

Chapter 3

Rules about application

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*.