

Chapter 19

Non-FSMA powers

19.23 Electronic Money Regulations 2011

19.23.1 The *FCA* has investigation and sanctioning powers in relation to both criminal and civil breaches of the *Electronic Money Regulations*. The *Electronic Money Regulations* impose requirements including, amongst other things, various provisions regulating the rights and obligations of electronic money institutions.

19.23.2 In addition to its powers that apply to *authorised electronic money institutions*, generally the *FCA* has the power to prohibit or restrict the carrying out of certain *regulated activities* by *EEA authorised electronic money institutions*.

19.23.3 The *FCA's* approach to enforcing the *Electronic Money Regulations* will mirror its general approach to enforcing the *Act*, as set out in ■ EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the electronic money issuer or relevant person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.

19.23.4 The *Electronic Money Regulations*, for the most part, mirror the *FCA's* investigative, sanctioning and regulatory powers under the *Act*. The *FCA* has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the *Act*. Key features of the *FCA's* approach are described below.

The conduct of investigations under the Electronic Money Regulations

19.23.5 The *Electronic Money Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Electronic Money Regulations*.

19.23.6 The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Electronic Money Regulations* and the reasons for the appointment, unless notification is likely

to prejudice the investigation or otherwise result in it being frustrated. The *FCA's* policy in civil investigations under the *Electronic Money Regulations* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Electronic Money Regulations

19.23.7 The *RDC* is the *FCA's* decision maker for some of the decisions under the *Electronic Money Regulations* as set out in ■ DEPP 2 Annex 1G. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3 and ■ 3.4. ■ DEPP 3.4 applies for urgent notices under regulation 11(6), (9) and (10)(b) (including as applied by regulation 15).

19.23.8 For decisions made by executive procedures the procedures to be followed will be those described in ■ DEPP 4.

19.23.9 The *Electronic Money Regulations* do not require the *FCA* to have published procedures to commence criminal prosecutions. However, in these situations the *FCA* expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.

19.23.10 The *Electronic Money Regulations* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to material as set out in section 394 of the *Act* in certain cases.

19.23.11 Certain *FCA* decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the Electronic Money Regulations

19.23.12 When determining whether to take action to impose a penalty the *FCA's* policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. When determining the level of a financial penalty the *FCA's* policy includes having regard to relevant principles and factors in ■ DEPP 6.5 to ■ 6.5D.

19.23.13 When determining whether to suspend the authorisation or, as the case may be, the registration of an electronic money institution or limit or otherwise restrict the carrying on of electronic money issuance or payments services business by an electronic money issuer the *FCA's* policy will have regard to the relevant factors in ■ DEPP 6A.

19.23.14 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Electronic Money Regulations* to assist it to exercise its functions under the Regulations in the most efficient and economic way. See ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 for further information on the settlement process and the settlement discount scheme.

Statement of policy in section 169(7) interviews (as implemented by the Electronic Money Regulations)

19.23.15

The *Electronic Money Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Electronic Money Regulations* the *FCA* will follow the procedures described in ■ DEPP 7.