



**Financial Services  
Commission**

# **Administrative Notice No. 9**

## **E-Money**

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# 1. Application, contents, purpose and general

## 1.1 Introduction

- 1.1.1 This Notice is issued by the Commissioner of Banking Under Section 16(2) of the Banking Ordinance 1992 ("the Ordinance") to facilitate compliance with EU Directive 2000/46/EEC ("the Electronic Money Directive").
- 1.1.2 The Electronic Money Directive was partially transposed into the Ordinance by way of the Banking Ordinance (Amendment) Ordinance 2002 and this notice completes transposition.

## Definitions

- 1.1.3 The following terms are used throughout this notice:

**"electronic money institution"** means an institution that issues means of payment in the form of electronic money, as defined by the Banking Ordinance 1992. This includes banks, building societies, recognised institutions and EMNY institutions.

**"e-money"** means electronic money as defined by the Banking Ordinance 1992.

**"EMNY Institution"** means an electronic money institution (as defined in the Banking Ordinance), which is not a bank, building society or recognised institution.

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

**"recognised institution"** means an EU branch.

## 1.2 Contents and purpose

- 1.2.1 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.
- 1.2.2 Chapter 2 sets out rules and guidance on the capital adequacy of EMNY Institutions Chapter 3 sets out rules and guidance on the investment of the e-money float in high quality liquid assets. It also restricts the use by EMNY Institutions of derivatives and quasi derivative contracts. Chapter 4 sets out rules and guidance restricting the business of EMNY Institutions to activities closely related to issuing e-money. 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.
- 1.2.3 This Administrative Notice implements parts of the Electronic Money Directive and (for EMNY Institutions) the Banking Consolidation Directive.
- 1.2.4 The requirements in this Administrative Notice set standards governing the backing 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.



- 1.2.5 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.
- (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) 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. As a result, parts of the prudential supervisory regime applying to banks do not apply to EMNY Institutions
  - (3) 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. To assist in achieving this, the removal of some features of the prudential supervisory regime applying to banks and building societies is balanced by rules that are stricter than those applying to banks and building societies. The main example of these stricter requirements is the limits on the business activities that EMNY Institutions may carry on and the requirements about asset liability management of the e-money float. As the main prudential measures that apply to EMNY Institutions are targeted specifically at the issue of e-money it is necessary to restrict the business of EMNY Institutions to that activity.

### 1.3 Restriction on issuing e-money

- 1.3.1 Article 1(4) of the Electronic Money Directive says that Member States shall prohibit persons or undertakings that are not credit institutions 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.
- 1.3.2 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 recognised institutions are excluded. If a firm falls into the definition of an EMNY Institution all the requirements in this Administrative Notice about EMNY Institutions apply.
- 1.3.3 However, article 8 of the Electronic Money Directive says that EEA States may allow their competent authorities to waive the application of some or all of the provisions of that Directive and the application of the Banking Consolidation Directive to certain small or local e-money schemes. Gibraltar will not be making use of this derogation.



## 2 Initial and continuing own funds requirement

### 2.1 Application

2.1.1 This Chapter applies to all EMNY Institutions.

### 2.2 Purpose

2.2.1 This chapter requires EMNY Institutions to have a minimum amount of capital.

2.2.2 In addition, section 23(3)(b) of the Banking Ordinance 1992 ("the Ordinance") says, 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";

2.2.3 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 asset liability management requirements in Chapter 3, 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.

2.2.4 This Chapter implements article 4 of the Electronic Money Directive

### 2.3 Base capital requirements

2.3.1 A firm must at the time it is granted an e-money permission, have initial capital and at all times maintain own funds, calculated in accordance with this Chapter, amounting to not less than one million euro or equivalent.

### 2.4 Calculation of initial capital and own funds

2.4.1 Initial capital and own funds are calculated as follows:

2.4.2

the sum of:

ordinary share capital  
 share premium account  
 audited reserves excluding revaluation reserves  
 externally verified interim net profits  
 partnership capital  
 = initial capital: (A)

the sum of:

investments in own shares  
 intangible assets  
 interim net losses  
 = deductions for calculating tier one capital: (B)

tier one capital = A – B (C)



the sum of:

subordinated debt forming part of upper tier 2 capital  
 revaluation reserves

= upper tier 2 capital (D)

subordinated debt forming lower tier 2 capital (E)

D + E = tier two capital

material holdings in financial institutions or credit institutions (F)

C + D + E – F = own funds

## Ordinary share capital

- 2.4.3 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

- 2.4.4 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.
- 2.4.5 If a reserve is negative, it must be deducted at the relevant stage of the calculation.

## Net profits

- 2.4.6 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

- 2.4.7 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.
- 2.4.8 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

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

## Losses

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

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

2.4.11 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

2.4.12 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

- 2.4.13 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).
- 2.4.14 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.
- 2.4.15 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.
- 2.4.16 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

- 2.4.17 (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

- 2.4.18 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.
- 2.4.19 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

- 2.4.20 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.

## Credit institutions and material holdings

- 2.4.21 Credit institutions are not included as this Administrative Notice does not allow a firm to have any ownership shares in a credit institution.

## 2.5 Continuing capital requirement

### Obligation to meet own funds requirement

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



## Calculation of own funds requirement

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

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

## Newly authorised EMNY Institution without a six month average

2.5.3 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 outstandings 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.

2.5.4 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 outstandings amount for the rest of that period.



### 3 Management of the e-money float

#### 3.1 Application

3.1.1 This Chapter applies to all EMNY Institutions.

#### 3.2 Purpose

3.2.1 The purpose of this chapter is to apply to EMNY Institutions prudent limits on their investments aimed at helping to ensure that their financial liabilities related to outstanding e-money are backed at all times by sufficiently liquid low risk assets.

3.2.2 This involves addressing credit risk, market risk, foreign exchange risk, large exposure risk, and liquidity risk.

3.2.3 In addition, section 23(3)(b) of the Ordinance says, 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".

3.2.4 Credit risk is incurred whenever a firm is exposed to loss if another party fails to perform its financial obligations to the firm. This includes issuer risk, which could potentially result in a firm losing the full price of its investments, since default by the issuer could result in their value falling to nil.

3.2.5 Liquidity is the ability of a firm to meet its liabilities at the time they fall due. Adequate liquidity is vital to the continuing viability of a firm and to maintaining the stability of the financial system as a whole. If consumers could not rely on being able to redeem their e-money in full in a timely fashion, they would lose confidence in the sector.

3.2.6 The purpose of the liquidity requirements of this chapter is to help to enable a firm to be able to do the following in particular:

- (1) to meet maturing obligations in the normal course of business (business liquidity);
- (2) to maintain an additional cushion of liquidity to cope with unexpected events such as the failure of a significant counterparty or debtor (contingent liquidity); and
- (3) to survive in a wider market generated crisis (market liquidity).

3.2.7 Where the firm's exposure to its counterparty is large, it risks a large loss should the counterparty default. Such a loss may be enough on its own to threaten the solvency of the firm and its ability to redeem e-money when required to do so. The purpose of the large exposure requirements is to help to ensure that a firm manages and diversifies its exposures to counterparties relating to its e-money float within suitable limits related to its capital resources.

3.2.8 The purpose of the foreign exchange risk requirements in this chapter is to help to ensure that the e-money float is not put at risk by foreign exchange exposures.

3.2.9 This chapter implements article 5 of the Electronic Money Directive. Although article 2 of the Electronic Money Directive disapplies the large exposures section of the Banking Consolidation Directive, article 5(2) reapplies it in part.



### 3.3 Asset liability management

- 3.3.1 A firm must, at all times, have qualifying liquid assets of a value no less than the amount of its e-money outstandings at that time.
- 3.3.2 For the purpose of the above, a firm's qualifying liquid 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.
- 3.3.3 Where an asset is marketable the value attributed to it above should normally be the quoted market price, except where there is reason to suggest that it could not realise the asset held in the quantity actually held at that price. If there is reason to suggest that the asset could not be realised at that price, the value attributed to it above should be the price at which it can be realised.
- 3.3.4 In determining the value attributed to assets, the firm should take into account any difficulty it might have in realising value from any concentration of assets.

#### Liquid assets

- 3.3.5 A qualifying liquid 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.
- 3.3.6 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.
- 3.3.7 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 3.3.6.
- 3.3.8 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.



3.3.9 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.

### Test for liquidity

3.3.10 Investments held by a firm are only sufficiently liquid if they satisfy all of the following requirements:

- (1) the firm is without delay able to get quotations for the sale or purchase of the investments complying with the following conditions:
  - (a) the prices are for transactions that would fall into (2) and (3) below; and
  - (b) the firm gets the prices from persons who are not associates of the firm, who are independent of the firm and who are willing and able to buy and purchase those investments at the prices they quote;
- (2) it is reasonable to conclude that, except in exceptional circumstances, the firm will be able to find a buyer for the investments and complete the sale, for money, within a time that is within the range of (or that is quicker than) what is normal for a sale falling into (5);
- (3) it is reasonable to conclude that, except in exceptional circumstances, the price that the firm will be able to obtain for the sale of the investments will not be materially affected by either the speed of the sale or the amount of the investments sold;
- (4) they are regularly traded;
- (5) taking into account all other factors such as volume of trading and the number of persons who frequently trade in them, their liquidity is at least as great as would be within the range of what is normal for government and public securities of the central governments of a Zone A country that are widely and continuously traded in large volumes; and



- (6) the firm can buy or sell the investments in a market in which;
    - (a) there is a timetable for the settlements of sales of those investments; and
    - (b) it is general market practice in that market to follow that timetable;
 so that the settlement timetable for purchases of those investments is generally not a matter for negotiation.
- 3.3.11 The above paragraph does not apply to a security listed on a recognised investment exchange or designated investment exchange.

### Establishment of the e-money float

- 3.3.12 A firm must choose which particular qualifying liquid assets to treat as the e-money float for the purposes of this Administrative Notice. The firm must also do so on a consistent basis. In particular, the firm must not treat a particular investment as part of its e-money float for the purposes of some of the provisions of this Administrative Notice and not for others.

## 3.4 Foreign exchange risk

- 3.4.1 A firm must, at all times, have sufficient own funds to ensure that its FX exposure does not exceed its absolute FX exposure limit.
- 3.4.2 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

- 3.4.3 A firm's FX exposure is its net FX open position multiplied by 8%.
- 3.4.4 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 3.3.2;
  - (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.
- 3.4.5 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

- 3.4.6 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.
- 3.4.7 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.
- 3.4.8 The effect is that a firm should not generally have any FX exposure unless its own funds exceed 3% of its e-money outstandings.
- 3.4.9 If a firm's own funds are 2.5% or less of its e-money outstandings, the firm should not have any FX exposure.
- 3.4.10 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 3.4.2. The FX exposure must not exceed the amount by which its own funds exceed 2.5% of its e-money outstandings.
- 3.4.11 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 3.4.2.
- 3.4.12 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 3.4.2(2) and (3).

## 3.5 Large exposure risk

### Large exposure limits

- 3.5.1 A firm must not at any time have any large e-money float exposure that exceeds 25% of its own funds.
- 3.5.2 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

- 3.5.3 (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.
- 3.5.4 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.
- 3.5.5 A firm's e-money float exposures relate to the exposures that it has in connection with its e-money float.

## Exclusions

- 3.5.6 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 claim or other asset required to be deducted at stages C or F set out in in the calculation of initial capital and own funds;
  - (2) a bill endorsement on a bill already endorsed by another firm;
  - (3) an e-money float exposure under a zero weighted asset;
  - (4) 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 3.5.16);
  - (5) 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

- 3.5.7 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.
- 3.5.8 A person, together with each person who is closely related to that person, is a group of closely related counterparties.
- 3.5.9 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.
- 3.5.10 Persons are also closely related if there are close links between them within the meaning of paragraph (2) of the definition of that term.
- 3.5.11 (1) 3.5.10 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.

3.5.12 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

3.5.13 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.

3.5.14 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 3.5, treat that e-money float exposure as having been incurred to that third party, as long as the following three paragraphs allow this.

3.5.15 A firm may not recognise the benefits of collateral or a guarantee unless paragraph 3.5.6 specifically permits this.

3.5.16 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.

3.5.17 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.



- 3.5.18 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.
- 3.5.19 Paragraph 3.5.17 does not apply to paragraph 3.5.6.

### Notifying the FSC of reportable large exposures

- 3.5.20 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).
- 3.5.21 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

- 3.5.22 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.

## 3.6 Liquidity and interest rate risk

- 3.6.1 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.
- 3.6.2 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.
- 3.6.3 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.



- 3.6.4 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.

## 3.7 Derivatives

- 3.7.1 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.

- 3.7.2 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.



## 4 Limitations on activities

### 4.1 Application

- 4.1.1 This Chapter applies to all EMNY Institutions;
- 4.1.2 This Chapter, with the exception of section 4.3 applies to licensed institutions that are authorised as electronic money institutions under Part IIA of the Ordinance.

### 4.2 Purpose

- 4.2.1 One purpose of this chapter is to limit the activities of an EMNY Institution to those closely connected to issuing e-money. This Notice, for EMNY Institutions, applies the capital adequacy requirements to banks and building societies but imposes controls that do not apply to them. Those controls include ones on the activities that an EMNY Institution may carry on. The prudential requirements for EMNY Institutions are not designed to support a wider range of activities. The limitation on activities provides further assurance that an EMNY Institution is able to redeem its e-money when it is required to.
- 4.2.2 This chapter implements article 1(5) of the Electronic Money Directive and the prohibition in that Directive on issuing e-money at a discount.
- 4.2.3 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.

### 4.3 Restriction to issuing e-money and related activities

#### Restriction on activities

- 4.3.1 A firm must not undertake or carry on business activities other than issuing e-money, except for those listed below.
- 4.3.2 The activities referred above are:
  - (1) the provision of financial and non financial services closely related to issuing e-money, such as:
    - (a) the administering of e-money by the performance of operational and other ancillary functions related to its issuance; and
    - (b) the issuing and administering of other means of payment; and
  - (2) the storing (on behalf of other undertakings or public institutions) of data on e-money electronic devices on which e-money issued by the firm is stored or which can be used to use or spend e-money issued by the firm;but excluding the granting of any form of credit.
- 4.3.3 The activities permitted include distributing e-money issued by another person.

#### Restriction on giving credit

- 4.3.4 A firm must not grant any credit in the course of or for the purpose of the business of issuing e-money.



4.3.5 Paragraphs 4.3.2 and 4.3.4 together prevent a firm from granting credit.

### Granting credit includes making loans.

4.3.6 If a person buys e-money from a firm and pays for it by cheque (so that the firm does not immediately receive value for it) that does not amount to granting credit.

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

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

4.4.2 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.

4.4.3 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.

4.4.4 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.

4.4.5 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 4.4.2, 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.

4.4.6 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.



## 5 Systems and controls; Rules for making calculations

### 5.1 Application

- 5.1.1 This Chapter applies to all EMNY Institutions;
- 5.1.2 This Chapter applies to licensed institutions that are authorised as electronic money institutions under Part IIA of the Ordinance.

### 5.2 Purpose

- 5.2.1 This chapter contains details about certain aspects of systems and controls and senior management arrangements.
- 5.2.2 Section 23(3)(b) of the Banking Ordinance says, *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.
- 5.2.3 Section 23(3)(h) of the Banking Ordinance 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.
- 5.2.4 Section 23(3)(h) of the Banking Ordinance also requires a firm to maintain adequate accounting and other records of its business, and adequate systems of control to its business.
- 5.2.5 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.
- 5.2.6 This chapter implements article 7 of the Electronic Money Directive.

### 5.3 Requirements for making calculations

#### Exchange rates

- 5.3.1 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

- 5.3.2 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.
- 5.3.3 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

- 5.3.4 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.



## 6 Redemption, information requirements and purse limits

### 6.1 Application

6.1.1 This Chapter applies to all electronic money institutions except recognised institutions.

6.1.2 This chapter applies only in relation to e-money issued in the course of the regulated activity of issuing e-money carried on from an establishment maintained by the firm in Gibraltar, unless provided for otherwise.

### 6.2 Purpose

6.2.1 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.

6.2.2 The purse limit protects holders of e-money by restricting the financial loss a holder of e-money may suffer if he loses his consumer e-money card or if the firm becomes insolvent. It takes into account the fact that the depositor guarantee scheme does not apply.

6.2.3 This chapter implements article 3 of the Electronic Money Directive and article 33(a) of the Banking Consolidation Directive.

6.2.4 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.

6.2.5 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.

6.2.6 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.

### 6.3 Duty to redeem

#### Person entitled to redemption

6.3.1 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

- 6.3.2 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

- 6.3.3 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 6.3.4;
  - (2) (in the case of redemption in accordance with paragraph 6.5.1(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 6.3.4; and
    - (b) the firm must ensure that the funds reach the holder's account within five business days of the day on which it gave the instructions in (2)(a).

### Money Laundering and other checks

- 6.3.4 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.
- 6.3.5 Nothing in 6.3.4 requires a firm to do anything that:
- (1) is prohibited by the Criminal Justice Ordinance or the Anti-Money Laundering 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.

### Redemption prevented by circumstances beyond the firm's control

- 6.3.6 A firm does not fail to meet the requirements in paragraph 6.3.3(2) if the failure of the funds to reach the holder's account in time is caused by a failure outside of the firm's control on the part of any third party that is involved in the funds transfer.

## 6.4 Exceptions to the duty to redeem

### Minimum redemption amount

- 6.4.1 Paragraph 6.3.1 does not apply if:
- (1) the e-money to be redeemed has a par value of less than:
    - (a) (if the e-money is denominated in euro) 10 euro; or
    - (b) (if it is denominated in another currency) the equivalent of 10 euro in that currency; and
  - (2) this exception is expressly provided for by the e-money scheme rules.

### Expiration of e-money

- 6.4.2 If the e-money scheme rules provide that e-money ceases to be valid after a specified period, the redemption right does not apply after the end of that period.



- 6.4.3 A firm must not issue e-money that is valid for less than a year. If a firm issues e-money to banks or other distributors who then distribute it to the public, the firm must use reasonable endeavours to ensure that it remains valid for at least a year after its distribution to the public.

## Guidance

- 6.4.4 The duty to redeem assumes that the person asking for redemption is able to present or make available the e-money for redemption. Thus, for example, if the e-money scheme in question is card based, and the person in question loses his card this Administrative Notice does not require the firm to reimburse the holder or redeem that e-money for him.
- 6.4.5 A firm should consider whether it is under any duty to compensate a holder of e-money issued by it who loses his consumer e-money card or whose e-money is used fraudulently by another.

## 6.5 Methods of redemption

- 6.5.1 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.
- 6.5.2 A firm must ensure that the exercise of the redemption right will not be unreasonably difficult for anyone entitled to exercise it.
- 6.5.3 Subject to the above, the firm may choose which of the methods of redemption to offer.
- 6.5.4 Paragraph 6.5.1 reflects article 3(1) of the Electronic Money Directive and article 33a of the Banking Consolidation Directive. Neither paragraph 6.5.1 nor 6.5.2 takes precedence over the other. A firm must therefore organise its affairs so that it can comply with both requirements.
- 6.5.5 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 6.5.2. 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 6.5.2.
- 6.5.6 A firm does not necessarily breach the requirements of paragraph 6.5.2 if it does not offer the redemption right at each automated teller machine at which persons may withdraw cash by using e-money issued by the firm. For instance, a firm may issue e-money in Gibraltar that can be used to withdraw cash from automated teller machines abroad. It may be reasonable for the firm not to offer the redemption right at the automated teller machines abroad.

## 6.6 Charges for redemption

- 6.6.1 A firm may not charge a person any fee, expenses or other charge for or in connection with the exercise of a redemption right, except that a firm may charge a fee for the redemption of e-money if the following conditions are satisfied:
- (1) the e-money scheme rules give the firm the right to charge that fee;
  - (2) the person exercising the redemption right is informed of the amount of the fee after the person makes the request for redemption and before completion of the redemption;



- (3) that person is given the opportunity, after he has received the information as described in (2), of withdrawing the request before the e-money is redeemed;
- (4) the fee is in accordance with the firm's usual tariff of fees for such redemptions; and
- (5) the fee is no greater than necessary to recover the costs to the firm of carrying out that redemption.

6.6.2 Any fee must never exceed the amount of e-money offered for redemption.

## 6.7 Terms of redemption

### Contents of e-money scheme contracts

6.7.1 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

6.7.2 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.

6.7.3 The contract referred to above must be in force at the time the firm issues the e-money.

6.7.4 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

6.7.5 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.

## 6.8 Information

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

6.8.2 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.

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

6.8.6 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.

6.8.7 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.

## 6.9 Purse limits and warnings on cards

### Purse limits

6.9.1 (1) A firm must ensure that:

- (a) e-money issued by it cannot be stored on a consumer e-money device with a capacity that exceeds the sum of Euro 1000 or equivalent; and
- (b) a consumer e-money holder is not able to hold, as part of the same balance or otherwise under the same arrangements, e-money issued by the firm of an amount that exceeds, at any time, the sum of Euro 1000 or equivalent.

### Exception to the purse limit

6.9.2 Paragraph 6.9.1 does not apply in a particular case if:

- (1) the firm has first given a warning:
  - (a) that the deposit guarantee scheme does not apply to e-money issued by the firm; or



- (b) if the firm becomes insolvent the e-money in question may become valueless and unusable; and
- (c) accordingly if the firm becomes insolvent the holder may lose his e-money, such warning should be
  - (i) in writing;
  - (ii) be presented in a way that can be easily understood; and
  - (iii) presented in such manner as, depending on the means by which the warning is given, is best calculated to bring it to the attention of the holder and to allow him to consider it;
 to the consumer e-money holder and the owner for the time being of the e-money stored on the consumer e-money device;
- (2) the firm has received a written acknowledgement from the holder, in respect of the warning given to him under (1) above, in that he has read and understood the warning and that he accepts those risks; and
- (3) the requirements of paragraph 6.9.3 are met as respects the consumer e-money device or which the holder uses to spend or otherwise use his e-money and as respects the scheme under which the firm issues the e-money.

6.9.3 These requirements are only met in a particular case if:

- (1) the scheme under which the e-money is issued is organised in such a way that the loss, malfunction, theft or damage to or of the consumer e-money device will not result in the holder losing any e-money or in any substantial prejudice to his redemption right or his ability to exercise it;
- (2) (in the case of any scheme under which a firm issues e-money) the firm is able to prevent the use or spending of any e-money it issues under that scheme; and
- (3) the identity of the person who is entitled to e-money issued by the firm under the scheme in question, the amount of such e-money to which he is entitled, the identity of the person who at any time has a redemption right against the firm under that scheme and the amount that he is entitled to have redeemed are determined by records maintained by or on behalf of the firm and are not affected by the matters in (1).

6.9.4 The requirements above may still be met if the holder is responsible for any unauthorised use of his consumer e-money device that occurs between its loss or theft and the consumer e-money holder notifying the firm of its loss or theft.

6.9.5 The acknowledgement of the warnings may be contained in a written contract in physical form between the firm and the consumer e-money holder. If it is, the firm should ensure that the signature of the consumer e-money holder acknowledging warnings is in addition to the signature by which the consumer e-money holder consents to the terms of the contract. If the firm contracts electronically with the consumer e-money holder, the firm should ensure that the consumer e-money holder's electronic acknowledgement of the warnings is separate from his electronic agreement to the terms of the contract.

6.9.6 These requirements cover a scheme in which the firm maintains the record of who owns e-money it issues. A holder of e-money issued by the firm should not be at risk from the theft, malfunction, loss or damage to his consumer e-money device as the firm has a record of how much he owns. This is in contrast to a



scheme in which the e-money is stored on a consumer e-money card where the loss of the device means that the holder loses the e-money on it.

- 6.9.7 In a card based e-money scheme, the firm should be able to freeze a stolen consumer e-money card once the owner tells the firm that it has been stolen. If an e-money scheme does not have the records referred to above or the firm is unable to freeze the use of consumer e-money devices, but the firm accepts the risk of loss of the device, the purse limits still apply.

### Warnings on cards

- 6.9.8 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.

## 6.10 Establishing to what e-money applies

- 6.10.1 If (with respect to any obligation of a firm about e-money in this Chapter and a scheme under which that firm issues that e-money) the obligations extends to all e-money issued under that scheme, unless provided otherwise.

- 6.10.2 Paragraph 1 above does not:

- (1) cover a case in which an e-money scheme is designed in such a way that generally the firm is unable to distinguish between e-money that comes within the scope of the obligations of this Chapter and e-money that would otherwise not and does not materially contribute to the firm's inability to make the distinction; or
- (2) cover e-money in respect of which the firm can establish it is not subject to that obligation; or
- (3) require a firm to extend any rights to a person whose holding of the e-money in question is contrary to the e-money scheme rules.

- 6.10.3 The requirements in this chapter make various distinctions about e-money. For example, they distinguish between e-money issued by the firm and e-money issued by other e-money issuers. With some e-money schemes it may not be possible for a firm to make those distinctions. If this is the case, 6.10.1 ensures that the requirements in this chapter still apply.

- 6.10.4 Thus, for example, if a firm is unable to distinguish between:

- (1) e-money issued by the firm and e-money issued by other issuers under the e-money scheme in question, it should offer the redemption right to holders of all e-money issued under that scheme;
- (2) e-money issued by the firm within the territorial scope of this chapter and other e-money issued by the firm, it should offer the redemption right to holders of all e-money issued by it.



## 7 Consolidated financial supervision

### 7.1 Application

7.1.1 This Chapter applies to an EMNY Institution that is part of a group.

### 7.2 Purpose

7.2.1 The requirements of this chapter address three main areas of supervisory concern arising from group membership:

- (1) losses in another group entity lead to financial pressure on a firm, because of financial or reputational linkages, or both;
- (2) capital is subject to double gearing or leveraging: that is, a solo assessment of a firm over-estimates the quantity or quality of capital, or both, that is available to support that firm's risks, because of the way its capital has been raised or accounted for by the group;
- (3) business is booked in an unauthorised group entity to avoid regulatory requirements.

7.2.2 This chapter implements the consolidation requirements of the Banking Consolidation Directive as applied by article 2 of the Electronic Money Directive.

### 7.3 Consolidated capital adequacy

7.3.1 If:

- (1) a firm (firm A) is a member of a group;
- (2) another member of that group (firm B) is a firm that is subject to consolidated supervision by the FSC;
- (3) firm B is in firm A's immediate group; and
- (4) firm A is included in the scope of the consolidation effected by the FSC as it applies to firm B; firm A must, at all times, maintain capital resources (calculated in accordance with the relevant rules) at a level that ensures that, taking into account (in the manner and to the extent provided for in those rules) the capital resources of other members of the group, firm B complies with the FSC requirements applicable to it. If there is more than one firm in the group that fits the description of firm B, the obligation in this rule applies in relation to all of them.

7.3.2 If:

- (1) Paragraph 7.3.1 does not apply to a firm;
  - (2) the firm is a member of an EEA consolidated group or Gibraltar consolidated group;
  - (3) there is a full credit institution or an investment firm in that EEA consolidated group or Gibraltar consolidated group; and
  - (4) the undertaking in (3) is in the firm's immediate group;
- the firm must, at all times, maintain capital resources (calculated in accordance with the relevant rule) at a level which ensures that, taking into account (in the manner and to the extent provided for in that rule) the capital resources of other members of the firm's group, the firm would comply with the bank consolidation rule if it applied to the firm.

7.3.3 If:

- (1) Paragraphs 7.3.1 and 7.3.2 do not apply to a firm;
- (2) the firm is a member of an EEA consolidated group; and
- (3) that EEA consolidated group is not subject to supervision on a consolidated basis by a competent authority of another EEA State

under the Banking Consolidation Directive, the Electronic Money Directive or the Capital Adequacy Directive;  
the firm must ensure that at all times its own funds are of such an amount that its EEA group risk own funds are equal to or exceed its EEA group risk own funds requirement.

#### 7.3.4 If:

- (1) Paragraphs 7.3.1, 7.3.2 and 7.3.3 do not apply to a firm; and
  - (2) the firm is a member of a Gibraltar consolidated group;
- the firm must ensure that at all times its own funds are of such an amount that its Gibraltar group risk own funds are equal to or exceed its UK group risk own funds requirement.

## 7.4 Scope of consolidation

7.4.1 A firm's EEA consolidated group is the consolidated sub group of the firm's EEA financial parent undertaking.

7.4.2 A firm has no EEA consolidated group if the firm would be its only member or if it has no EEA financial parent undertaking.

7.4.3 A firm's Gibraltar consolidated group is the consolidated sub group of:

- (1) the firm's Gibraltar financial parent undertaking; or
- (2) (if the firm has no Gibraltar financial parent undertaking and the firm is a Gibraltar domestic firm) the firm.

7.4.4 A firm has no Gibraltar consolidated group if the firm would be its only member.

7.4.5 A firm, having given prior notice to the FSC, may exclude from its EEA consolidated group or Gibraltar consolidated group for the purposes of this chapter:

- (1) an undertaking, the total assets of which; or
- (2) two or more undertakings, the total of whose assets added together; are less than the smaller of 10 million euro and 1% of the total assets of the firm.

## 7.5 Calculation of capital adequacy on a consolidated basis

### EEA group risk own funds

7.5.1 A firm's EEA group risk own funds are calculated as follows:

- (1) the own funds of members of the EEA consolidated group are consolidated using the principles that apply to preparing consolidated accounts under The Banking (Accounts Directive) Regulation, 1997 and in accordance with accounting principles generally accepted in Gibraltar;
- (2) for these purposes the own funds of a person to whom the calculation of initial capital and own funds in this Administrative Notice does not apply are calculated as if it did apply;
- (3) the adjustments provided for in article 37 of the Banking Consolidation Directive apply (if required by the Banking Consolidation Directive), in accordance with (1);
- (4) the deductions specified in calculation of initial capital and own funds in this Administrative Notice must be recalculated at the level of the EEA consolidated group;
- (5) the deduction at stage (F) of the calculation in the calculation of initial capital and own funds in this Administrative Notice does not



- apply to material holdings held by members of the EEA consolidated group in another member;
- (6) the limits on components of own funds must be applied;
  - (7) minority interests are not included; and
  - (8) own funds of members of the EEA consolidated group other than the person at its head are only included if they represent capital that is freely transferable to other members of the EEA consolidated group.
- 7.5.2 A firm's EEA group risk own funds requirement is calculated by way of consolidation using the principles that apply to preparing consolidated accounts under The Banking (Accounts Directive) Regulation, 1997 as follows:
- (1) the rules for calculating a firm's own funds requirement must be applied to the firm's EEA consolidated group as if it were a single firm;
  - (2) the consolidation must be in accordance with accounting principles generally accepted in Gibraltar.

### Proportional consolidation

- 7.5.3 All items included in the calculation of a firm's EEA group risk own funds and EEA group risk own funds requirement must be included in full, even though the member of the EEA consolidated group concerned is not a wholly owned subsidiary undertaking of the undertaking at the head of the EEA consolidated group.

### The Banking Consolidation Directive

- 7.5.4 A firm's EEA group risk own funds and EEA group risk own funds requirement must be calculated in a way that is not contrary to the Banking Consolidation Directive as applied by the Electronic Money Directive.

### Gibraltar group risk own funds and Gibraltar group risk own funds requirement

- 7.5.5 A firm's Gibraltar group risk own funds and Gibraltar group risk own funds requirement are calculated in the same way as its EEA group risk own funds and EEA group risk own funds requirement except that references to its Gibraltar consolidated group are substituted for references to its EEA consolidated group.

## 7.6 Large exposures

### The EEA group

- 7.6.1 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.
- 7.6.2 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.

## The Gibraltar group

7.6.3 If paragraph 7.3.4 R applies to a firm, the firm must ensure that at all times its own funds are of such an amount that:

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

7.6.4 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.

## 7.7 Waiver

7.7.1 Article 52( 3) of the Banking Consolidation Directive says that competent authorities responsible for exercising supervision on a consolidated basis may decide that a credit institution, financial institution or auxiliary banking services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation in certain cases. These include the following:

- (1) if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information;
- (2) if, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.