

Chapter 3

Rules about application

3.1 Who?

- 3.1.1** **R** *PRIN* applies to every *firm*, except that it does not apply to a *firm* in relation to its carrying on of *auction regulation bidding*.
- 3.1.1A** **R** *PRIN* also applies:
- (1) to an *electronic money institution*, an *authorised payment institution*, a *small payment institution* or a *registered account information service provider*; and
 - (2) [deleted]
- 3.1.1B** **R**
- (1) *Principle 7* applies to a *registered person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (in reliance on the exemption in article 73ZA of the *Financial Promotion Order*) as it applies to an *authorised person communicating a financial promotion* relating to one or more *qualifying cryptoassets* (■ PRIN 3.2.2R), disregarding the effect of ■ PRIN 3.2.10R.
 - (2) For the purpose of (1), relevant references in this sourcebook to a *firm* include reference to a *registered person*.
- 3.1.2** **G** [deleted]
- 3.1.3** **G** [deleted]

- 3.1.4 **G** [deleted]
- 3.1.5 **G** [deleted]
- 3.1.6 **R** A firm will not be subject to a Principle or ■ PRIN 2A to the extent that it would be contrary to the requirements of an EU measure passed or made before IP completion day, to the extent that those requirements continue to have effect after IP completion day under the EUWA.
- 3.1.7 **G** ■ PRIN 4 provides specific guidance on the application of the Principles and ■ PRIN 2A for MiFID business.
- 3.1.8 **G** The Principles will not apply to the extent that they purport to impose an obligation which is inconsistent with requirements which implemented the Payment Services Directive, the Consumer Credit Directive or the Electronic Money Directive. For example, there may be circumstances in which Principle 12 and ■ PRIN 2A may be limited by the conduct of business obligations derived from the Payment Services Directive and the Electronic Money Directive and applicable to payment service providers and electronic money issuers (see Parts 6 and 7 of the Payment Services Regulations and Part 5 of the Electronic Money Regulations) or derived from the Consumer Credit Directive (see, for example, the information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)).
- 3.1.9 **R** PRIN applies to a TP firm, except that Principle 4 only applies to the extent that a TP firm is subject to rules relating to capital adequacy.
- 3.1.10 **R**
- (1) Only Principles 1, 2, 3, 9, 11, 12 and ■ PRIN 2A apply to a TP UCITS qualifier and a TP AIFM qualifier, and only with respect to the activities in ■ PRIN 3.2.2R (Communication and approval of financial promotions).
 - (2) Where Principle 12 and ■ PRIN 2A do not apply, Principle 7 also applies to a TP UCITS qualifier and a TP AIFM qualifier with respect to the activities in ■ PRIN 3.2.2R.
- 3.1.11 **G** For the purposes of ■ PRIN 3.1.9R, a TP firm should refer to ■ GEN 2.2.30R and ■ GEN 2.2.31G to determine which rules relating to capital adequacy apply to it.
- 3.1.12 **R** Principle 12 and ■ PRIN 2A only apply where a client is a retail customer, or there is distribution chain which involves a retail customer.
- 3.1.13 **R** Principle 12 and ■ PRIN 2A apply to:
- (1) a TP firm; and
 - (2) a Gibraltar-based firm.

3.2 What?

- 3.2.1A** **R** *PRIN* (other than *Principle 12* and **■** *PRIN 2A*) applies with respect to the carrying on of:
- (1) *regulated activities*;
 - (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc);
 - (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, *regulated funeral plan activity*, *credit-related regulated activity*, *insurance distribution activity* and *accepting deposits*; and
 - (4) activities directly arising from *insurance risk transformation*.
- 3.2.1B** **R** Other than with respect to a *firm* that is a *credit union*, *PRIN* also applies with respect to:
- (1) the provision of *payment services*;
 - (2) issuing of *electronic money* (where not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*); and
 - (3) activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*).
- 3.2.1C** **G** Issuing of *electronic money* will therefore be covered under either **■** *PRIN 3.2.1AR(1)* where it is the regulated activity of *issuing electronic money* specified in article 9B of the *Regulated Activities Order*, or under **■** *PRIN 3.2.1BR* where it is not that *regulated activity*.
- 3.2.2** **R** *PRIN* also applies with respect to the *communication and approval of financial promotions* which:
- (1) if *communicated* by an *unauthorised person* without *approval* would contravene section 21(1) of the *Act* (Restrictions on financial promotion); and

(2) may be *communicated* by a *firm* without contravening section 238(1) of the *Act* (Restrictions on promotion of collective investment schemes).

3.2.2-A **G** *PRIN* applies to the communication of promotions concerning *payment services* and *electronic money*.

3.2.2A **R** [deleted]

3.2.3 **R** Subject to **■** PRIN 3.2.4R, *Principles* 3, 4 and (in so far as it relates to disclosing to the *FCA*) 11 (and this chapter) also:

- (1) apply to *firms* with respect to the carrying on of *unregulated activities* (for *Principle* 3 this is only in a *prudential context*); and
- (2) for *firms* and other *persons* that are subject to the *Principles*, take into account any activity of other members of a *group* of which the *firm* is a member.

3.2.4 **R** In relation to an *Annex II benchmark administrator* which:

- (1) administers only *benchmarks* which are subject to Annex II to the *benchmarks regulation*; and
- (2) does not have *permission* to carry on any other *regulated activities* in relation to which *Principle* 11 applies,

Principle 11 (in so far as it relates to disclosing to the *FCA*) applies only to the *regulated activity* of *administering a benchmark*.

3.2.5 **G** The *FCA* only expects an *Annex II benchmark administrator* subject to **■** PRIN 3.2.4R to disclose information under *Principle* 11 which is relevant to the *firm's* compliance with its obligations under the *benchmarks regulation*.

Principle 12 and PRIN 2A: additional application provisions

3.2.6 **R**

- (1) *Principle* 12 and **■** PRIN 2A apply to a *firm's retail market business*, including in respect of *existing products* and *closed products*.
- (2) (a) Subject to (b), *Principle* 12 and **■** PRIN 2A apply to a *firm* with respect to the *communication* or *approval* of a *financial promotion* (see **■** PRIN 3.2.2R), but only if the *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail customer*.
- (b) *Principle* 12 and **■** PRIN 2A do not apply to the *communication* or *approval* of a *financial promotion* to the extent that the *financial promotion* relates to an activity that is excluded from the definition of *retail market business* by virtue of limbs (1) to (6) of that definition.

(3) If the *firm* is a *credit union*, and except insofar as *Principle 12* and ■ PRIN 2A apply by virtue of (2), then *Principle 12* and ■ PRIN 2A do not apply to the following activities:

- (a) *payment services* and activities connected to the provision of *payment services*, except where the activity is an *ancillary activity* in relation to a *regulated activity* other than *issuing electronic money*; and
- (b) activities connected to or *ancillary activities* in relation to *issuing electronic money*, but only insofar as the activity is not an *ancillary activity* in relation to another *regulated activity*.

3.2.7 **R** Where *Principle 12* and ■ PRIN 2A apply to the activities of a *firm* operating in a distribution chain, *Principle 12* and ■ PRIN 2A apply only to the extent that the *person* is responsible in the course of carrying out those activities for determining or materially influencing *retail customer* outcomes.

3.2.8 **R** Subject to ■ PRIN 3.2.7R, *Principle 12* and ■ PRIN 2A do not apply to activities to the extent that those activities are not included in a *rule* which sets out the scope of protections offered to *retail customers* by *COBS*, *ICOBS*, *MCOB*, *BCOBS*, *CMCOB*, *FPCOB*, *PROD* or *CONC*.

3.2.9 **G** [deleted]

Interaction between Principle 12 and Principles 6 and 7

3.2.10 **R** *Principles 6* and *7* do not apply to a *firm's* activities to the extent that *Principle 12* and ■ PRIN 2A apply.

3.2.11 **G** Activities to which *Principles 6* and *7* rather than *Principle 12* and ■ PRIN 2A may apply include, for example, services provided to *professional clients*.

3.2.12 **G** *Principle 12* and ■ PRIN 2A have a broader application than *Principles 6* and *7*, for example they apply to *firms* in the distribution chain for whom the *retail customer* may not be a *client*.



3.3 Where?

3.3.1 **R** Territorial application of the Principles

Principle	Territorial application
<i>Principles 1, 2 and 3</i>	in a <i>prudential context</i> , apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , apply with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see PERG 2.4A), unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>onshored regulation</i> .
<i>Principle 4</i>	applies with respect to activities wherever they are carried on.
<i>Principle 5</i>	if the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the <i>UK financial system</i> , applies with respect to activities wherever they are carried on; otherwise, applies with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , applies with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see PERG 2.4A).
<i>Principles 6, 7, 8, 9 and 10</i>	<i>Principle 8</i> , in a <i>prudential context</i> , applies with respect to activities wherever they are carried on; otherwise these <i>Principles</i> apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> , or in respect of <i>regulated claims management activities</i> , apply with respect to activity carried on in <i>Great Britain</i> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see PERG 2.4A), unless another applicable <i>rule</i> or <i>onshored regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in re-

Principle	Territorial application
	lation to the activity described in that <i>rule</i> or <i>onshored regulation</i> .
<i>Principle 11</i>	applies with respect to activities wherever they are carried on.
<i>Principle 12</i> and <i>PRIN 2A</i>	apply with respect to activities carried on with <i>retail customers</i> located in the <i>United Kingdom</i> unless another applicable rule or <i>onshored regulation</i> which is relevant to the activity has a different territorial scope, in which case <i>Principle 12</i> and <i>PRIN 2A</i> apply with that scope in relation to the activity described in that <i>rule</i> or <i>onshored legislation</i> .

3.3.2 **G** [deleted]

3.3.3 **R** ■ *PRIN 3.3.1R* applies to *electronic money institutions, payment institutions* and *registered account information service providers* as if the references to a *firm* were references to a *person* within that description, and references to an *appointed representative* were to an *agent* of such a *person* within the meaning of the *Payment Services Regulations*.

3.3.4 **R** Notwithstanding ■ *PRIN 3.3.1R*, *PRIN* applies to:

- (1) a *TP firm* with respect to activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;
- (2) a *TP firm* with respect to services provided into the *United Kingdom* by the *firm* (or its *appointed representative*) from an establishment in an *EEA State*; and
- (3) a *TP AIFM qualifier* or a *TP UCITS qualifier* with respect to the *firm's* activities in relation to the *AIF* or *scheme* in question, in the *United Kingdom*.

3.4 General

Clients and the Principles

- 3.4.-1** **R** ■ PRIN 3.4.1R, ■ PRIN 3.4.2R and ■ PRIN 1 Annex 1 do not apply with respect to:
- (1) *credit-related regulated activities*; or
 - (2) *regulated claims management activities*; or
 - (3) *regulated funeral plan activities*; or
 - (4) *payment services*; or
 - (5) the issuing of *electronic money* (where not a *regulated activity*).
- 3.4.1** **R** For business other than *MiFID* or *equivalent third country business*, the only requirement of *Principle 7* relating to *eligible counterparties* is that a *firm* must communicate information to *eligible counterparties* in a way that is not misleading.
- 3.4.1A** **G** *Principle 7* applies in full to *MiFID* or *equivalent third country business*.
- 3.4.2** **R** For the purposes of *PRIN*, a *firm* intending to carry on, or carrying on, activities that do not involve *designated investment business*, may treat a *client* as an *eligible counterparty* in accordance with ■ PRIN 1 Annex 1 R.
- 3.4.3** **G** [deleted]
- ### Guarantors etc
- 3.4.3A** **R**
- (1) Paragraph (2) applies in relation to an *individual* who:
 - (a) has provided, or is to provide, a guarantee or an indemnity (or both) in relation to a *regulated credit agreement*, a *regulated consumer hire agreement* or a *P2P agreement*; and
 - (b) is not the *borrower* or the *hirer*.
 - (2) If the *individual* is not a *customer*, they are to be treated as if they were a *customer* for the purposes of *Principles 6* and *7* and as if they were a *retail customer* for the purposes of *Principle 12* and ■ PRIN 2A.

(3) For the purposes of this *rule*, a guarantee does not include a *legal or equitable mortgage* or a *pledge*.

Actions for damages

3.4.4

R

A contravention of the *rules* in *PRIN* does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

Reference to "regulators" in Principle 11

3.4.5

R

Where *Principle 11* refers to regulators, this means, in addition to the *FCA*, other regulators with recognised jurisdiction in relation to *regulated activities, payment services* and *electronic money* whether in the *United Kingdom* or abroad.