



# Electronic money

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Block	Module	Application
	Conduct of Business sourcebook (COB)	<p>The effect of :</p> <p>(1) ELM 6.8.2A R is that COB 2.6 (General provisions in relation to distance contracts) applies;</p> <p>(2) ELM 1.4A.5 R is that COB 6.7.47R; COB 6.7.48R and COB 6.7.51R to COB 6.7.53R apply; and</p> <p>(3) ELM 6.8.2A R is that COB 6.4.25 R (Entering into a distance contract for accepting deposits) applies in relation to <i>distance contracts</i> concluded with <i>retail customers</i> as if references to '<i>accepting deposits</i>' and '<i>deposits</i>' were references to '<i>issuing e-money</i>' and '<i>e-money</i>' respectively.</p> <p>Otherwise, COB does not apply to an ELM I when <i>issuing e-money</i>. As explained in PERG 3 , the <i>rules</i> in COB about <i>financial promotions</i> do not usually apply to <i>e-money</i>, but may do so in certain situations.</p>
	Insurance: Conduct of Business sourcebook (ICOB)	Does not apply to an ELM I when issuing <i>e-money</i>
	Mortgages: Conduct of Business sourcebook (MCOB)	Does not apply to an ELM I when issuing <i>e-money</i>
	Client Assets sourcebook (CASS)	Does not apply to an ELM I when issuing <i>e-money</i> .
	Training and Competence Sourcebook (TC)	TC 1 (Commitments) applies to ELM Is. TC 2 (Rules and Guidance) applies to a <i>firm</i> whose <i>employees</i> carry on activities listed in TC 2.1.4 R . Those activities do not include <i>issuing e-money</i> .
Regulatory processes	Supervision manual (SUP)	The following chapters of SUP apply to every ELM I: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16 and 20. The following chapters of SUP do not apply to an ELM I: 4, 12, 14, 17, 18 and 19.
	Decision, Procedure and Penalties Manual (DEPP)	Applies to every ELM I.
Redress	Complaints (DISP)	Applies to every ELM I.
	Compensation (COMP)	An ELM I is not a <i>participant firm</i> for the purposes of COMP in relation to <i>issuing e-money</i> . Under article 9J of the <i>Regulated Activities Order</i> , the <i>compensation scheme</i> is

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		not to provide for the compensation of <i>persons</i> in respect of claims made in connection with <i>issuing e-money</i> .
	Complaints against the FSA ( <i>COAF</i> )	Applies to every <i>ELMI</i> .
Specialist sourcebooks other than <i>ELM</i>	Credit unions ( <i>CRED</i> ), Professional firms, ( <i>PROF</i> ), Collective Investment Schemes ( <i>CIS</i> ) or <i>COLL</i> and Recognised Investment Exchanges and Recognised Clearing Houses ( <i>REC</i> ).	These sourcebooks do not apply to an <i>ELMI</i> .
	E-Commerce Directive sourcebook ( <i>ECO</i> )	Applies to every <i>ELMI</i> that carries on electronic commerce activities. Also applies to every <i>ELMI</i> in relation to a <i>financial promotion</i> which is an <i>outgoing electronic commerce communication</i> .
Listing, Prospectus and Disclosure	Listing Rules ( <i>LR</i> )	May apply if the <i>ELMI</i> is applying for <i>listing</i> in the <i>United Kingdom</i> or is a <i>listed issuer</i> in the <i>United Kingdom</i> .
	Prospectus Rules ( <i>PR</i> )	May apply if the <i>ELMI</i> makes an <i>offer of transferable securities to the public</i> in the <i>United Kingdom</i> or is seeking the <i>admission to trading of transferable securities</i> on a <i>regulated market</i> situated or operating in the <i>United Kingdom</i> .
	Disclosure Rules and Transparency Rules ( <i>DTR</i> )	May apply if the <i>ELMI</i> is an <i>issuer</i> , any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i> , or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i> , other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments</i> to trading on a <i>regulated market</i> .



**5.4A Organisation and internal control mechanisms**

- 5.4A.1** **R** A *firm* must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures.
- 5.4A.2** **R** The arrangements, processes and mechanisms referred to in **■ ELM 5.4A.1 R** must be comprehensive and proportionate to the nature, scale and complexity of the *firm's* activities.
- 5.4A.3** **G** **■ ELM 5.4A.1 R** and **■ ELM 5.4A.2 R** reflect article 22 of the *Banking Consolidation Directive*.



## 5.5 Rules for making calculations

### Exchange rates for the ELM financial rules

- 5.5.1 **R** Except as otherwise provided for in *ELM*, a *firm* must, for the purposes of the *ELM financial rules*, 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 for the ELM financial rules

- 5.5.2 **R** Except as otherwise provided for in *ELM*, and subject to ■ ELM 5.5.3 R, a *firm* must determine amounts included in the calculations required by the *ELM financial rules* in accordance with the accounting principles and rules which the *firm* would apply if it were drawing up financial statements under the Companies Act 1985 (and Companies Act 2006 (as applicable)) including those accounting principles and rules contained in the United Kingdom Statements of Standard Accounting Practice (SSAPs) and Financial Reporting Standards (FRSs) or, where applicable, *international accounting standards* effective at the relevant time.

- 5.5.3 **R** A *firm* must determine amounts included in the calculations required by the *ELM financial rules* in such a way as to reflect the substance and not merely the legal form of the underlying transactions and balances.

### Valuation under the ELM financial rules

- 5.5.4 **R** 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. This *rule* does not override the valuation requirements in ■ ELM 3.3.2 R (Valuation of qualifying liquid assets).

**Money laundering and other checks**

- 6.3.4 **R** (1) The procedures referred to in ■ ELM 6.3.3 R are the carrying out of any checks 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.
- (2) A *firm* must complete any procedures referred to in (1) as soon as reasonably possible.

- 6.3.5 **R** Nothing in ■ ELM 6.3 requires a *firm* to do anything:
- (1) [deleted]
- (2) prohibited by the *Money Laundering Regulations*; or
- (3) that would be a criminal offence under the law of any part of the *United Kingdom*; or
- (4) (in relation to *e-money*) that would be a criminal offence under the law of a country other than the *United Kingdom* in which the *firm* redeems or would redeem that *e-money*.

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

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

**Guidance**

- 6.3.7 **G** Merchants who accept *e-money* in the course of their business do not benefit from this right to redemption but will usually make separate contractual arrangements for redemption.
- 6.3.8 **G** ■ ELM 6.3.3 R recognises that it may not be possible to make electronic payments to *e-money* holders at once owing to the timetable of the settlement cycle for retail payments.
- 6.3.9 **G** The par value of *e-money* is its monetary value.
- 6.3.10 **G** The *redemption right* applies against the issuer of *e-money*. Issuer means the same thing as it does for the purpose of article 74A of the *Regulated Activities Order* (Electronic money). There is *guidance* on the meaning of issuer under that article in ■ PERG 3 (The regulated activity of issuing e-money).

## 6.4 Exceptions to the duty to redeem

### Minimum redemption amount

- 6.4.1 **R** ■ ELM 6.3.1 R 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 **R** 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 **R** 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 **G** 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, ■ ELM 6.3.1 R does not require the *firm* to reimburse the holder or redeem that *e-money* for him.
- 6.4.5 **G** 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. For example, a *firm* should consider whether the duty of a card issuer under regulation 21 (Payment by card) of the Consumer Protection (Distance Selling) Regulations 2000 to recredit or to return sums in the event of fraudulent use of a payment card applies to it, particularly in the case of *e-money* stored on a *plastic card*.



## 8.2 Purpose

- 8.2.1** **G** This chapter, together with articles 9C to 9G of the *Regulated Activities Order* (Exclusions), implements the provisions of article 8 (Waiver) of the *E-Money Directive* by setting out the procedure for applying for, and revoking, a certificate (a *small e-money issuer certificate*).
- 8.2.2** **G** This chapter also contains provisions relating to the obtaining of information by the FSA from a *small e-money issuer* to ensure the exclusion provisions referred to in **ELM 8.2.1 G** are not abused.

## 8.3 Introduction

### The small e-money issuer certificate

- 8.3.1** **G** The holder of a *small e-money issuer certificate* (a *small e-money issuer*) is excluded from the *regulated activity* of *issuing e-money*.
- 8.3.2** **G** A *small e-money issuer* is not an *exempt person* within the meaning of the *Act*, that is a *person* who is carrying on a *regulated activity* but exempt from the need to be *authorised*. The *small e-money issuer* is not, as such, carrying on a *regulated activity*. This means, in particular, that:
- (1) an *authorised person* can be a *small money issuer* (unless it is a *full credit institution* (see ■ ELM 8.4.2 G); and
  - (2) a *small e-money issuer* does not benefit from the exclusion in article 16 of the *Financial Promotion Order* (Exempt persons).
- 8.3.3** **G** ■ PERG 3 gives *guidance* on the restrictions on financial promotion in section 21 of the *Act* (Restrictions on financial promotion) in relation to *e-money*.
- 8.3.4** **G** A *person* who issues *e-money* on a limited scale may apply to the *FSA* for a *small e-money issuer certificate*. This chapter contains the provisions relating to the certificate in the following sections:
- (1) ■ ELM 8.4 gives *guidance* on the three conditions under which a certificate may be given;
  - (2) ■ ELM 8.5 contains the direction on how to apply for a certificate and gives *guidance* on the application procedure;
  - (3) ■ ELM 8.6 contains the direction on how to apply for a revocation of a certificate and gives *guidance* on how the *FSA* may revoke a certificate on its own initiative; and
  - (4) ■ ELM 8.7 contains *rules* and *guidance* about the provision of information to the *FSA*, including the *rules* which require a *small e-money issuer* to give periodic reports and change reports to the *FSA* on Form ELM-SI (which is set out in ■ ELM 8 Annex 2 RR).