

PERIMETER GUIDANCE MANUAL (APPLICATION OF E-MONEY PROVISIONS) INSTRUMENT 2005

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of its power under section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 31 December 2005.

Amendments to the Perimeter Guidance manual

- C. General guidance on FSA regulatory perimeter issues, amending the Perimeter Guidance manual, is set out in the Annex to this instrument. This general guidance does not form part of the FSA Handbook.

Citation

- D. This instrument may be cited as the Perimeter Guidance Manual (Application of E-money Provisions) Instrument 2005.

By order of the Board
17 November 2005

Annex

Amendments to the Perimeter Guidance manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

- 3.2.7 G The definition of e-money in the Regulated Activities Order is based on copies ~~out~~ the definition of *electronic money* in the *E-Money Directive* ~~with one~~ exception. The definition in the E-Money Directive is that e-money is "monetary value as represented by a claim on the issuer which is:
- (1) stored on an electronic device;
 - (2) issued on receipt of funds of an amount not less in value than the monetary value issued; and
 - (3) accepted as means of payment by undertakings other than the issuer".
- 3.2.8 G The ~~main difference~~exception is that the words "of an amount not less in value than the monetary value issued" in article 1(3)(b)(ii) of the *E-Money Directive* are not reproduced in the *Regulated Activities Order*.
- ...
- 3.2.18 G ... ~~Such a delay does not make the payment for the e-money a deposit. This is because the means of spending the e-money is put into the hands of the purchaser when he purchases the card.~~
- 3.2.19 G ~~A person may also pay for e-money by cheque. The e-money issuer will not receive the value until the cheque has cleared. This delay does not make the payment for the e-money into a deposit. The purchaser has paid for the e-money even though his payment obligation has only been satisfied conditionally. The delay referred to in PERG 3.2.18G does not make the~~ payment for the e-money a deposit. This is because the means of spending the e-money is put into the hands of the purchaser when he purchases the card.
- ...
- 3.3.13 G ... This is so even if in practice most of the e-money is spent with the issuer and only a small portion is ever spent with third parties.
- ...

After PERG 3.3.21G insert the following new provisions:

Substance of the scheme

- 3.3.22 G When deciding whether a particular scheme involves *issuing e-money* or not, it is necessary to take into account the substance of the scheme. In particular it is necessary to consider whether:
- (1) the scheme involves the issue of prepaid electronic monetary value that the holder can spend with third parties; or
 - (2) the provision by the issuer of some other sort of service.
- 3.3.23 G In considering the question in *PERG 3.3.22G*, relevant factors include:
- (1) the risks incurred by the holder of the value;
 - (2) the nature of the rights and obligations of the holder of the prepaid value, the issuer of the value and third parties involved in the scheme; and
 - (3) what the scheme allows the holder of the value to do.
- 3.3.24 G Therefore artificial features of a scheme that disguise, or try to disguise, the payment function as the supply of another sort of service are not likely to prevent the scheme from involving *issuing e-money*.
- 3.3.25 G The European Commission Services published a separate guidance note in January 2005 on the application of the *E-money Directive* to mobile network operators. The full text of this guidance is available at the following link: http://europa.eu.int/comm/internal_market/bank/docs/e-money/2004-05-consultation_en.pdf. The *FSA* will have regard to such guidance when considering whether the issue of prepaid airtime to a mobile phone user, which can be used to pay for third party goods and services, whether delivered through or outside the telephone operator's network, constitutes the *regulated activity of issuing e-money*.

...

After *PERG 3.4* insert the following new section:

3.5 The application of the e-money definition to various products

3.5.1 G This section of *PERG 3* contains *guidance* on whether certain products involve *issuing e-money*.

Electronic travellers cheques

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

- (1) ones whose only function is to allow the holder to withdraw cash in a foreign currency from automated teller machines ("ATMs") when abroad; and

- (2) ones that can also be used to buy goods and services from third parties.
- 3.5.3 G The card referred to in *PERG 3.5.2G* is loaded with value. The holder pays for the value on issue. The value therefore complies with the part of the definition of *e-money* that says that the value must be issued on receipt of funds (see *PERG 3.3.5G - PERG 3.3.9G*). The card is likely to be an electronic device for the purpose of paragraph (a) of the definition of *e-money* (which is explained in *PERG 3.3.2G - PERG 3.3.4G*).
- 3.5.4 G The remaining condition that value must meet if it is to be *e-money* is that the value must be accepted as a means of payment by *persons* other than the issuer. This part of the definition is explained in *PERG 3.3.10G – PERG 3.3.13G*.
- 3.5.5 G An electronic travellers cheque falling into *PERG 3.5.2G(2)* meets the part of the definition of *e-money* referred to in *PERG 3.5.4G*.
- 3.5.6 G An electronic travellers cheque falling into *PERG 3.5.2G(1)* does not meet the part of the definition of *e-money* referred to in *PERG 3.5.4G* if the scheme is set up in such a way that:
- (1) it can only be used to withdraw foreign currency from ATMs owned by the issuer of the value; or
 - (2) (if (1) does not apply) the withdrawal of foreign currency by a cardholder will never involve the purchase of the currency from the owner of the ATM but instead the repayment of the prepaid value by the issuer of the prepaid value.

Trust accounts

- 3.5.7 G A prepaid electronic value payment system may involve the "float" being paid into a trust account. The float is the running balance of money held by the issuer of the electronic value representing payments for the issue of electronic value less the amount of electronic value that has been redeemed.
- 3.5.8 G Holding the float on trust:
- (1) does not prevent the electronic value from being monetary value as represented by a claim on the issuer (this part of the definition of *e-money* is described in *PERG 3.3.1G*);
 - (2) is not relevant to the other elements of the definition of *e-money*; and
 - (3) does not mean that the *person* who accepts the payment for the electronic value is not the issuer of that value.
- 3.5.9 G The result of *PERG 3.5.8G* is that putting the float into a trust account does not prevent the *person* who accepts the payment for the electronic value from *issuing e-money*.

