to form a separate legal entity to issue e-money and provide payment services.

## 3 Initial and continuing own funds requirement

### 3.1 Application

3.1.1 This Chapter applies to all EMNY Institutions.

### 3.2 Purpose

3.2.1 The Regulations establish capital requirements for EMNY Institutions. Under the Regulations, authorised EMNY Institutions and those small EMNY Institutions whose average outstanding e-money exceeds the relevant monetary threshold, are required to hold a minimum amount of capital.

3.2.2 Capital is required to be held as a buffer, absorbing both unexpected losses that arise while the business is a going concern as well as the first losses if it is wound up. The parts of the Regulations that deal with the capital resources and requirements are regulation 19 and Schedule 2.

3.2.3 The term 'capital resources' describes what a business holds as capital. 'Capital requirements' refers to the amount of capital that must be held by the business for regulatory purposes. The capital requirements established by the Regulations are initial requirements that are a condition of authorisation or registration and ongoing requirements.

3.2.4 The items that may be used to meet the capital requirements are set out in 3.6.1. EMNY Institutions must hold at all times the capital amounts required, in the manner specified. The capital requirements set out in the Regulations are expressed in euro, as they are in 2EMD. It is expected that EMNY Institutions will hold sufficient capital to ensure that the capital requirements are met, even in the event of exchange rate fluctuations.

3.2.5 EMNY Institutions can also provide unrelated payment services. There are separate capital requirements for authorised EMNY Institutions that provide unrelated payment services.

3.2.6 Additionally, EMNY Institutions can undertake activities that are not related to issuing e-money and payment services. These businesses are called 'hybrid' businesses. The Regulations do not impose any initial or ongoing capital requirements in relation to the business that does not involve issuing e-money or providing payment services. Any other capital requirements imposed because of other legislation – for example, if the EMNY Institution is undertaking another regulated activity – the capital requirements have to be met separately and cumulatively.

3.2.7 For the purposes of calculating the capital requirements, EMNY Institutions that provide unrelated payment services or that are hybrid businesses must treat each part of the business as a separate business.

3.2.8 The purpose of the capital requirements in this Chapter is to:

- (1) help an EMNY Institution to maintain itself as a viable going concern, to overcome expected and unexpected difficulties, and to sustain its infrastructure;
- (2) help an EMNY Institution to secure, in conjunction with the safeguarding requirements in Chapter 4, its ability to redeem e-money whenever redemption may be required; and
- (3) help to maintain public confidence in an EMNY Institution's ability to redeem e-money as and when required.



### 3.3 Base capital requirements

3.3.1 The initial capital requirement is one of the conditions to be met at the application stage. The Regulations require that the EMNY Institution's capital must not at any time fall below the prescribed levels of initial capital for its business activity. The Regulations specify the following capital requirements:

- authorised EMNY Institutions must hold at least €350,000; and
- small EMNY Institutions whose business activities generate (or are projected to generate) average outstanding e-money of €500,000 or more must hold an amount of initial capital at least equal to 2% of their average outstanding e-money.
- There is no initial capital requirement for small EMNY Institutions whose business activities generate (or are projected to generate) average outstanding e-money less than €500,000.
- 

### 3.4 Calculation of initial capital and own funds

#### Ordinary share capital

3.4.1 Ordinary share capital may only be included when making the calculations to the extent that it is paid up and permanent. In addition, there must be no fixed dividend and, if the shares carry a dividend, the terms of those shares must provide that a dividend payment can only be made if the firm's governing body has agreed that it should be made and must provide that the amount of the dividend payment cannot exceed the amount recommended or decided on by the firm's governing body. Accordingly, any dividends must be non cumulative. Sums credited to a firm's share premium account are only included in its own funds if they are in respect of shares forming part of its own funds.

#### Reserves

3.4.2 Audited reserves are audited accumulated profits retained by the firm after deduction of tax and dividends and other audited reserves created by similar realised appropriations. Reserves include gifts of capital.

3.4.3 If a reserve is negative, it must be deducted at the relevant stage of the calculation.

#### Net profits

3.4.4 Externally verified interim net profits are interim net profits that the firm's external auditor has verified. They are net of any foreseeable charge, proprietors' drawings, dividend or similar amount.

#### Partnership capital

3.4.5 Partnership capital is made up of the partners' capital accounts. The capital account is an account:

- (1) into which capital contributed by the partners is paid; and
- (2) from which under the terms of the partnership agreement an amount representing capital may be withdrawn by a partner only if:
  - (a) he ceases to be a partner and an equal amount is transferred to another such account by his former partners or any person replacing him as their partner; or
  - (b) the partnership is otherwise dissolved or wound up.



If partnership capital is negative, it must be deducted.

- 3.4.6 Partnership capital is eligible for inclusion in a firm's own funds only to the extent that it is permanent and that no obligation that cannot be cancelled without cost exists to pay costs on it (for example in the form of interest).

### Intangible assets

- 3.4.7 Intangible assets are the full balance sheet value of intangible assets including goodwill, capitalised development costs, licences and intellectual property.

### Losses

- 3.4.8 Interim net losses are any interim net losses (audited or unaudited).

## Subordinated debt capital: requirements for both upper and lower tier two capital

- 3.4.9 Subordinated debt capital does not form part of the own funds of a firm unless the following requirements are met:
- (1) the claims of the subordinated creditors (whether in respect of principal, interest or otherwise) must rank behind those of all unsubordinated creditors of the firm and behind any unsubordinated creditors of any partner in it;
  - (2) the debt capital is unsecured and fully paid up;
  - (3) to the fullest extent permitted under the laws of all relevant jurisdictions, creditors must waive their right to set off amounts they owe the firm against the subordinated debt capital;
  - (4) the remedies (other than rights falling into (3)) available to the subordinated creditor in the event of non payment, an event of default, breach of agreement or other default in respect of the subordinated debt capital (so far as applicable) must be limited to:
    - (a) bringing proceedings for the winding up, bankruptcy or administration of the firm (or any partner in the firm) or any similar or equivalent proceedings under the law of Gibraltar or of any other country; or
    - (b) proving for the debt and claiming in the liquidation of the firm or in any other proceedings referred to in (4)( a);
  - (5) neither the firm nor any partner in it may by virtue of any remedy be obliged to pay any sum or sums sooner than the same is payable under subordinated debt capital;
  - (6) the terms of the subordinated debt capital must be set out in a written agreement or instrument that contains terms that provide for the conditions set out in:
    - (a) (1) to (5); and
    - (b) meets the additional requirements for subordinated debt capital.; and
  - (7) the firm has obtained a written legal opinion from a suitably experienced external lawyer confirming that the debt capital meets the requirements of:
    - (a) (1) to (6); and
    - (b) meets the additional requirements for subordinated debt capital.



## Subordinated debt capital: additional requirements for lower tier two capital

- 3.4.10 Subordinated debt capital does not form part of the lower tier two capital of a firm unless the following requirements are met:
- (1) the subordinated debt capital must not be capable of becoming due and payable before any maturity date set under (2) except (if it is subject to any events of default) on an event of default complying with (3);
  - (2) the subordinated debt capital must:
    - (a) have a fixed original maturity of at least five years; or
    - (b) be subject to notice of repayment of at least five years; or
    - (c) be perpetual; or
    - (d) be repayable only in a winding up of the firm or in any other proceedings;
  - (3) any events of default are limited to the winding up of the firm or the bringing of any other proceedings referred to 2.4.11(4)(a) and
  - (4) any:
    - (a) events of default; or
    - (b) remedy referred to in 2.4.11(3) or (4); or
    - (c) provision for a final maturity date;must not prejudice the subordination set out in (1) and 2.4.11(1).

## Subordinated debt capital: additional requirements for upper tier two capital

- 3.4.11 Subordinated debt capital does not form part of a firm's upper tier two capital unless the following requirements are met:
- (1) the subordinated debt capital is perpetual or is only repayable in a winding up of the firm or in any similar proceedings relating to the firm or relating to the firm and any partner of the firm;
  - (2) no interest, principal or other amount may be payable:
    - (a) at a time when the firm is in breach of any financial requirement under this Administrative Notice or is insolvent; or
    - (b) if making that payment would result in the firm breaching any financial requirement under this Administrative Notice or becoming insolvent;
  - (3) the firm may defer the payment of any interest;
  - (4) the subordinated debt capital complies with the conditions in article 35(2)(d) of the Banking Consolidation Directive;
  - (5) the debt capital is not subject to any event of default; and
  - (6) any remedy referred to 2.4.11(3) or (4) must not prejudice the subordination set out in (1) and 2.4.11(1).
- 3.4.12 For the purposes of calculating the amount of subordinated debt capital which may be included in a firm's own funds as lower tier two capital in its final five years to maturity the principal amount must be amortised on a straight line basis by 20% per annum.
- 3.4.13 A firm may treat subordinated debt capital that would be eligible to form part of its upper tier two capital as falling into stage E of the calculation rather than stage D.



3.4.14 Article 35(2)(d) of the Banking Consolidation Directive says that "the documents governing the issue of the [subordinated debt capital] must provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the [firm] in a position to continue trading". Compliance with the other conditions of this Administrative Notice will usually ensure that a firm complies with this Article. The debt capital may only be repayable on a winding up of the firm. This contrasts with the corresponding provisions for lower tier two capital subordinated debt, where repayment is allowed in a wider range of circumstances. For instance, upper tier two capital should not become repayable merely because the firm goes into administration. Even in a winding up, the debt capital may only be repaid if all other creditors have been repaid and the firm has enough assets left to repay the debt capital. If the firm does not have enough assets to repay it, the debt is never repayable.

### Material holdings

- 3.4.15 (1) Material holdings in financial institutions or credit institutions are the sum of:
- (a) the total value of all ownership shares and all subordinated loan capital owned by the firm (or in which it has a position) in any financial institution in which the firm owns more than 10% of the ownership shares; and
  - (b) the amount by which the total amount specified in (3) exceeds 10% of the firm's own funds (calculated before the deduction of material holdings at stage F).
- (2) In the case of ownership shares in an issuer with a share premium account, the figure of 10% in (1)(a) must be calculated by reference to the share capital plus share premium of that issuer.
- (3) The amount referred to in (1)(b) is the sum of the total value of all the ownership shares and all subordinated loan capital owned by the firm (or in which it has a position) in financial institutions or credit institutions except for financial institutions or credit institutions that fall into (1)(a).
- (4) The firm must include ownership shares and subordinated loan capital of which it is not the registered owner but which it owns beneficially and ownership shares and subordinated loan capital that are or should be included as an asset in its accounting records.
- (5) The value of ownership shares and subordinated loan capital for the purposes of (1)(a) and (3) is the full balance sheet value.

### Limits on components of own funds

- 3.4.16 Any item that would otherwise form part of a firm's tier two capital must be excluded from the firm's own funds to the extent that the firm's tier two capital would otherwise exceed its tier one capital.
- 3.4.17 Any item that would otherwise fall into stage E of the calculation must be excluded from own funds to the extent that the sum of items falling into that stage would exceed 50% of the amount calculated at stage C.

### Adjustments to own funds

- 3.4.18 In accordance with article 34(4) of the Banking Consolidation Directive, tier one capital and revaluation reserves must not be included within a firm's own funds to the extent that those items do not represent capital that is available to the firm for unrestricted and immediate use to cover risks and losses as soon as these occur, whether because of taxation charges, any future foreseeable taxation charges, or for any other reason.



### 3.5 Continuing capital requirement

#### Obligation to meet own funds requirement

3.5.1 A firm must, at all times, maintain own funds equal to or in excess of its own funds requirement.

#### Calculation of own funds requirement

3.5.2 A firm's own funds requirement is, at any time, 2% of the higher of the following amounts:

- (1) its e-money outstanding amount at that time; and
- (2) the average of its daily e-money outstanding amount for the six month period ending at that time.

#### Newly authorised EMNY Institution without a six month average

3.5.3 If a firm has not been an EMNY Institution for six months, the firm must calculate the amount of own funds from the projected amounts of its daily e-money outstanding amount for the six month period beginning on the day it is granted an e-money authorisation. Those projections must be the ones contained in the business plan supplied by the firm to the FSC as part of its application for the granting of an e-money permission or the plan as so amended and resubmitted.

3.5.4 If, in relation to a firm:

- (1) the projections referred to above have proved to be significantly incorrect; or
- (2) it is reasonably likely that those projections will prove to be significantly incorrect;

and more than one month of the six month period remains, the firm must prepare revised projections of its daily e-money outstanding amount for the rest of that period.

### 3.6 Initial capital requirement

3.6.1 Qualifying items to be used to meet the initial capital requirement are:

- paid-up capital (including share premium account but excluding cumulative preference shares);
- reserves; and
- profit/loss.

#### Ongoing capital (own funds)

3.6.2 The ongoing capital requirement is to be met by the capital resources using qualifying items as set out below.

Authorised EMNY Institutions and small EMNY institutions with capital requirements must calculate ongoing capital requirements using method D for their e-money business and related payment services (see below).

Authorised EMNY Institutions that also provides unrelated payment services must calculate cumulative ongoing capital requirements using one of methods A, B or C (see below). The ongoing capital held must not fall below the level of €350,000.



## Meeting the Capital Requirement

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

- Assess what qualifying item that EMNY Institution X holds
- Identify relevant items to which deductions will be applied
- Apply limits as relevant
- Calculate EMNY X's capital, which may be used to meet the ongoing capital requirement

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

(1)

- Own shares at book value held by the EMNY Institution;
- Intangible assets;
- Material losses of the current financial year;

(2)

- Material holdings (meaning holdings of shares in credit and financial institutions in excess of 10% of their capital) as well as the undated securities, cumulative preference shares, co-operative society members' commitments held in these institutions;
- Material holdings not already deducted as above where the amount exceeds 10% of the EMNY Institution's capital calculated before deduction of the other items grouped at B on this list;
- Participations in insurance or reinsurance undertakings or insurance holding companies (IHCs); and
- Subordinated debt issued by those insurance or reinsurance undertakings or IHCs in which a participation is held.

## 3.7 Limits on qualifying items

3.7.1 There are also limits on qualifying items. The limits are to be applied as follows, and can be seen in the diagram below:

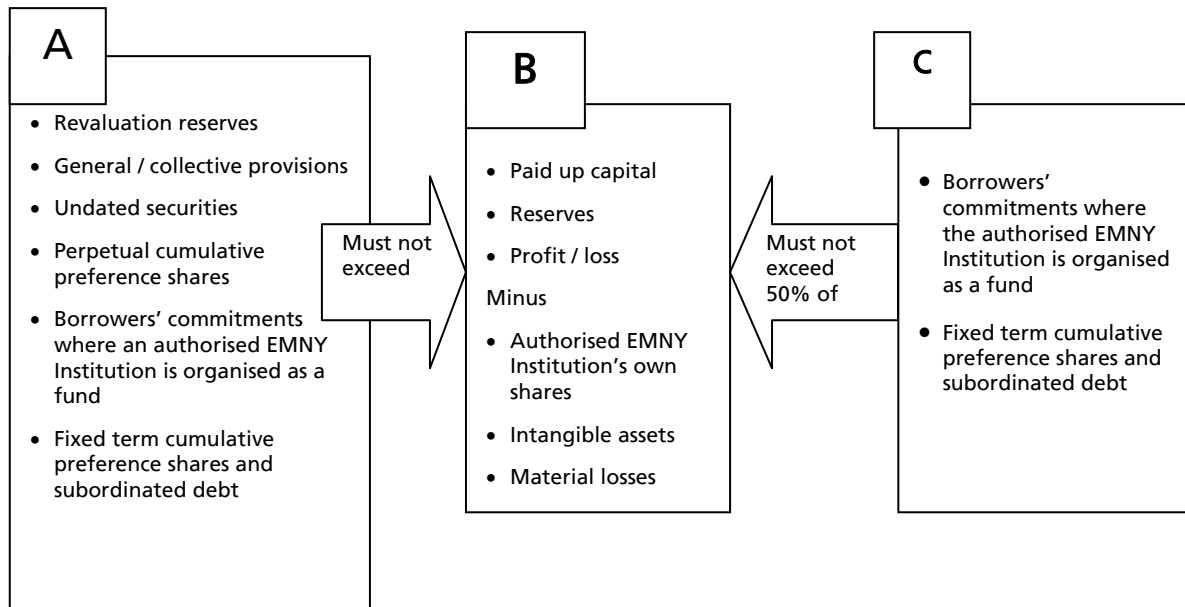
- The items listed in A must not exceed those listed in B; and
- The items listed in C must not exceed 50% of B

After applying such limits –

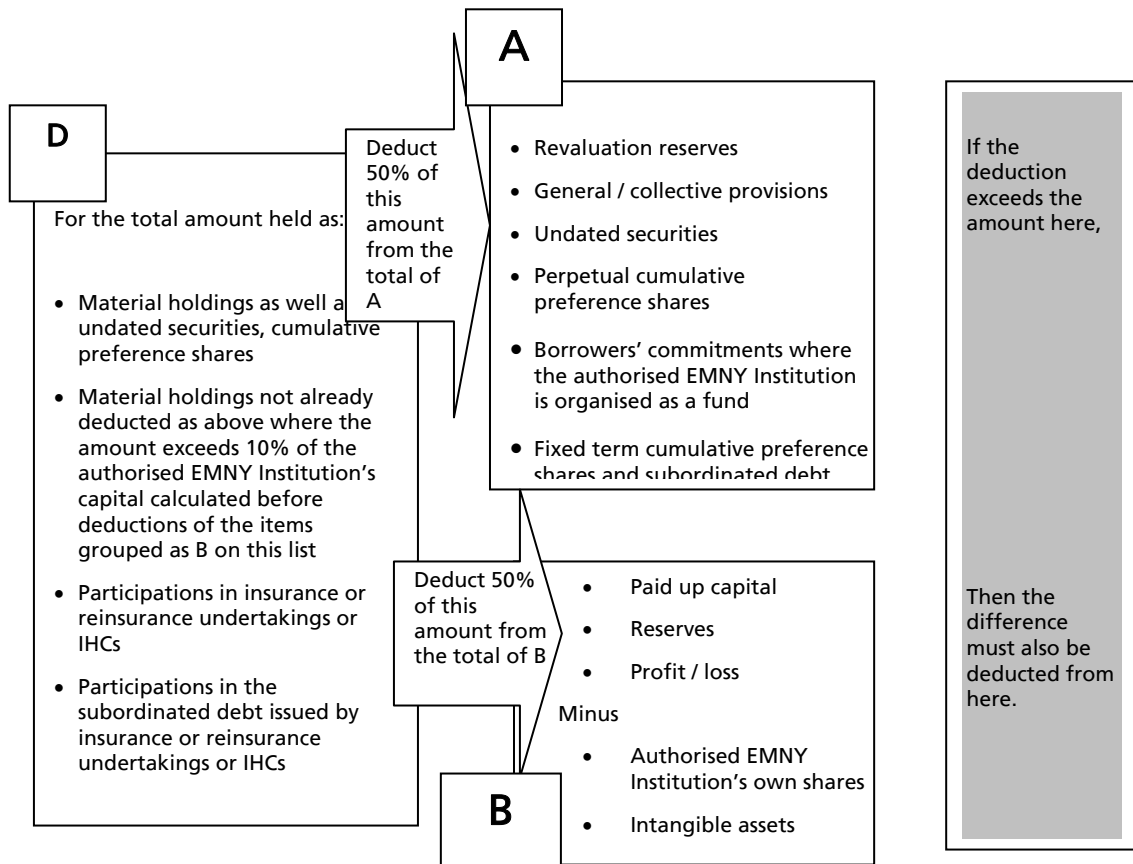
- 50% of the total in D, must be deducted from A and the remaining 50% must be deducted from B; and
- The amount, if any, by which the amount to be deducted from A exceeds A must be deducted from B.



First



Then



- 3.7.2 An authorised EMNY Institution that carries out business other than issuing e-money and providing payment services must not use:
- in its calculation of own funds in accordance with methods A, B or C, any qualifying item included in its calculation of own funds in accordance with method D
  - in its calculation of own funds in accordance with method D, any qualifying item included in its calculation of own funds in accordance with methods A, B or C; or
  - in its calculation of own funds in accordance with methods A, B, C or D any qualifying item included in its calculation of own funds to meet its capital requirement for any other regulated activity.

## 3.8 Calculation of Own funds requirements

### 3.8.1 Method A

The own funds shall amount to at least 10% of its fixed overheads of the preceding year. If there has been a material change to the business since the preceding year, the FSC may adjust this requirement. Examples of material changes include the sale of parts of the business, or a business acquisition and rapid growth (typically of a new business).

### 3.8.2 Method B

The own funds are based on a scaled amount, representing the firm's average monthly payment volume (PV), on which a scaling factor is then applied, relevant to the type of payment services carried out. Under this calculation method, the firm's ongoing capital requirement is the product of this scaling factor and the scaled average monthly PV. The scaled average monthly PV is one twelfth (1/12) of the total amount of the payment transactions executed in the previous year scaled in the following manner:

- a) 4.0% of the slice of PV up to €5m  
plus
- b) 2.5% of the slice of PV above €5m up to €10m  
plus
- c) 1.0% of the slice of PV above €10m up to €100m  
plus
- d) 0.5% of the slice of PV above €100m up to €250m  
plus
- e) 0.25% of the slice of PV above €250m.

### 3.8.3 Method C

The own funds is based on the firm's income over the preceding year with a scaling factor applied. It shall amount to at least the relevant indicator (as defined below) multiplied by the multiplication factor (defined below) and by the scaling factor (which is dependent on the services provided by the firm):



*Relevant Indicator (RI)* is the sum of the following from the previous financial year's results:

- Interest income;
- Interest expenses;
- Commissions and fees received; and
- other operating income.

*Multiplication factor* shall be:

- 10% of the slice of the RI up to a value of €2.5m
- 8% of the slice of the RI from €2.5m up to €5m
- 6% of the slice of the RI from €5m up to €25m
- 3% of the slice of the RI from €25m up to €50m
- 1.5% above €50m

#### 3.8.4 Method D

Method D is 2% of the average outstanding e-money issued by the EMNY Institution. The average outstanding e-money is the average total amount of financial liabilities related to e-money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month,

3.8.5 Firms are required to hold an amount of own funds which is 20% higher than the amount which would result from the application of the relevant method above as per the Regulations.

3.8.6 EMNY Institutions that have not completed a sufficiently long period of business to calculate the amount of average outstanding e-money for these purposes should use the projected figure submitted in the business plan in their application for authorisation (subject to any adjustments that the FSC have required)

3.8.7 If an authorised EMNY Institution provides payment services that are not related to issuing e-money or is a hybrid business and the amount of outstanding e-money is not known in advance, the authorised EMNY Institution may calculate its own funds requirement on the basis of a representative portion being assumed as e-money, as long as a representative portion can be reasonably estimated on the basis of historical data and to the satisfaction of the FSC.



## 4 Safeguarding Requirements

### 4.1 Application

4.1.1 This Chapter applies to all EMNY Institutions.

### 4.2 Purpose

4.2.1 The Regulations impose safeguarding requirements to protect customer funds. If a business that has safeguarded funds becomes insolvent, the claims of e-money holders or payment service users are paid from the asset pool formed from these funds.

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

All EMNY Institutions are required by Regulation 20 to safeguard funds received in exchange for e-money that has been issued.

### 4.4 Safeguarding funds from unrelated payment services

4.4.1 EMNY Institutions are entitled to provide payment services that are unrelated to the issuance of e-money.

4.4.2 Authorised EMNY Institutions that provide unrelated payment services are subject to the safeguarding provisions set out in Regulation 9 of the Financial Services (EEA)(Payment Services) Regulations 2010 ("PS Regulation 9") as if they were authorised payment institutions.

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

4.5.1 EMNY Institutions must safeguard funds that have been received in exchange for e-money that has been issued (referred to as 'relevant funds'). Authorised EMNY Institutions must also safeguard funds received in exchange for unrelated payment services.

4.5.2 Relevant funds received in the form of payment by a payment instrument only have to be safeguarded when they are credited to the institution's payment account or are otherwise made available to the EMNY Institution, but must be safeguarded by the end of five business days after the date on which the e-money has been issued. This relates to e-money paid for by a payment instrument such as a credit or debit card and not e-money that is paid for by cash, even if the cash payment is received by a person acting on behalf of the EMNY Institution (such as an agent or distributor).

4.5.3 Some EMNY Institutions will also received funds from the public in respect of other services. Examples include, an EMNY Institution with a foreign exchange business. EMNY Institutions with such "hybrid" businesses are only required to safeguard the funds received for e-money. However, sometimes such hybrid businesses will not know the precise portion of customer funds that constitute e-money or the amount may be variable. In these circumstances, the EMNY Institution may make a reasonable estimate on the basis of relevant historical



data of the portion that is likely to be e-money and this portion must be safeguarded. The EMNY Institution, would if asked, need to satisfy the FSC that the proportion actually safeguarded was a reasonable estimate.

- 4.5.4 Where an EMNY Institution is carrying out a foreign exchange transaction independently from its payment services, it does not need to safeguard the funds received for the purpose of the foreign exchange transaction. Once the foreign exchange transaction has taken place, if the EMNY Institution pays those funds on to a third party on behalf of its client, and this amounts to a payment service, the currency purchased in the foreign exchange transaction becomes relevant funds and should be safeguarded as soon as it is received.

## 4.6 How must funds be safeguarded?

There are two ways in which an EMNY Institution may safeguard relevant funds:

- safeguarding option 1 – the segregation method; and
- safeguarding option 2 – the insurance or guarantee method

### 4.6.1 Safeguarding Option 1 – the segregation method

- 4.6.1.1 The first method requires the EMNY Institution to segregate funds received in exchange for e-money (relevant funds) from any other funds it holds including its working capital and funds received for other business activities for example, foreign exchange transactions.

- 4.6.1.2 Relevant funds must be held separately from funds received for the execution of payment transactions not related to issuing e-money. This requirement applies as soon as funds are held by the EMNY Institution and includes money received on its behalf by agents or distributors.

- 4.6.1.3 If relevant funds are still held at the end of the business day following the day the EMNY Institution received them, the EMNY Institution must:
- deposit the relevant funds in a separate account it holds with an authorised credit institution; or
  - invest the relevant funds in secure and low risk assets as per Regulation 21(6)(a) and place those assets in a separate account with an authorised custodian.

- 4.6.1.4 The safeguarding account in which the relevant funds or equivalent assets are held must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the EMNY Institution. It must be clear to any administrator that the funds are held for the purpose of safeguarding.

- 4.6.1.5 The safeguarding account must not be used to hold any other funds or assets including safeguarding or segregation of funds from other services or the protection of funds received for foreign exchange deals. This means that, when EMNY Institutions are safeguarding funds received for both e-money and unrelated payment services, the money should not be held in the same account.

- 4.6.1.6 To ensure it is clear what funds have been segregated and in what way, an EMNY Institution must keep records of any:
- relevant funds segregated;



- relevant funds placed in a deposit account; and
- assets placed in a custody account.

## 4.6.2 Safeguarding Option 2 – the insurance or guarantee method

- 4.6.2.1 The second safeguarding method is to arrange for the relevant funds to be covered by an insurance policy with an authorised insurer, or a guarantee from an authorised insurer or an authorised credit institution. The policy or guarantee will need to cover all relevant funds, not just funds held overnight or longer.
- 4.6.2.2 The proceeds of the insurance policy or guarantee must be payable in an insolvency event as defined in Regulation 24 into a separate account held by the EMNY Institution. That account must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the EMNY Institution). The account must not be used for holding any other funds, and no-one other than the EMNY Institution may have any interest in or right over the funds in it (except as provided by Regulation 24).
- 4.6.2.3 Neither the authorised credit institution nor the authorised insurer can be part of the corporate group to which the EMNY Institution belongs.

## 4.7 Protection from the claims of other creditors

Where an EMNY Institution that has chosen to deposit customer funds in a bank account or invest them in secure, low-risk and liquid assets, is placed in administration or “wound-up”, these funds shall form part of the EMNY Institution’s asset pool. The claims of the e-money holder/payment service user will be paid from the asset pool above all other creditors. Regulation 24 or Regulation 9 ensure that, provided the funds are have been safeguarded in accordance with one of the methods described above, the users’ funds are protected from the claims of other creditors. The claims of the e-money holder/payment service user are not subject to the priority of expenses of an insolvency proceeding except in respect of the costs of distributing the asset pool.

## 4.8 Systems and controls

- 4.8.1 EMNY Institutions must maintain organisational arrangements that are sufficient to minimise the risk of the loss or reduction of relevant funds or assets through fraud, misuse, negligence or poor administration. This requirement is in addition to the general requirements on EMNY Institutions to have effective risk management procedures, adequate internal control mechanisms and to maintain relevant records.
- 4.8.2 An EMNY Institution’s auditor is required to tell the FSC if it has become aware in its capacity as an auditor that, in its opinion, there is or has been, may be or may have been a breach of any requirements imposed by or under the Regulations that is of material significance. This may be in relation to either or both the issuing of e-money and the provision of unrelated payment services, and includes a breach of the safeguarding requirements and the organisational arrangements required.
- 4.8.3 Listed below are the arrangements that, an EMNY Institution should have in place:



- EMNY Institutions should exercise all due skill, care and diligence in selecting, appointing and periodically reviewing credit institutions, custodians and insurers involved in the safeguarding arrangements.
- EMNY Institutions should also consider, together with any other relevant matters:
  - The need for diversification of risks;
  - The capital and credit rating of the third party;
  - The amount of relevant funds or assets placed, guaranteed or insured as a proportion of a third party's capital and (in the case of a credit institution) deposits; and
  - The level of risk in the investment and loan activities undertaken by the third party and its affiliates (to the extent that information is available).

4.8.4 When it makes its decisions on appropriateness, an EMNY Institution should record the grounds for that decision.

- EMNY Institutions should have arrangements to ensure that relevant funds received by agents and distributors are safeguarded in accordance with Regulation 20
- Where relevant funds are segregated in a different currency from that of receipt but the e-money holder or payment service user has not instructed the EMNY Institution to convert it in this way, the EMNY Institution should ensure that the amount held is adjusted regularly to an amount at least equal to the currency in which they are liable to the e-money holder/payment service user, using an appropriate exchange rate, such as the previous day's closing spot exchange rate.
- An EMNY Institution's records should enable it, at any time and without delay, to distinguish relevant funds and assets held for one e-money holder/payment service user from those held for any other e-money holder/payment services and from its own money. The records should be sufficient to show and explain its transactions concerning relevant funds and assets. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for e-money holders/payment service users.
- An EMNY Institution should carry out internal reconciliations of records and accounts of the entitlement of e-money holders/payment service users to relevant funds and assets with the records and accounts of amounts safeguarded. Records should be maintained that are sufficient to show and explain the method of internal reconciliation and adequacy.
- An EMNY Institution should regularly carry out reconciliations between its internal accounts and records and those of any third parties safeguarding relevant funds or assets. When determining whether the frequency of reconciliation is adequate, the EMNY Institution should consider the risks the business is exposed to, such as the nature, volume and complexity of the business, and where and with whom the relevant funds and assets are held.



- 4.8.5 Where discrepancies arise as a result of reconciliations, EMNY Institutions should identify the reason for the discrepancy and correct it as soon as possible by paying any shortfall or withdrawing any excess, unless the discrepancy arises only due to timing differences between internal and external accounting systems. While a discrepancy cannot be resolved, EMNY Institutions should assume that the records that are correct are those showing a greater amount of relevant funds or assets should be safeguarded.
- 4.8.6 EMNY Institutions should notify the FSC in writing without delay if in any material aspect, they have not complied with, or are unable to comply with, the requirements in Regulation 20 or PS Regulation 9.

## 4.9 Effect of an insolvency event

- 4.9.1 If an insolvency event (as listed in Regulation 24) occurs in relation to an authorised EMNY Institution or a small EMNY Institution that has implemented safeguarding requirements, then (with one exception) the claims of e-money holders and payment service users will be paid from the relevant funds and assets that have been segregated (the "asset pool" as defined in Regulation 24) above all other creditors. The exception, however, is that expenses of the insolvency proceedings take priority so far as they are in respect of the costs of distributing the asset pool.
- 4.9.2 No right of set-off or security can be exercised in respect of the asset pool, except to the extent that it relates to the fees and expenses of operating a safeguarding account.

## 4.10 Low Risk Assets

For the purpose of the above, a firm's qualifying low risk assets must be valued at the lower of:

- (1) cost;
- (2) the amount that can reasonably be realised in money from that investment by redemption, realisation, sale, exchange or other disposal of that asset.

- 4.10.1 A qualifying low risk asset is an investment fulfilling all the following criteria:
- (1) it is unsubordinated;
  - (2) it ranks at least equally with the unsubordinated, non preferred and unsecured obligations of the person who owes the obligation under the qualifying liquid asset in question;
  - (3) it is:
    - (a) a zero weighted asset; or
    - (b) a deposit that is repayable on demand and is held with a Zone A credit institution; or
    - (c) a qualifying debt security; and
  - (4) either:
    - (a) it has a residual maturity of one year or less; or
    - (b) (in the case of an investment on which a floating rate of interest is payable) the interest rate will be re-determined no later than one year from the time in question.



- 4.10.2 The total amount of investments that fall into (3)(b) or (3)(c) that are included as qualifying liquid assets in the calculation must not exceed an amount equal to 20 times the firm's own funds at the time in question.
- 4.10.3 The limit above only applies to qualifying liquid assets held to comply with 3.3.1. It does not prohibit holding qualifying liquid assets that fall into (3)(b) and (3)(c) in excess of 20 times the firm's own funds. Instead, it requires that the firm should have sufficient zero weighted assets or own funds to ensure that the firm complies with the limit in 4.10.2.
- 4.10.3 A zero weighted asset is any of the following:
- (1) cash;
  - (2) a security issued by and representing a claim on (or that is fully, directly and unconditionally guaranteed by):
    - (a) a central government or central bank of a Zone A country; or
    - (b) the European Communities; or
    - (c) the European Central Bank; but only if it is sufficiently liquid.
- 4.10.4 A qualifying debt security means a debenture or government and public security (other than a zero weighted asset) that:
- (1) is sufficiently liquid;
  - (2) is not issued by a controller of the firm or by a person in the same group as the firm; and
  - (3) either:
    - (i) the security is issued by and represents a claim on (or it is fully, directly and unconditionally guaranteed by):
      - (a) a multilateral development bank; or
      - (b) the regional or local government of a Zone A country; or
      - (c) a Zone A credit institution, but only if the security does not form part of its regulatory capital resources; or
      - (d) an ISD investment firm or recognised third country investment firm, but only if the shares of that person are listed on a recognised investment exchange or designated investment exchange;

or

      - (ii) the security:
        - (a) is listed on a recognised investment exchange or designated investment exchange; and
        - (b) is subject to a degree of default risk that, by virtue of the solvency of the issuer or guarantor (as the case may be) is no greater than what would be within the range of what is normal for a security of this type.
- 4.11 Foreign exchange risk**
- 4.11.1 A firm must, at all times, have sufficient own funds to ensure that its FX exposure does not exceed its absolute FX exposure limit.
- 4.11.2 A firm must, at all times, have sufficient own funds to ensure that its FX exposure does not exceed its FX exposure limit on more than:



- (1) one day in any one week period; or
- (2) two days in any one month period; or
- (3) five days in any one year period; ending on the day in question.

## Calculation of FX exposure

- 4.11.3 A firm's FX exposure is its net FX open position multiplied by 8%.
- 4.11.4 A firm's net FX open position is calculated as follows:
- (1) only take into account an asset, liability or other position that:
    - (a) is denominated in, or gives rise to a position in, a foreign currency; and
    - (b) forms part of its e-money outstandings or e-money float;
  - (2) items forming part of its e-money float must be valued in accordance with paragraph 4.10;
  - (3) for each foreign currency:
    - (a) sum the long and short positions;
    - (b) calculate the net long or short position for that currency;
  - (4) convert each net position, long and short, into the firm's base currency at prevailing spot rates;
  - (5) sum all short positions and sum all long positions;
  - (6) the largest figure from (5) is the firm's net FX open position.
- 4.11.5 For the purposes of determining the currency in which a position is denominated, a firm must apply the following principles:
- (1) where the price of an investment is quoted in only one currency, a position in that investment must be treated as denominated in that currency;
  - (2) where the price of an investment is quoted in more than one currency, a position in that investment must be treated as denominated in the currency in which the firm accounts for the investment.

## FX exposure limits

- 4.11.6 A firm's absolute FX exposure limit is, at any time, the amount by which, at that time, the firm's own funds exceed 2.5% of its e-money outstandings. If there is no such excess, the firm's absolute FX exposure limit is zero.
- 4.11.7 A firm's FX exposure limit is, at any time, the amount by which, at that time, the firm's own funds exceed 3% of its e-money outstandings. If there is no such excess, the firm's FX exposure limit is zero.
- 4.11.8 The effect is that a firm should not generally have any FX exposure unless its own funds exceed 3% of its e-money outstandings.
- 4.11.9 If a firm's own funds are 2.5% or less of its e-money outstandings, the firm should not have any FX exposure.
- 4.11.10 If the firm's own funds are between 2.5% and 3% of its e-money outstandings, it should not in general have any FX exposure, but may occasionally have an FX exposure as long as it does so no more frequently than set out in 4.11.2. The FX exposure must not exceed the amount by which its own funds exceed 2.5% of its e-money outstandings.
- 4.11.11 If the firm's own funds exceed 3% of its e-money outstandings, it may have an FX exposure of up to the amount of that excess. It may exceed that limit by up



to ½% of its e-money outstandings, but only if it does so occasionally, in accordance with 4.11.2.

- 4.11.12 The limits in 3.4.2 are cumulative. Therefore, for example, if a firm exceeds its FX exposure limit more than once in a one week period, the firm will breach 3.4.2 even though it is within the limits of 4.11.2(2) and (3).

## 4.12 Large exposure risk

### Large exposure limits

- 4.12.1 A firm must not at any time have any large e-money float exposure that exceeds 25% of its own funds.
- 4.12.2 The total of a firm's large e-money float exposures must not at any time exceed 800% of its own funds.

### General rules for calculation of exposures

- 4.12.3 (1) A firm has an e-money float exposure to a person if the firm is exposed to the risk of incurring losses:
- (a) in connection with an item that forms part of the firm's e-money float and that involves an obligation of that person; or
  - (b) if the firm realises an asset or off balance sheet position that relates to an investment forming part of the firm's e-money float issued by that person or that otherwise involves an obligation of that person; or
  - (c) if the risk:
    - (i) relates to an investment forming part of the firm's e-money float; and
    - (ii) is wholly or mainly attributable to the risk that the person fails to meet or cannot meet an obligation or to the condition or prospects of that person (including its financial soundness).
- (2) The amount of a firm's e-money float exposure in (1) is the maximum loss that the firm might suffer.
- (3) An individual item gives rise to an individual e-money float exposure.
- (4) The total e-money float exposure to a person is the sum of all such individual e-money float exposures.
- 4.12.4 When calculating the amount of an e-money float exposure for the purpose of this Notice, a firm must include accrued interest and dividends due.
- 4.12.5 A firm's e-money float exposures relate to the exposures that it has in connection with its e-money float.

### Exclusions

- 4.12.6 A firm must not take account of the following e-money float exposures for the purposes of the definition of large e-money float exposure:
- (1) a bill endorsement on a bill already endorsed by another firm;
  - (2) an e-money float exposure under a zero weighted asset;
  - (3) an e-money float exposure that is secured by collateral held by the firm in the form of:
    - (a) zero weighted assets; or
    - (b) a deposit of money with or certificates of deposit issued by the firm; (but see 4.12.16);



- (4) an e-money float exposure with a residual maturity of one year or less to a full credit institution (including a deposit that is a qualifying liquid), but only if that e-money float exposure does not form part of that credit institution's regulatory capital resources.

## Calculation of large e-money float exposure

- 4.12.7 Each of the following is a large e-money float exposure of a firm:
- (1) (if the total of the firm's e-money float exposures to a person equals or exceeds 10% of the firm's own funds) all the firm's e-money float exposures to that person; and
  - (2) (if the total of the firm's e-money float exposures to each member of a group of closely related counterparties equals or exceeds 10% of the firm's own funds) all the firm's e-money float exposures to each member of that group of closely related counterparties.
- 4.12.8 A person, together with each person who is closely related to that person, is a group of closely related counterparties.
- 4.12.9 Persons are closely related if:
- (1) the financial soundness of one of them is, or is likely to be, significantly affected by the financial soundness of the others; or
  - (2) it would be prudent to regard them as representing the same risk, because the same factors are likely to affect the financial soundness of them all or for some other reason.
- 4.12.10 Persons are also closely related if there are close links between them within the meaning of paragraph (2) of the definition of that term.
- 4.12.11 (1) 4.12.10 does not apply with respect to particular e-money float exposures if the firm:
- (a) has taken all steps that are reasonably required to prove that the persons in question are not closely related; and
  - (b) makes and retains a record of the steps taken under (1)( a).
- (2) A firm must retain the record in (1) for the period of three years after the firm ceases to take advantage of the disapplication.
- 4.12.12 The persons who are closely related to each other and each person who is linked with any of them are all closely related to each other.

## Treatment of guarantees and collateral

- 4.12.13 To the extent that an e-money float exposure is directly and unconditionally guaranteed by a third party, a firm may, for the purposes of the rules in this section, treat that part of the e-money float exposure as having been incurred to the guarantor.
- 4.12.14 If an e-money float exposure is secured by collateral in the form of securities issued by a third party, a firm may, for the purposes of 4.12, treat that e-money float exposure as having been incurred to that third party, as long as the following three paragraphs allow this.
- 4.12.15 A firm may not recognise the benefits of collateral or a guarantee unless paragraph 4.12.6 specifically permits this.
- 4.12.16 A firm may not recognise the benefits of collateral for the purpose of this section, unless:



- (1) the firm has an unconditional right to apply the collateral to discharge (or to use the proceeds of realising the collateral to discharge) the liability forming the e-money float exposure;
- (2) the collateral arrangements are:
  - (a) legally well founded in all relevant jurisdictions; and
  - (b) enforceable in the default, liquidation, bankruptcy or other similar circumstance of the person who provides the collateral, the person to whom the firm has the e-money float exposure and the firm; and
- (3) the firm has obtained legal opinions from suitably experienced external lawyers confirming that the requirements of (1) and (2) are satisfied and has taken such other steps as are reasonable to confirm that they are satisfied.

4.12.17 A firm may not recognise the benefits of collateral unless:

- (1) the securities are not issued by:
  - (a) the firm;
  - (b) another member of its group;
  - (c) the person to whom the firm has the e-money float exposure in question; or
  - (d) any member of that group of closely related counterparties;
- (2) the securities are listed on a recognised investment exchange or designated investment exchange; and
- (3) the mark to market value of the securities is at least 200% of the amount of the e-money float exposure concerned, except that:
  - (a) the percentage figure is 250% rather than 200% in the case of shares;
  - (b) the percentage figure is 150% rather than 200% in the case of debentures issued by a full credit institution if those debentures do not form part of its regulatory capital resources; and
  - (c) the percentage figure is 150% rather than 200% in the case of debentures or government and public securities issued by regional or local authorities of an EEA State or by a multilateral development bank.

4.12.18 A firm must make the choices set out in this section on a consistent basis. In particular, the firm must not:

- (1) treat a guaranteed e-money float exposure as being one to the guarantor for the purposes of some of the provisions of this Administrative Notice and as being to the principal debtor for others; or
- (2) treat a secured e-money float exposure as being one to the person who is the debtor under the security that is held as collateral for the purposes of some of the provisions in this Administrative Notice and as being to the debtor under the secured obligation for others.

4.12.19 Paragraph 4.12.17 does not apply to paragraph 4.12.6.

## Notifying the FSC of reportable large exposures

4.12.20 A firm must notify the FSC if:

- (1) it proposes to enter into a transaction or transactions that would result in it having a reportable large exposure; or
- (2) it has a reportable large exposure not already notified under (1).

4.12.21 The reporting requirement applies to the total e-money float exposure, that is, it includes e-money float exposures that are exempt from the limits as well as those that are not.



## Factors to consider when deciding whether to incur an exposure

4.12.22 When considering the acceptability of a particular e-money float exposure, the FSC expects a firm to consider:

- (1) the standing of the counterparty;
- (2) the nature of the firm's relationship with the counterparty;
- (3) the nature and extent of security taken against the e-money float exposure;
- (4) the maturity of the e-money float exposure; and
- (5) the firm's expertise in the type of transaction.

## 4.13 Liquidity and interest rate risk

4.13.1 A firm must maintain adequate liquidity, taking into account the nature and scale of its business, so that it is able to meet its obligations as they fall due.

4.13.2 A firm should be able to meet its obligations as they fall due. It should hold sufficient liquidity to ensure it can be considered to be conducting its business in a prudent manner. This includes holding adequate liquidity to meet:

- (1) its e-money outstandings; and
- (2) requirements to make other payments such as cash flows in respect of off balance sheet instruments and other expenses.

4.13.3 A firm can meet such obligations in a number of ways:

- (1) by holding sufficiently immediately available cash (including bank deposits) or marketable assets; this is the primary method to be used to meet e-money obligations;
- (2) by securing an appropriate matching future profile of cash flows from maturing assets and liabilities; and
- (3) by borrowing; this is subject to the firm's ability to raise funds and the cost at which they can be raised, which depends upon its standing in the market and on the general liquidity situation at the time.

4.13.4 There are no specific rules about holding capital against interest rate risk as this risk is addressed by two other parts of this Administrative Notice. These are the prohibition on paying interest and the limitations on the residual maturity of qualifying liquid assets and on the period within which the interest rate on them must be re-determined.

## 4.14 Derivatives

4.14.1 A firm must not be a party to or have a position in a derivative or quasi derivative contract unless allowed under the following paragraph.

4.14.2 A firm may be a party to a derivative or quasi derivative contract if:

- (1) the sole purpose (ignoring any other purposes which together are insignificant) of becoming a party to it is hedging market risks arising from:
  - (a) issuing e-money; or
  - (b) the e-money float;
- (2) so far as reasonably possible, being a party to that derivative or quasi derivative contract achieves the permitted purpose described above;
- (3) the derivative or quasi derivative contract is sufficiently liquid; and
- (4) either:



- (a) the derivative or quasi derivative contract is an exchange rate contract relating to a foreign currency with an original maturity of 14 days or less; or
- (b) the derivative or quasi derivative contract:
  - (i) is an interest rate or foreign exchange related contract;
  - (ii) is regularly traded on a recognised investment exchange or designated investment exchange; and
  - (iii) is subject to daily margin requirements under the rules of that exchange.



## 5 Additional Activities

### 5.1 Application

5.1.1 This Chapter applies to all EMNY Institutions;

### 5.2 Purpose

5.2.1 One of the main changes arising out of the 2<sup>nd</sup> E-money Directive is that the restrictions on other business activities which was previously imposed on EMNY Institutions has been removed. In order to provide assurances that an EMNY Institution is able to redeem its e-money when it is required to, and still be able to conduct a wider range of activities, safeguarding requirements have been put in place.

5.2.2 EMNY Institutions are prohibited from issuing e-money at a discount.

5.2.3 The prohibition on issuing e-money at a discount avoids the financial risk that might affect an e-money firm that issues e-money for less than the amount required to redeem it. The prohibition also helps to prevent e-money firms from creating monetary value in an uncontrolled way. In an extreme case, that could lead the monetary stock to expand without central banks being able to monitor it. That would hinder monetary analysis and affect the adequacy of monetary policy instruments. If the activities of e-money firms were to become a source of such instability, that could prejudice consumers who deal with them.

### 5.3 Activities

5.3.1 In addition to issuing electronic money, EMNY Institutions shall be entitled to engage in any of the following activities:

5.3.2 The provision of payment services listed in Schedule 1 of the PS Regulations;

5.3.3 EMNY Institutions may grant credit subject to the same conditions as apply to authorised payment institutions by virtue of PS Regulation 16(2), provided that such credit is not granted from funds safeguarded in accordance with Regulation 20;

5.3.4 The provision of operational services and closely related ancillary services in respect of the issuing of electronic money or to the provision of payment services referred to in 5.3.2:

- Ensuring the execution of payment transaction;
- Foreign exchange services;
- Safe-keeping activities;
- The storage and processing of data;

5.3.5 The operation of payment systems;

5.3.6 Business activities other than the issuance of electronic money, subject to any relevant European Union or national law.

### 5.4 Restrictions

5.4.1 The restrictions that were previously imposed on EMNY Institutions which did not permit them from carrying out any activity that was not related to the issuance of electronic money have been lifted. However, other restrictions have



been introduced with regards to the new activities that these firms can carry out. These are referred to below:

- Credit can only be granted as per 5.3.3 provided that such credit is not granted from funds safeguarded in accordance with the safeguarding requirements as set out in Regulation 20;
- Any payment account held by an EMNY Institution which is used for payment transactions which are not related to the issuance of electronic money must be used only in relation to such payment transactions;
- An authorised EMNY Institution which has a branch located in Gibraltar and whose head office is situated in a territory which is outside the EEA may only provide payment services if those services are related to the issuance of electronic money.

## 5.5 Prohibition on issue of e-money at a discount

5.5.1 A firm must not issue e-money that has a monetary value greater than its e-money issue price.

5.5.2 A firm may want, for promotional reasons, to issue e-money to a client on terms that the client pays less than its monetary value. For instance, a firm may want to:

- (1) give away some e-money to new clients on their first load to encourage them to start using the product; or
- (2) give away £X of e-money for each £Y of e-money a client buys or for each £Y of goods or services that the client buys using e-money issued by the firm.

This may take the form of a rebate of the load fee, or a combination of the load fee and £X, where £X represents a token promotional amount.

5.5.3 A firm may be able to issue e-money in the way described above without infringing the provisions of this Administrative Notice. A sum paid by a third party to the firm before the firm issues e-money can form part of the e-money issue price for that e-money if:

- (1) that sum is paid to the firm in payment of part or all of the e-money issue price for that e-money; and
- (2) at the time when the firm issues that e-money it applies that sum towards the payment of the e-money issue price of that e-money.

5.5.4 The fact that a firm incurs costs distributing e-money does not necessarily mean that that e-money is issued at a discount. But the payment by the firm of commission to distributors to whom the firm issues e-money may amount to issuing it at a discount.

5.5.5 A firm must deal with the FSC in an open and cooperative way, and must disclose to it appropriately anything relating to the firm of which the FSC would reasonably expect notice. If a firm decides to launch a promotion of the type described in paragraph 5.5.2, the firm should notify the FSC of its intention and provide details about the promotion. Those details should include the type of promotion, any other businesses taking part in it, the likely amount over the life of the promotion of the difference between the monetary value of the e-money and the amount to be paid by those to whom the firm issues it, and the proposed length of the promotion. The information should also include details about the persons who are to make the payments, how much each is to pay, and when the payments are to be made.



- 5.5.6 The firm should also keep the FSC informed of changes in its expectations during the promotion, and of any substantial difference between its expectations and the actual outcome.



## 6 Systems and controls; Rules for making calculations

### 6.1 Application

6.1.1 This Chapter applies to all EMNY Institutions;

6.1.2 This Chapter applies to licensed institutions that are authorised as electronic money institutions under the Financial Services (Banking) Act (“the Banking Act”).

### 6.2 Purpose

6.2.1 This chapter contains details about certain aspects of systems and controls and senior management arrangements.

6.2.2 Section 23(3)(b) of the Banking Act states, *inter alia*, that “in carrying on the business, the applicant will at all times maintain in the business paid-up capital and reserves that, together with the other financial resources available to the business, are in the opinion of the Commissioner sufficient to safeguard the interests of depositors, and consumers and businesses dealing with electronic money as the case may be”. This includes the means by which a firm manages the incidence of risk in connection with its business.

6.2.3 Section 23(3)(h) of the Banking Act also requires a firm to satisfy the FSC that every person who is director, controller, shareholder or manager of the business is a fit and proper person.

6.2.4 Section 23(3)(h) of the Banking Act also requires a firm to maintain adequate accounting and other records of its business, and adequate systems of control to its business.

6.2.5 The purpose of this chapter is to amplify the requirements for firms in specific areas and thus make it more likely that firms will have adequate systems and controls.

6.2.6 Schedule 1 of the Regulations requires a firm to demonstrate that it is able to employ appropriate and proportionate systems, resources and procedures to operate soundly. This includes governance arrangements and internal control mechanisms to deal with administrative risk management and accounting procedures; and internal control mechanisms to comply with the firm’s Anti-Money Laundering requirements.

6.2.7 Regulation 6(5)(c) requires an EMNY Institution to demonstrate sound and prudent conduct of the affairs of the institution through adequate internal control mechanisms such as sound administrative, risk management and accounting procedures.

6.2.8 Regulation 6(6)(a) requires an EMNY Institution to satisfy that any persons having a qualifying holding in the institution are fit and proper persons.

6.2.9 Regulation 6(6)(b) requires an EMNY Institution to satisfy that the directors and persons responsible for the management of the business are of good repute and possess appropriate knowledge and experience to issue electronic money and provide payment services.

6.2.10 Regulation 24(3) requires an EMNY Institution to maintain organisational arrangements sufficient to minimise the risk of the loss or diminution of relevant funds or relevant assets through fraud, misuse, negligence or poor administration.



6.2.11 Listed below are the arrangements that an EMNY Institution is required to have in place.

- They shall exercise all due skill, care and diligence in selecting, appointing and periodically reviewing credit institutions, custodians and insurers involved in the safeguarding arrangements. They should take account of the expertise and market reputation of the third party and any legal requirements or market practices related to the holding of relevant funds or assets that could adversely affect e-money holders' or payment service users' rights or the protections afforded by Regulation 20 and PS Regulation 9 (for example, where the local law of a third country credit institution holding a safeguarding account would not recognise the priority afforded by the Regulations and PS Regulations to e-money account holders/payment service users on insolvency).
- They shall also consider, together with any other relevant matters:
  - the need for diversification of risks;
  - the capital and credit rating of the third party;
  - the amount of relevant funds or assets placed, guaranteed or insured as a proportion of a third party's capital and (in the case of a credit institution) deposits; and
  - the level of risk in the investment and loan activities undertaken by the third party and its affiliates (to the extent that information is available). When the decision is made on whether the arrangements remain appropriate they should record the grounds for that decision.
- They shall have arrangements to ensure that relevant funds received by persons acting on their behalf (such as agents or distributors) are safeguarded in accordance with Regulation 20 and PS Regulation 9.
- Where relevant funds are segregated in a different currency from that of receipt but the e-money holder has not instructed the EMNY Institution to convert it in this way, it should ensure that the amount held is adjusted regularly to an amount at least equal to the currency in which they are liable to the e-money holder using an appropriate exchange rate, such as the previous day's closing spot rate.
- The records shall enable them, at any time and without delay, to distinguish relevant funds and assets held for each e-money holder from their own money. The records should be sufficient to show and explain its transactions concerning relevant funds and assets. Records and accounts should be maintained in a way that ensures their accuracy and correspondence to the amounts held for e-money holders.
- They shall carry out internal reconciliations of records and accounts of the entitlement of e-money holders to relevant funds and assets with the records and accounts of amounts safeguarded. This shall be done as often as necessary and as soon as reasonably practicable after the date of the reconciliation to ensure the accuracy of the records and accounts. Records should be maintained that are sufficient to show and explain the method of internal reconciliation and its adequacy.
- They are required to regularly carry out reconciliations between internal accounts and records and those of any third parties safeguarding relevant funds or assets. Reconciliations shall be performed as regularly as necessary and as soon as reasonably practicable after the date to which the reconciliation relates to ensure the accuracy of its internal accounts and records against those of the third parties. When determining whether the frequency is adequate,



they shall consider the risks the business is exposed to, such as the nature, volume and complexity of the business, and where and with whom the relevant funds and assets are held. An adequate method of reconciliation is for a comparison to be made and any discrepancies identified between:

- the balance on each safeguarding account, as recorded by the EMNY Institution, with the balance on that account as set out on the statement or other form of confirmation issued by the firm that holds those accounts; and
- the balance, currency by currency, on each e-money holder transaction account as recorded by the EMNY Institution, with the balance on that account as set out in the statement or other form of confirmation issued by the firm that holds the account.

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

6.2.13 They shall notify the FSC in writing without delay if in any material respect they have not complied with, or are unable to comply with, the requirements in Regulation 20 or PS Regulation 9 or if they cannot resolve any reconciliation discrepancies in the way described.

## 6.3 Requirements for making calculations

### Exchange rates

6.3.1 Except as otherwise provided for in this Administrative Notice, a firm must translate assets and liabilities denominated in a foreign currency into the firm's base currency using the closing mid market rate of exchange.

### Accounting policy

6.3.2 Except as otherwise provided for in this Administrative Notice a firm must determine amounts included in the calculations required by this Administrative Notice in accordance with the accounting principles and rules which the firm would apply if it were drawing up financial statements under the Companies Ordinance including those accounting principles and rules contained in the United Kingdom Statements of Standard Accounting Practice (SSAPs) and Financial Reporting Standards (FRSs) effective at the relevant time.

6.3.3 A firm must determine amounts included in the calculations in such a way as to reflect the substance and not merely the legal form of the underlying transactions and balances.

### Valuation

6.3.4 A firm must value assets, liabilities and positions on a prudent and consistent basis, as well as having regard to the liquidity of the investment concerned and any special factors which may adversely affect the closure of the position.



## 7 Redemption, information requirements, purse limits and Conduct of business Requirements

### 7.1 Application

7.1.1 This Chapter describes the conduct of business requirements, redemption requirements and purse limits. This chapter applies to all electronic money issuers.

7.1.2 This chapter sets out the following:

- The conduct of business requirements in the Regulations; and
- The conduct of business requirements in the PS Regulations.

### 7.2 Purpose

7.2.1 One purpose of this chapter is to ensure that a firm redeems on demand any e-money issued by it. This will ensure that a consumer who finds that for the moment there is nothing he wishes to buy using e-money he has bought is not left with an asset that he cannot use and that he cannot turn back to cash to spend elsewhere. This will increase confidence among consumers in e-money as a product.

7.2.2 This chapter sets out the requirements in Regulations 40-46.

7.2.3 The purpose of the rules about redemption is that holders of e-money issued by the firm should have the right to redeem that e-money at par in a simple and easy way. If any fee is charged for redemption, it should be limited. Holders should have the right for redemption proceeds to be paid in the currency in which the e-money is denominated and paid immediately in banknotes and coins or by transfer to a conventional bank account. Therefore a firm should not have a contract with a holder of e-money under which the holder is only entitled to redeem e-money on different terms.

7.2.4 However, this does not require a firm to redeem e-money in a way that the holder does not want; it requires that the holder should be entitled to have the e-money redeemed in accordance with this Chapter. Thus if, at the time that a holder of e-money is exercising a redemption right, the holder asks the firm to pay the proceeds in a currency other than the one in which it is denominated, the firm may do so. Similarly, the holder may ask the firm to pay the proceeds of redemption in a different form.

7.2.5 This also means that a firm may allow a holder of e-money issued by the firm to use it to buy a currency other than the one in which the e-money is denominated through an automatic teller machine.

### 7.3 Issuing e-money

7.3.1 Regulation 39 requires EMNY Institutions to issue e-money at par value (the e-money issued must be for the same amount as the funds received) when they receive the funds and without delay.

7.3.2 It is important to recognise that if an agent of an electronic money issuer receives funds, the funds are considered to have been received by the issuer itself. It is not, therefore, acceptable for an electronic money issuer to wait to receive the funds from its agent before it enables the customer to begin spending the e-money.



## 7.4 Redeeming e-money

- 7.4.1 E-money holders have the right to redeem the monetary value of their e-money (that is the payment to the e-money holder of an amount equivalent to the remaining balance from the electronic money issuer) at any time and at par value (regulation 39). This means that, it is not acceptable to have a term in a contract with an e-money holder under which the e-money holder's right to redeem the remaining balance ceases to apply after a specified period of validity (although the contract can still provide for the e-money holder's right to use the e-money for the purpose of making payment transactions to cease after a specified period).
- 7.4.2 An EMNY Institution is therefore also unable to impose a monetary limit below which it will not redeem the monetary value of the e-money holder remaining balance.
- 7.4.3 The contract between the electronic money issuer and the e-money holder must, clearly and prominently, set out the conditions of redemption (or part thereof), including any fees that may be payable. These conditions must be advised to the e-money holder before they are bound by the contract.

## 7.5 Redemption fees

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

For these purposes, the contract terminates when the e-money holder's right to use the e-money for the purpose of making payment transactions ceases.

- 7.5.2 The effect of this is that no fee for redemption may be charged to the e-money holder if he requests redemption at termination of the contract or up to one year after that date. In this chapter, we use the phrase 'dormant e-money' to describe e-money held more than one year after the termination of the contract.
- 7.5.3 Any fee that is charged must be proportionate and in line with the costs actually incurred by the electronic money issuer. It is reasonable, for example, for the calculation of a redemption fee to take account of costs the issuer can show it actually incurs in retaining records of and safeguarding dormant e-money (on the basis that any such costs must relate to redemption rather than making payments). If challenged, the electronic money issuer must be able to justify the level of the fee charged by reference to costs that it has incurred, either in the act of redeeming the dormant e-money, or in retaining records of and safeguarding the dormant e-money.
- 7.5.4 In principle, the FSC does not consider that it would be objectionable for an issuer to deduct from the proceeds of redemption of dormant e-money the amount of any redemption fee (as long as the electronic money issuer can demonstrate that the redemption fee is clear and prominent in the contract and reflects only valid redemption-related costs). So, if the amount of a valid redemption fee is greater than the value of the dormant e-money, in practice, the proceeds of any redemption by the holder would be nil, after the fee is deducted. In these circumstances, it would be reasonable for the issuer to cease



to safeguard those dormant e-money funds (as there is no use in requiring issuers to safeguard dormant e-money funds that can no longer be spent or redeemed). The issuer would, however, need to be able to show to the e-money holder that this is how the e-money balance has been used, in the event of the e-money holder later seeking redemption.

- 7.5.5 The above rules on redemption do not apply to a person (other than a consumer) who accepts e-money (for example, a merchant who has accepted e-money in payment for goods or services). For such persons, redemption rights will be subject to the contractual agreement between the parties.

## 7.6 Duty to redeem

### Person entitled to redemption

- 7.6.1 A firm must, if requested to do so, redeem, at par, any e-money it has issued if the request is from a person who lawfully holds the e-money and who is:
- (1) the person to whom the firm issued the e-money; or
  - (2) any other person, as long as his holding the e-money is not contrary to the e-money scheme rules.

### Currency of redemption

- 7.6.2 A firm must give a person who is exercising a redemption right against the firm the right to have the proceeds of redemption paid to him in the currency in which the e-money is denominated.

### Time of redemption

- 7.6.3 A firm must give a person who is exercising a redemption:
- (1) (in the case of redemption for cash) the right to receive the cash immediately following the completion of the procedures in paragraph 7.6.4;
  - (2) (in the case of redemption in accordance with paragraph 6.57.8.1(2)) the right to be paid as follows:
    - (a) the firm must give the necessary payment instructions immediately following the completion of the procedures in paragraph 7.6.4; and
    - (b) the firm must ensure that the funds reach the holder's account within a reasonable time period from the day on which it gave the instruction in (2) (a) and in line with the requirements set out in the Financial Services (EEA) (Payment Services) Regulations 2010.

### Money Laundering and other checks

- 7.6.4 A firm must carry out any checks, as soon as is reasonably practicable, that are reasonably required to prevent money laundering or fraud or to check whether the holder of the e-money is a person who is entitled to redeem it.
- 7.6.5 The FSC's Anti Money Laundering Guidance Note's states that "Generally, a firm should never establish a business relationship until all the relevant parties to the relationship have been identified and the nature of the business they expect to conduct has been established. Furthermore, Section 10F stipulates that if satisfactory evidence of identity has not been obtained it must not carry out a transaction or establish a business relationship"

- 7.6.6 Nothing in 7.6.4 requires a firm to do anything that:
- (1) is prohibited by the Crime (Money Laundering and Proceeds) Act 2007 or the AML/CFT Guidance Notes ;
  - (2) would be a criminal offence under the laws of Gibraltar; or
  - (3) (in relation to e-money) would be a criminal offence under the laws of a country other than Gibraltar in which the firm redeems or would redeem that e-money.

## 7.7 Methods of redemption

- 7.7.1 A firm must give a person who is exercising a redemption right against the firm the right to have the proceeds of redemption paid to him:
- (1) in cash; or
  - (2) by electronic transfer to an account with a bank or other financial undertaking nominated by that person.
- 7.7.2 A firm must ensure that the exercise of the redemption right will not be unreasonably difficult for anyone entitled to exercise it.
- 7.7.3 Subject to the above, the firm may choose which of the methods of redemption to offer.
- 7.7.4 If the methods by which the firm offers to redeem e-money are the same as those by which it is made available to the public, those methods of redemption are likely to be reasonable for the purposes of paragraph 6.5.7.2. If a firm distributes e-money it issues through its branches, restricting the places where it can be redeemed to those branches is likely to be reasonable for the purpose of paragraph 7.7.2.

## 7.8 Terms of redemption

### Contents of e-money scheme contracts

- 7.8.1 A firm must ensure that (for each e-money scheme under which it issues e-money) the e-money scheme rules (so far as the firm is a party to the relevant contracts or can control their contents) are consistent with the rules in this chapter.

### Obligation to enter into contracts with those entitled to redeem e-money

- 7.8.2 A firm must (for any e-money scheme under which the firm issues e-money) ensure that there is a contract between it and:
- (1) any person to whom it issues e-money; and
  - (2) any other person with a redemption right against the firm.
- 7.8.3 The contract referred to above must be in force at the time the firm issues the e-money.
- 7.8.4 The contract must be in force either before the person with the redemption right obtains the e-money in question or as soon as reasonably possible afterwards, having regard to the laws of the jurisdiction in question and the nature of the scheme. It must however be in force no later than the time of redemption.

### Obligation to offer redemption as a contractual right

- 7.8.5 Any contract must incorporate the duty of the firm under the rules in this chapter to redeem e-money issued by it as a term of that contract. That term



must be enforceable against the firm by the person who holds the e-money. That term must include all the rights that the firm must give to a person exercising a redemption right against the firm.

## 7.9 Information

7.9.1 A firm must not issue e-money to any person unless that person has been supplied with the information below.

7.9.2 A firm must make available to actual and prospective holders of e-money issued by the firm or that may be issued by it in the future:

- (1) information about the redemption right, including
  - (a) the amount of any fee for redemption, or, if there is no such fee, that fact;
  - (b) details of how the redemption right is to be exercised;
  - (c) the amount of any limit of the minimum redemption amount, or, if there is no such limit, that fact; and
  - (d) the length of any period of validity, or, if there is no such period of validity, that fact;

and

- (2)(a) an explanation of the liability of a holder of e-money issued by the firm, and of the liability of the firm, for loss arising from, and the risks to such a holder arising from:
  - (i) the use, by a person other than such a holder, of the e-money electronic device used by the holder;
  - (ii) fraud by another in relation to such a holder's e-money;
  - (iii) access to or use of such a holder's e-money by another;
  - (iv) loss, malfunction, theft or damage to or of any e-money electronic device used by such a holder;
- (b) any other significant risks arising from the acquisition, use or holding of the e-money;
- (c) the fact that the depositor guarantee scheme does not cover claims made in connection with issuing e-money;
- (d) details about any scheme that compensates holders of e-money issued by the firm in cases where the firm is unable to satisfy claims against it in relation to e-money or the fact that there is no such scheme;
- (e) details about:
  - (i) any other complaints and redress procedures available to the holder; and
  - (ii) how the holder may initiate those procedures; and
- (f) a geographical address at which the firm may be contacted.

7.9.3 The information must be in writing, and in a readily comprehensible form.

7.9.4 In the case of e-money schemes that use consumer e-money cards and under which the risk of theft or loss is on the holder of the e-money, the information should warn a holder of e-money that he should treat his consumer e-money card like cash in a wallet. The warning should say that if he loses his consumer e-money card or it is stolen, he will lose any money in it, in just the same way as if he lost his wallet.

7.9.5 A document "in writing" means a document in legible form and capable of being reproduced on paper, irrespective of the medium used. Thus the information does not have to be produced in the form of a physical document.



## 7.10 Warnings on cards

A firm must ensure that any consumer e-money card on which e-money issued by it can be stored or which can be used to spend or use e-money issued by it has the following information physically printed on it or on the packaging in which it is made available to the public:

- (1) a geographical address at which the firm may be contacted; and
- (2) a brief summary of the risks if the consumer e-money card is lost or stolen.

## 7.11 Relevant funds

7.11.1 Electronic money institutions must safeguard funds that have been received in exchange for electronic money that has been issued (referred to as "relevant funds" within the Regulations) in accordance with Regulation 21 or 22

7.11.2 Where only a proportion of the funds that have been received are to be used for the execution of a payment transaction (with the remainder being used for non-payment services; and

7.11.3 the precise portion attributable to the execution of the payment transaction being used is variable or unknown in advance, the relevant funds are such amount as may be reasonably estimated, on the basis of historical data and to the satisfaction of the FSC, to be representative of the portion attributable to the execution of the payment transaction.

## 7.12 Conduct of Business Requirements under the Payment Services Regulations

7.12.1 The PS Regulations set out conduct of business requirements for all payment service providers, including Electronic money Issuers. In this context, this means requirements for information to be provided to payment service users, and specific rules on the respective rights and obligations of payment service users and providers.

7.12.2 Electronic money issuers should refer to Chapter 10 of the guidance issued in relation to Payment Services Regulations Appendix A Document to consider how the requirements of the PS Regulations relates to their business of issuing e-money and the payment services that they provide.

## 7.13 Large exposures

### The EEA group

7.13.1 If the consolidated capital adequacy requirements applies to a firm, the firm must ensure that at all times its own funds are of such an amount that:

- (1) no EEA group large exposure exceeds 25% of its EEA group risk own funds;
- (2) the total of its EEA group large exposures does not exceed 800% of its EEA group risk own funds.

7.13.2 A firm's EEA group large exposures must be calculated as follows:

- (1) the rules for calculating a firm's large e-money float exposures must be applied to the firm's EEA consolidated group as if it were a single



firm subject to the financial requirements of this Administrative Notice;

- (2) the exclusions permitted in the calculation of e-money float are applied at the level of the firm's EEA consolidated group; and
- (3) the consolidation must be in accordance with accounting principles generally accepted in Gibraltar.

7.13.3 A firm's Gibraltar group large exposure means the same thing as its EEA group large exposure except that references to members of its EEA consolidated group are replaced with references to its Gibraltar consolidated group.



## 8 Agents and Distributors

### 8.1 Application

This chapter applies to EMNY Institutions that use or want to use agents, and sets out the process to be followed when registering agents with the FSC. This chapter also covers the requirements governing the use of distributors.

### 8.2 Purpose

8.2.1 This chapter requires EMNY Institutions wanting to use agents in order to distribute or redeem electronic money, or provide payment services on its behalf, to register these agents with the FSC. It also sets out the requirements with regards to the use of distributors.

8.2.2 EMNY Institutions need to advise the FSC of all agents and distributors that they wish to use, whether these are to be based in Gibraltar or acting within another EEA State

8.2.3 This chapter sets out the restrictions to the activities that the agents and distributors can carry out on behalf of the EMNY Institution.

8.2.4 In addition it highlights the requirements set out in the Regulations which make the EMNY Institution responsible for any act or omission of the agent or distributor as if the EMNY Institution had expressly permitted the act or omission.

### 8.3 Differentiating agents and distributors

8.3.1 Regulation 33 provides that an EMNY Institution may distribute or redeem e-money through an agent or a distributor. EMNY Institutions may not issue e-money through an agent or distributor. Agents must, under regulation 34, be included on the Register, but there is no requirement to register distributors. It is therefore important to understand the difference between the two.

8.3.2 EMNY Institutions may engage agents to provide payment services both related and unrelated to issuing e-money (see the definition of agent in regulation 2(1)). EMNY Institutions may also distribute or redeem e-money through agents.

8.3.3 EMNY Institutions may engage distributors to distribute and redeem e-money but not to provide payment services. Therefore, a person who simply loads or redeems e-money on behalf of an EMNY Institution would, in principle, be considered to be a distributor.

### 8.4 Agents and distributors

8.4.1 An agent is any person who provides payment services on behalf of an EMNY Institution. EMNY Institutions may provide payment services both related and unrelated to payment services through agents, but in each case the agent must be registered with the FSC.

8.4.2 An EMNY Institution may also distribute or redeem e-money through an agent.

8.4.3 EMNY Institutions may engage distributors to distribute and redeem e-money. A distributor is not engaged by an EMNY Institution to provide payment services, so does not need to be registered however all distributors need to be notified to the FSC.

8.4.4 EMNY Institutions may not issue e-money through an agent or distributor.



- 8.4.5 An authorised EMNY Institution wanting to use a passport to provide payment services and distribute or redeem e-money in another Member State may use an agent, established in either Gibraltar or the host state, to provide those services (an EEA Agent), subject to additional notification requirements.
- 8.4.6 An authorised EMNY Institution may engage a distributor to distribute or redeem e-money in another Member State and may engage a distributor in the exercise of its passport rights, subject to Regulation 28. Where an authorised EMNY Institution seeks to exercise its right of establishment or freedom to provide services by engaging a distributor(s) located in another EEA state, the FSC will communicate the information contained in the notice of intention relating to the distributor to the relevant host state competent authority and take account of any adverse information received from that authority, relating to money laundering or terrorist financing, in connection with the intended engagement of the distributor.
- 8.4.7 The requirements relating to the use of agents are contained mostly in regulation 34 and these are described below.
- 8.4.8 In addition, regulation 36(2) makes EMNY Institutions responsible for anything done or omitted by an agent or distributor. EMNY Institutions are responsible to the same extent as if they had expressly permitted the act or omission. The FSC will therefore expect EMNY Institutions to have appropriate systems and controls in place to effectively oversee their agents' and distributors' activities.

## 8.5 Registering an agent

### 8.5.1 Registration process

Agents need to be registered with the FSC using the Add an EMD Agent form available from the FSC website. The agent must be registered and approved prior to carrying out any business activity on behalf of the EMNY Institution.

In general, the information required for the registration of an agent is:

- the name and address of the agent
- a description of the anti-money laundering internal control mechanisms in place which should be as robust as those implemented by the EMNY Institution for its own operations; and
- the identity of the directors and persons responsible for the management of the agent and evidence that they are fit and proper persons.

### 8.5.2 Anti-money laundering internal control mechanisms for agents

- 8.5.2.1 The EMNY Institution is required to provide a description of the internal control mechanisms that will be used by the agent to comply with the Crime (Money Laundering and Proceeds) Act 2007 and the AML/CFT Guidance Notes, or in the case of an EEA Agent, the Third Money Laundering Directive.
- 8.5.2.2 The internal controls in place to deal with the agents should be as robust as those implemented by the EMNY Institution for its own operations. Where agents are based in another EEA Member State, authorised EMNY Institutions must ensure the agent's anti-money laundering systems and controls comply with the local legislation and regulation, which implements the Third Money Laundering Directive.



8.5.2.3 the EMNY Institution should take reasonable measures to satisfy itself that the agent's money laundering internal controls mechanisms remain appropriate throughout the agency relationship.

### 8.5.3 Additional information and changes to information supplied

8.5.3.1 At any time after receiving an agent application and before determining it, the FSC may require the EMNY Institution to provide the FSC with such further information as the FSC reasonably considers necessary to determine the application (regulation 34(5)).

8.5.3.2 Once an application has been submitted, both before the application has been determined and on an ongoing basis, the duty to notify significant changes in circumstances relevant to the fitness and propriety of an agent's management or to matters relating to money laundering and terrorist financing applies.

8.5.3.3 EMNY Institutions must notify the FSC of such changes without undue delay (regulation 37(1)(c) )



## 9 Definitions and Glossary of Terms

“agent” means a person who provides payment services on behalf of an electronic money institution;

“authorised electronic money institution” means

- a) a person included by the Authority in the register as an authorised electronic money institution pursuant to regulation 4(1)(a); or
- b) a person deemed to have been granted authorisation by the Authority by virtue of regulation 74;

“the Authority” means the Financial Services Commission;

“average outstanding electronic money” means the average total amount of financial liabilities related to electronic money in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month;

“consumer” means an individual who is acting for purposes other than a trade, business or profession;

“distributor” means a person who distributes or redeems electronic money on behalf of an electronic money institution but who does not provide payment services on its behalf;

“EEA agent” means an agent through which an authorised electronic money institution, in exercise of its passport rights, provides payment services in an EEA state other than Gibraltar;

“EEA authorised electronic money institution” means a person authorised in an EEA state other than Gibraltar to issue electronic money and provide payment services in accordance with the electronic money directive;

“EEA branch” means a branch established by an authorised electronic money institution, in the exercise of its passport rights, to issue electronic money, provide payment services, distribute or redeem electronic money or carry out other activities in accordance with these Regulations in an EEA state other than Gibraltar;

“electronic money” means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which

- a) is issued on receipt of funds for the purpose of making payment transactions;
- b) is accepted by a person other than the electronic money issuer; and



c) is not excluded by regulation 3;

“electronic money institution” means an authorised electronic money institution or a registered electronic money institution;

“initial capital” has the meaning given by Part 1 of Schedule 2 of the Regulations;

“own funds” has the meaning given by Part 4 of Schedule 2 of the Regulations;

“payment account” means an account held in the name of one or more payment service users which is used for the execution of payment transactions;

“payment instrument” means any –

- a) personalised device; or
- b) personalised set of procedures agreed between the payment service user and the payment service provider;

“payment services” has the same meaning as in the Financial Services (EEA) (Payment Services) Regulations 2010;

“payment service user” means a person when making use of a payment service in the capacity of a payer or payee, or both;

“payment system” means a fund transfer system with formal and standardised arrangements and common rules for processing, clearing and settlement of payment transactions;

“payment transaction” means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee;



## 10 Frequently asked questions

### **Who are “electronic money issuers” under the Financial Services (Electronic Money) Regulations 2011?**

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

#### Electronic money institutions (EMNY Institutions)

- authorised EMNY Institutions are subject to the full regulatory regime, including the capital, safeguarding and conduct of business requirements. Authorised EMNY Institutions may provide payment services that are not related to issuing e-money (unrelated payment services), subject to any requirements imposed on their authorisation. Authorised EMNY Institutions must, however, notify the FSC of the types of payment services they wish to provide.
- Businesses are eligible to be registered EMNY Institutions only if they have an average outstanding e-money that does not exceed €5m. The registration process is more straight forward than authorisation, but there are no passporting rights. Some registered EMNY Institutions are subject to capital requirements and all are subject to the requirements relating to safeguarding funds received in exchange for e-money and conduct of business. Registered EMNY Institutions can provide unrelated payment services, but only if the average monthly total of payment transactions does not exceed €3m, on a rolling 12-month basis. Registered EMNY Institutions must notify the FSC of payment services they wish to provide.

#### European Economic Area (EEA) authorised EMNY Institutions

- Firms authorised in an EEA State other than Gibraltar to issue e-money and provide payment services who exercise passport rights to issue, distribute or redeem e-money or provide payment services in Gibraltar in accordance with the second Electronic Money Directive (2EMD).

#### Electronic money issuers who require permission to carry out business under the Financial Services (Banking) Act (“the Banking Act”)

- Credit institutions do not require authorisation or registration under the Regulations, but if they propose to issue e-money they must have permission under the Banking Act for issuing e-money. When issuing e-money, they are subject to the provisions on issuance and redeemability of e-money in the Regulations. Credit institutions are also subject to the relevant conduct of business requirements of the Financial Services (EEA) (Payment Services) Regulations 2010 (“PS Regulations”).

### **How to determine whether your business activity involves issuing e-money**

Regulation 2 defines e-money as monetary value represented by a claim on the issuer that is:

- Stored electronically, including magnetically;
- Issued on receipt of funds for the purpose of making payment transactions (see PS Regulation 2);



- Accepted by a means of payment by persons other than the issuer; and
- Is not excluded by regulation 3 of the Regulations.

There are two express exclusions in regulation 3. The first covers monetary value stored on instruments that may be used to purchase goods and services only in or on the issuer's premises or under a commercial agreement with the issuer within a limited network of service providers or for a limited range of goods or services. The second covers monetary value used to make payment transactions executed by any telecommunication, digital or IT device where the goods or services are delivered to and used through such a device, but only where the operator of the device does not only act as an intermediary between the user and the supplier.

Businesses must consider whether the changes in the scope and substance of the regulation of e-money will have an impact on whether they should be authorised or registered by the FSC to carry on their business activities.

#### **What should a payment institution do if it wants to become an EMNY Institution?**

If a payment institution wishes to also issue e-money then, it should apply to be an EMNY Institution.

Such a payment institution will have to make a fresh application because e-money authorisation / registration is granted under separate legislation with different conditions. Furthermore, additional information is needed (i.e. on their IT systems and controls).

#### **What are the COB requirements?**

Part 5 of the Regulations sets out obligations that apply to the conduct of e-money business where it is carried out from an establishment maintained by an electronic money issuer or its agent. These are typically referred to as conduct of business (COB) requirements.

They relate to issuing and redeeming e-money and the prohibition on the payment of interest or other benefits linked to the length of time that e-money is held.

The PS Regulations set out COB requirements for all payment service providers, including electronic money issuers. In this context, this means requirements for information to be provided to payment service users, and specific rules on the respective rights and obligations of payment service users and providers.

#### **Do the Regulations increase consumer protection?**

Under the Regulations, all electronic money issuers must give back the full value of any unused e-money if the consumer asks for it. Electronic money issuers may charge a fee for giving back the money in certain circumstances, but only if it is clear in the contract and the fee is proportionate and only covers the actual costs incurred by the issuer.

**Are EMNY Institutions covered by the Gibraltar Deposit Guarantee Scheme?**

No, there are no provisions for a compensation scheme in the Regulations. Furthermore, e-money does not constitute deposit taking, therefore e-money issued by Credit institutions would also fall outside of the Gibraltar Deposit Guarantee Scheme.

The safeguarding provisions in place for EMNY Institutions are intended to prevent customer losses in the event of the insolvency of an EMNY Institution.

## 11 Regulatory objectives and principles of good regulation checklist

<b>Which regulatory objectives are the proposals aimed to facilitate:?</b>		
(a) To promote market confidence;		Yes
(b) The reduction of systemic risk;		Yes
(c) To promote public awareness;		Yes
(d) The protection of the reputation of Gibraltar;		Yes
(e) The protection of consumers;		Yes
(f) The reduction of financial crime, including the funding of terrorism;		Yes
<b>Do the proposals accord with the following principles of good regulation?</b>		
1. The need to use our resources in the most efficient, effective and economic way;	Not applicable	
2. The principle that the duty to manage a business falls upon the senior management of that business. The Directors of a licence holder, both executive and non-executive have ultimate responsibility for ensuring that the business is properly run and operates in accordance with regulatory requirements;	Yes – this Administrative Notice sets out the requirements for firms carrying out electronic money and also sets out the FSC expectations in this regard.	
3. The principle that a burden or restriction which is imposed upon authorised firms should be commensurate with the benefits expected to result from such action, so ensuring that the Authority is striking the right balance between achieving the statutory objectives and ensuring that the impact on those being regulated is not such as to be counterproductive;	Yes – the revised Administrative Notice sets out the changes following the implementation of the Financial Services (Electronic Money) Regulations 2011. The regulations aim to make electronic money more accessible and the Administrative Notice sets out how the requirements set out in the regulations need to be complied with by firms in practical terms.	
4. The desirability of facilitating innovation in connection with regulated activities;	Not applicable	
5. The international character of financial services and markets and the desirability of maintaining the competitive position of Gibraltar; and	Yes – this Administrative Notice aims to further enhance the position of Gibraltar electronic money institutions by setting out the requirements and expectations from the new Regulations.	
6. The need to consider the adverse effects of regulation on competition and consumer choice.	Not applicable	



7. Does this match UK supervisory practices	Yes – the Administrative Notice sets out the changes arising from the 2 <sup>nd</sup> Electronic Money Directive which covers all Member States within the EEA including the UK.
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