

Payment Services: Countdown to new Principles-based regime in August

July 2019

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[New Principles for Business and conduct rules for payment services and connected activities will apply from 1 August. Affected firms will need to have in place a business-wide strategy for complying with the Principles for Business and review their marketing and disclosure practices in readiness.](#)

Background

Payment service providers (PSPs) and electronic money issuers (EMIs) are authorised under the UK's Payment Services Regulations 2017 and Electronic Money Regulations 2011, respectively. These regimes carry their own standards, but the FCA has expressed concerns that they do not represent a level playing field with the framework applicable to FSMA-authorised firms. The FCA has also expressed concerns that it needs to be better positioned to respond to a rapidly evolving payments landscape and be able to address potential harm more effectively.

Accordingly, in 2018, the FCA consulted on extending the application of some of its Handbook provisions to the payment services and e-money sectors. The final rules, set out in Policy Statement [PS19/3](#), will affect payment institutions, e-money institutions, registered account information service providers, and credit institutions when carrying out payment services activities ("**Affected Firms**").

New Rules

The new rules fall into three broad categories: extending the application of the FCA's Principles for Business, extending the application of conduct rules to Affected Firms' communications with retail banking customers, and imposing new conduct rules on currency transfer services.

[Principles for Business](#)

The FCA's Principles for Business are set out in the PRIN sourcebook, part of the FCA's Handbook of Rules and Guidance. The 11 Principles set out fundamental standards that firms need to comply with throughout their in-scope business operations. They address issues such as conflicts, treating customers fairly, proper market conduct, risk management and communicating in a way that is clear, fair and not misleading.

Readers who have enjoyed roles within FSMA authorised firms and are familiar with the Principles for Business will appreciate that compliance with them is far from straightforward. Compliance requires thought, persistent application and evidence of application – and the Principles for Business have a sharp edge with the FCA routinely citing their breach as the basis for enforcement action and fines. Taking Principle 6, treating customers fairly (or TCF) as an example, the FCA sees this as a cultural issue and links the behaviours of management and staff with the ability of a firm to deliver fair outcomes to customers (6 target outcomes are defined). The FCA therefore expects firms to be able to demonstrate how their leadership drives forward a

TCF agenda from the top, manifested in their approach to leadership, strategy, decision making and challenge, business controls, performance assessment and staff reward.

We suggest that Affected Firms need to address the following:

- **Scope:** Define which parts of your business the Principles for Business apply to (e.g. provision of payment services and issuing e-money and *activities connected to* these activities)
- **Territorial application:** Where you have an international footprint, understand the territorial application of the Principles for Business
- **Responsibility:** Identify the leaders within the business that will have responsibility for implementing the Principles for Business
- **Understanding:** Familiarise yourself with the significant body of guidance around compliance with the Principles for Business that has built up since the FCA's predecessor, the FSA, launched its principles-based approach and regulation in 2005
- **Implementation:** Develop an appropriate and proportionate strategy for implementation of the Principles for Business and education about them across your in-scope business
- **Document, review and challenge:** Recognising that failure can form the basis of enforcement, implement a process for recording and challenging your implementation

Communications with Retail Banking Customers

In a similar vein to the PRIN extension, the FCA is broadening the application of certain communications rules under the Banking Conduct of Business sourcebook (BCOBS) to include Affected Firms. The rules, which are set out in Chapter 2 of BCOBS, will apply when providing payment services and connected activities to "banking customers" (broadly, retail consumers, micro-enterprises and small charities).

As a result of the extension, Affected Firms will be required to ensure that communications with payment service and e-money customers are "fair, clear and not misleading". This standard already applies to payment services or e-money issuance where these relate to deposit-taking activities. In view of increased instances of misleading advertisements, the FCA's aim is to create a consistent standard of communication across the market.

Currency Transfer Services

In addition to the high-level BCOBS 2 communication requirements, the new rules will specifically target communications relating to currency transfer services. In its consultation, the FCA identified harm arising from misleading communications about rates a customer can achieve, service fees, and alternative providers' fees.

The new rules aim to prevent misleading consumers of these services by mandating that:

- Firms may only promote exchange rates that are achievable; and
- Claims about competitors' fees are fair, balanced, and supported by evidence.

Affected Firms should review their policies and procedures for approving marketing and other customer communications to ensure compliance with the new rules.

Next Steps

The new rules will apply to Affected Firms from 1 August 2019. In our view, Affected Firms need to treat this initiative as a clear signal that going forward the FCA will have the same expectations around behaviour and culture within Affected Firms as they do mainstream FSMA-licensed firms. It can be taken as a given that enforcement action will eventually follow as a means of example making in the sector – and firms offering currency transfer services are put on particular notice.

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